



W.P.(MD)Nos.9568 & 11549 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
19.10.2022	19.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.9568 & 11549 of 2012

and

M.P.(MD)No.1 of 2012

W.P.(MD)No.9568 of 2012

The Management of Fenner (India) Limited,
Kochadai, Madurai – 625 016.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Madurai.

2. M.Sangariah

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records of the 1st respondent in C.P.No.83 of 2009 and quash its order, dated 17.12.2011.



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For Petitioner : Mr.Anand Gopalan, for
M/s.T.S.Gopalan & Co.
For R-1 : Court
For R-2 : M/s.K.R.Shiva Sankari, for
Mr.D.Prabhakar

W.P.(MD)No.11549 of 2012

M.Sangariah

... Petitioner

vs.

1. The Presiding Officer,
Labour Court, Madurai.

2. The Management of Fenner (India) Limited,
Kochadai, Madurai – 625 016.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records on the file of the 1st respondent in C.P.No.83 of 2009 and quash the award of the 1st respondent, dated 17.12.2011 in respect of the dismissal portion of the claim of the petitioner and to direct the 2nd respondent to pay all the monetary benefits as claimed by the petitioner in C.P.No.83 of 2009.

For Petitioner : M/s.K.R.Shiva Sankari, for
Mr.D.Prabhakar
R-1 : Court
For R-2 : Mr.Anand Gopalan, for
M/s.T.S.Gopalan & Co.



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COMMON ORDER

W.P.(M)No.9568 of 2012 is filed by the Management for issuance of ***Writ of Certiorari***, to quash the order, dated 17.12.2011 passed in C.P.No.83 of 2009.

W.P.(M)No.11549 of 2012 is filed by the employee for issuance of ***Writ of Certiorarified Mandamus***, to quash the order, dated 17.12.2011 passed in C.P.No.83 of 2009 passed by the 1st respondent, in respect of that portion of the order where the claim of the petitioner was dismissed and to direct the 2nd respondent to pay all the monetary benefits as claimed by the petitioner in C.P.No. 83 of 2009.

2. For the sake of convenience the Management of Fenner (India) Limited, is referred as, the petitioner Management and the employee namely M.Sangariah, is referred as, the 2nd respondent.



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3. The petitioner management is engaged in the manufacture of Belt and Oil seals. The workmen of the petitioner management are paid emoluments in terms of various settlements entered between the management and the recognized union. As far as the management staffs are concerned, they are not bound by the said wage settlements, but they are paid emoluments based on their performance and at the discretion of the management. The second respondent has joined the service of the petitioner management on probation on 07.05.1972 as Workman and his emoluments were covered in terms of various settlements. On 29.05.1985, he was promoted to the post of Supervisor. On 01.08.1986, he was confirmed as Supervisor-III. From the date of his promotion as a Supervisor, the 2nd respondent ceased to have the benefit of the settlement entered into between the management and the Union. Due to unsatisfactory performance, the 2nd respondent service was terminated on 28.02.1989, which was challenged in I.D.No.501 of 1990. By an award, dated 31.05.1993, the 2nd respondent was granted the relief of reinstatement and backwages. The said award was challenged before this Court in W.P.No.375 of 1994 and during the pendency of the writ petition, the 2nd respondent was paid monthly wages at Rs.2,183/-, totaling to Rs. 1,95,836/-, in terms of Section 17(e) of the Industrial Disputes Act. The petitioner



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management also deposited a sum of Rs.1,31,000/-towards backwages. By an order, dated 15.06.2001, the writ petition filed by the petitioner was allowed and the matter was remanded to the 1st respondent for fresh consideration. The 2nd respondent challenged the above order in W.A.No.869 of 2002. During the pendency of the appeal, on 15.05.2004, the 2nd respondent reached the age of superannuation. By an order dated 03.04.2008, the writ appeal filed by the 2nd respondent was allowed, thereby, confirming the award of the 1st respondent. Thereafter, the 2nd respondent filed C.P.No.83 of 2009 claiming a sum of Rs. 25,57,807/- towards backwages, gratuity and various allowances for the period from 28.02.1989 to 15.05.2004. The 2nd respondent's claim was based on various allowances, emoluments and benefits, which were payable to the workmen, who were covered by various settlements. The petitioner management had filed counter statement contending that the 2nd respondent was lastly employed as a Supervisor, that he could not claim wages for the said period on a par with the wages paid to the workmen category, that when he lastly working as a Supervisor, he was getting emoluments consisting of basic wages and house rent allowance, that from the date of termination till his date of superannuation, the amount towards back wages and other benefits payable to the 2nd respondent was only at



