



WEB COPY



W.P. No.26510 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No.26510 of 2017
and WMP.No.28230 of 2017**

The Management of
M/s.Suolificio Linea Italia (India) Pvt. Ltd.,
No.19/1, 4/4, Pondy Mailam Road,
Sedurapet, Puducherry,
Rep. by its Company Secretary.

...Petitioner

Vs

1. The President
Chemcrown Exports and M/s.Suolificio Linea Italia Private
Limited Thozhilalar Sangam,
Cuddalore Road,
Bharathi Mill Thittu, Mudaliarpur,
Puducherry.

2. The Presiding Officer,
Labour Court, Puducherry.

3. The Management of
Chemcrown Exports Limited Unit-III,
19/1, 4/4, Mylam Road, Sedarpur, Puducherry.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari to call for the records connected with the award dated 24.02.2016 passed by the second respondent, Labour Court, Puducherry in I.D(L).No.24/2012 and quash the same.



WEB COPY



W.P. No.26510 of 2017

For Petitioner : Mr.Ravi, Senior Counsel
For M/s.Uptan & Ravi

For Respondent : Mr.P.R.Thiruneelakandan R1
R2 – Court
R3 – No appearance

ORDER

This petition has been filed seeking to quash the award dated 24.02.2016 passed by the second respondent, Labour Court, Puducherry in I.D.(L).No.24/2012 directing the petitioner to reinstate 12 workmen of the 3rd respondent with 50% back wages and other attendant benefits.

2. It is the case of the petitioner that the petitioner is a company and the first respondent is a trade union. The 12 members/workers of the first respondent union were working as permanent employees in the petitioner company, which was engaged in manufacturing of leather products. There was a fire accident in the petitioner's factory on 08.12.2010. The petitioner declared lay-off, but the workmen were regularly coming to the factory and signed for a few days. The petitioner company refused to get signature of the 12 workmen. On 21.02.2011, the petitioner issued closure notice stating that the company has decided to pay four months salary as full and final settlement to the workers, but the 12 workmen have refused to receive the final settlement amount and



W.P. No.26510 of 2017

insisted for their reinstatement in the third respondent since it is a sister concern of the petitioner Management but the petitioner Management has refused to do so. Therefore, the first respondent Union raised a dispute before the Labour Court against the petitioner company. The Labour Court allowed the petition in favour of the workman with certain directions. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the third respondent is the sister concern of the petitioner and they are distinct and different factories and they are having separate owners and shareholders. It was further stated that there was fire accident on 08.12.2010 in the petitioner's company and the entire goods and machineries were totally damaged. Therefore, the petitioner company could not run the company due to fire accident and lay off was given to the workers and lay off salary was also duly disbursed which they were legally entitled to get. Without considering the entire facts, the Labour Court has passed the impugned order in favour of the first respondent, which is not sustainable one.

4. Per contra, the learned counsel for the first respondent Union submitted that during pendency of the writ petition, the respective workmen



W.P. No.26510 of 2017

were re-engaged by the petitioner Management and the last drawn wages on par with the other employees was paid to the respective workmen. The alleged dispute before the Labour Court for extentsion of Section 12(3) settlement was not in respect of wages. Hence, payment of the current wages to the respective workmen is unsustainable one. This Court may issue a direction to the petitioner to pay the difference of wages to the respective workmen.

5. The learned counsel for the respondent union submitted that even there is no pleading or averments in the claim petition, it is the duty of the petitioner to establish before the Labour Court as if the workmen were gainfully employed during the non employment period. In the absence of any materials, the Labour Court elaborately discussed the issue and awarded 50% backwages and with continuity of service and other attendant benefits to the respective 12 workmen, which cannot be interfered with.

6. In support of his contention, the learned counsel relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Bhuvanesh Kumar Dwivedi Vs., M/s.Hindalco Industries Ltd., reported in CDJ 2014 SC 388.***



W.P. No.26510 of 2017

7. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

8. The facts of the case are not in dispute. Admittedly the respective 12 workmen was employed with the petitioner company. Due to fire accident, the said establishment was closed. Thereafter, the workmen raised a dispute before the Labour Court on the ground that the petitioner Management and the third respondent Management are one and the same and hence, they seek reinstatement in the third respondent.

9. Before the Labour Court, on behalf of the petitioner management, two witnesses were examined and 14 documents were marked. On the other hand, the first repondent Union examined one witness and marked 24 documents. After analysing all the evidences and witnesses, the Labour Court passed the impugned order in favour of the workmen. Pursuant to whcih, 12 workmen were reengaged by the third respondent. The issue arises in the present petition is, whether the workmen are entitled to get 50% backwages or not.



W.P. No.26510 of 2017

10. This Court called for records and perused the same. On perusal of the records, it reveals that the Labour Court has not discussed with regard to the payment of 50% backwages in the impugned order. Admittedly, the initial burden lies upon the workman to establish that he may not gainfully employed during non-employment period. Thereafter, the management has to disprove the same by adducing evidence that the workman was gainfully employed elsewhere. However, without any discussion, the Labour Court simply awarded 50% backwages to the respective workmen which is not sustainable one. Further this Court also perused the decision relied upon by the respective workmen as stated supra and is of the view that the same is not applicable to the present case.

11. Considering the fact that the Labour Court has not stated on what basis they awarded 50% of backwages to the workmen and in the absence of any evidence and discussion, the Labour Court awarding 50% of the backwages to the respective workmen is not sustainable one. Hence, this Court is inclined to set aside the 50% backwages alone awarded by the Labour Court. However, liberty granted to the respective workmen to raise wages dispute before the competent Court in the manner known to law if they are not satisfied with the wages provided by the petitioner Management.



W.P. No.26510 of 2017

WEB COPY 12. With the above direction, the writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is also closed.

01.09.2023

rli

Index: Yes/No

NCS : Yes/No

To

The Presiding Officer,
Labour Court, Puducherry.



WEB COPY



W.P. No.26510 of 2017

M.DHANDAPANI, J.

Rli

W.P. No.26510 of 2017

01.09.2023