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Rs.6,00,194/-. Since the 2nd respondent was paid Rs.1,95,836/-, therefore, the balance payable towards back wages is only Rs.4,04,358/-. The petitioner management admitted its liability towards education allowance at Rs.14,175/-, gratuity amount of Rs.30,077/- and 20 years service award amount of Rs.4,000/-. Before the 1st respondent, the 2nd respondent examined himself as witness and marked Exs.W.1 to W.7. On behalf of the petitioner management, its Assistant Manager (Personnel) was examined as M.W.1 and Exs.R.1 to R.4 were marked.

4. By, order dated 17.12.2011, the 1st respondent has held that, allowances claimed by the 2nd respondent could not be granted, as they were liable to be paid only, if the 2nd respondent had actually worked, that he was entitled to education allowance, as admitted by the petitioner. In respect of payment of gratuity, though there is a dispute on the amount, the 2nd respondent's calculation could be allowed without driving him to approach the authority under the Payment of Gratuity Act. The 2nd respondent's claim for 20 years allowance at Rs.41,600/-could be granted to him and that in respect of backwages and house rent allowance, the 2nd respondent's calculation could be taken into account in the absence of proof filed by the petitioner and that the said amount would be Rs.



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12,99,757/-. In the above circumstances, the 1st respondent allowed the claim of the 2nd respondent at Rs.15,63,432/- and after adjusting the amount of Rs. 3,36,836/- the balance amount payable by the petitioner to the 2nd respondent was at Rs.12,26,600/-. Aggrieved over the award which is vitiated by errors of law and jurisdiction, the present writ petition is filed.

5. Since the claim of Rs.25,57,807/- was declined by the Labour Officer, challenging the said order, the employee has also filed W.P.(MD)No. 11549 of 2012 and hence, both the writ petitions were taken simultaneously.

6. Heard Mr.Anand Gopalan, for M/s.T.S.Gopalan & Co. for the petitioner management and M/s.K.R.Shiva Sankari, for Mr.D.Prabhakar for the 2nd respondent and perused the material documents available on record.

7. The learned counsel appearing for the petitioner management submitted the service details of the employee, which is extracted hereunder:



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DETAILS	
Date of Joining as workman	15.05.1972
Promotion to Supervisor	29.05.1985
Supervisor – III	01.08.1986
Termination	28.02.1989
Award ID 501/1990	31.05.1993
W.P.No. 375/1994	15.06.2001
Superannuation	15.05.2004
W.A.No.869/2002 allowed	03.04.2008

8. The 2nd respondent had claimed allowance under various heads and the same was negatived by the Labour Court, since prior to the dismissal the 2nd respondent was not receiving such allowances, moreover the 2nd respondent had not adduced any evidence to substantiate that he was receiving such allowances. Since the Labour Court had rendered a finding that the 2nd respondent is a “workman”, hence the 2nd respondent is claiming such allowances. As rightly held by the Labour Court the 2nd respondent was not receiving any such allowances prior to his dismissal and the 2nd respondent has not filed any



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evidence to substantiate such claim. Moreover, such allowances would be paid only if the attendant benefits allowed in Industrial Disputes award, since attendant benefits were not allowed and the litigation had attained finality. Therefore, this Court is of the considered opinion that the petitioner is not entitled to such allowances.

9. The petitioner management claims that prior to dismissal the 2nd respondent was paid Basic Wages, House Rent Allowance and Education Allowance and has admitted its liability that the 2nd respondent is entitled to Basic wages plus HRA of Rs.6,00,184/-. But the 2nd respondent claims that he is entitled to Rs.12,99,757/-. It is seen from the records that the 2nd respondent has not submitted any evidence to substantiate his claim. Whenever the workman is claiming any monetary benefits and if the management is disputing the correctness of the amount, the onus of proof lies on the employee to demonstrate that the amounts claimed by the employee are based on evidence and are based on pre-existing right. In the present case, the 2nd respondent has not filed any evidence.



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10. On perusal of the order passed by the Labour Court, the employee has filed only the award passed in Industrial Dispute, writ petition and writ appeal orders and the claim petitions. The employee has not substantiated the claim based on any other evidence. As rightly pointed out by the management, the employee has not substantiated his pre-existing right. The Labour Court has simply accepted the claim statement of the employee. The Labour Court has held that in view of the 2nd respondent's calculation memo, the same should be allowed.

11. The next contention that was raised, when the employee has claimed 20 years award amount to the tune of Rs.41,600/-the same was refuted by the management, by stating that the employee is entitled to only Rs.4,000/-, however, the Labour officer without any reason and without any basis, has simply held the claim of the employee ought to be accepted.

12. The next contention that was submitted by the management is



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that the petitioner is entitled to the claim that are applicable to the petitioner, since the management had arrived at the calculation based on the persons who are similarly placed and has circulated a memo and the same is extracted hereunder:

PARTICULAR FOR BACK WAGES		
S.No.	PARTICULARS	AMOUNT (Rs.) P.
1.	Back Wages [01.01.1994 to 15.05.2004]	600194.00
2.	Educational Allowance	14175.00
3.	Gratuity	35077.00
4.	20 Years Award	4000.00
5.	Madurai Labour Court Cost awarded in I.D.501/1990	1000.00
	TOTAL	654446.00
	Less:	
	Back wages already paid [01.01.1994 – 30.06.2001]	195836.00
	Net amount	458610.00

[Rupees Four Lakhs Fifty Eight Thousand Six Hundred and Ten Only]

Since this calculation is arrived at by taking all the particulars that are applicable to the similarly placed persons, the claim of the management ought to be accepted. If the claim of the employee is accepted without any reasons, the management will be pushed to such situation, where there will be claims by similarly placed persons by taking into the calculation submitted by the employee, which will have a chain reaction and the management will be in vulnerable



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position.

13. The comparative statement of the 2nd respondent claims and the management claims ought to be taken into account to resolve this issue. The claim of the 2nd respondent employee for the year 1994 from January to December under the head of Basic wages is Rs.69,030/-, however, the management submitted for the year 1994 January to December, the basic pay is Rs.37,659/-. On comparing these two statements of the employee and the management, there is a huge difference and the employee is claiming nearly doubled the amount of the claim of the petitioner management. Since the claim of the employee is not substantiated by way of any evidence, this Court is of the considered opinion that claim of the 2nd respondent cannot be accepted. The claim of the petitioner management is that the statement is prepared based on the similarly placed persons and therefore, this Court is of the considered opinion that the claim of the 2nd respondent ought to be in accordance with the similarly placed persons. Therefore, the statement of accounts submitted by the management is acceptable one.

14. The management has submitted a calculation wherein it is stated



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that the petitioner management had already paid a sum of Rs.3,26,836/- to the employee and the balance amount payable is Rs.3,27,610/-. In the said amount, the gratuity is also inclusive. The petitioner management had levied statutory interest for gratuity as 10% and for the balance of the amount, the interest was levied as 7%. The relevant calculation is extracted hereunder:

Our Calculation

(i) Back wages	..	Rs.6,00,194
(ii) Education Allowance	..	Rs. 14,175
(iii) Gratuity	..	Rs. 35,077
(iv) 20 years Service Award..		Rs. 4,000
(v) Cost in ID 501/90	..	Rs. 1,000

Rs.6,54,446

LESS

(i) 17(B) Payment	Rs.1,95,836
(ii) Amount deposited	Rs.1,31,000

Rs.3,26,836

BALANCE PAYABLE Rs.3,27,610

INTEREST CALCULATION

Balance (without gratuity)	Rs.2,92,533
Interest for 18 years at 7%	Rs.3,68,592

Total (without gratuity) Rs.6,61,125

Gratuity	Rs. 35,077
Gratuity Interst for 18 years at 10%	Rs. 63,138

Total Gratuity Rs. 98,215



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Since the 2nd respondent had attained superannuation, apart from the above amount, this Court is awarding Rs.50,000/- as compensation and the same is not carrying any interest. Moreover, this Court is granting 10% interest for the gratuity and 7% for the balance amount. Therefore, this Court is directing the petitioner management to pay the balance amount of Rs.3,27,610/- with the applicable rate of interest as stated supra i.e. gratuity interest 10% and balance amount 7% interest and Rs.50,000/- as compensation without interest within a period of eight weeks from the date of receipt of the copy of the order.

15. With the above directions, these Writ Petitions are disposed of.
No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

The Presiding Officer,
Labour Court, Madurai.



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S.SRIMATHY, J

ksa

Pre-Delivery

Common Order made in

W.P.(MD)Nos.9568 & 11549 of 2012

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