



W.P.(MD).No.6728 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.12.2022

DELIVERED ON : 08.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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Sundaram Industries Employees Union,
Represented by its President,
Kamarajar Nagar, Tiruchy Main Road,
Viralaimalai,
Pudukottai District – 621 316.

... Petitioner

Vs

1.The Management of Sundaram Industries,
Limited (Coach Division),
Represented by its Managing Director,
TVS Registered Office,
West Veli Street,
Madurai – 625 001.

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records in order dated 27.12.2010 in C.P.No.4 of 2001 on the file of the second respondent Labour Court and to quash the same as illegal, unfair and unjust and to direct the respondent Management to pay the monetary benefits which are entitled to the members of the petitioner Union.

For Petitioner : Mr.V.Prakash,
Senior Advocate,
For Mr.D.Prabhakar.

For R-1 : Mr.S.Ravindran,
Senior Advocate,
for Mr.G.Thanivannan

For R-2 : Labour Court

ORDER

This Writ Petition is filed to quash the order dated 27.12.2010 passed in C.P.No.4 of 2001 on the file of the second respondent Labour Court and direct the respondents to pay the monetary benefits which the members of the petitioner's Union are entitled to.



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2. The first respondent Management belongs to TVS Groups of Companies and runs factories in Madurai, Pudukottai and Viralimalai. The Management has three divisions namely, Rubber Division, Coach Division and Retreading Division. There was a wage settlement dated 03.12.1998 between the respondent Management and the TVS workers Union, which was a common settlement for all the three divisions and also common for the workmen, those who had worked in all the three cities. The claimants who are represented by the petitioner's Union were the employees of Coach Division at Pudukottai and Viralimalai. In the respondent Company, there is a Union namely TVS Workers Union which is a Management sponsored Union and the workmen in TVS Group of Companies were forced to become the member of the said Union and the subscription for the membership were received by the Management itself at the time of monthly salary. The office bearers were selected by the respondent Management without election. The respondent Management did not allow the employees to have Trade Union of workmen of their own or join any other Trade Union of their choice. Under these circumstances, some workmen of the respondent Management formed a Trade Union in the name of Sundaram Industries Employees Union. The respondent Management took steps to thrash the new Union and the



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Management resorted to all unfair labour practices. The respondent Management entered into a wage settlement with TVS Workers Union dated 03.12.1998 with effect from 01.01.1989 to 31.12.1992 under Section 18(1) of the Industrial Dispute Act and the benefits of the settlement were given only to the members of the TVS workers Union. The newly formed petitioner's Union presented a Charter of Demand on 19.02.1989 and conciliation proceedings were initiated and failure report was submitted. However, the Government of Tamil Nadu did not refer the dispute for adjudication. Hence, the petitioner's Union preferred W.P.No.19743 of 1990 with a prayer to direct the Government of Tamil Nadu to refer the Charter of Demand for adjudication. Subsequently, another Writ Petition was preferred by the petitioners Union in W.P.Nos.20871 and 20872 of 1993 against the discrimination of the wage parity and misuse of the administrative powers by transfer and suspension of employees. The Writ Petition in W.P.No.20871 and 20872 of 1993 was dismissed vide order dated 13.03.1998. The Writ Petition in W.P.No.19743 of 1990 was dismissed on 14.10.1998 with an observation that the members of the petitioner Union are also entitled to get the same benefits provided if they fulfill the requirements of the settlements. The contention of the petitioner Union is that they have not been paid the Dearness Allowances, Bonus



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dated 03.12.1988, time limit was not prescribed for acceptance of the terms and conditions of the settlement. The Labour Court dismissed the Claim Petition on the ground that the petitioner Union should have accepted the settlement before the expiry of the settlement and hence the claim is illegal. The members of the petitioner Union who were working in the Rubber Factory Division preferred a Claim Petition in C.P.No.11 of 2000 based on the order passed in W.P.No.19743 of 1990 and the same was dismissed by the second respondent on 12.04.2004. The Madurai Branch of the petitioner Union preferred a Writ Petition in W.P.No. 1050 of 2005 and the same was allowed on 23.08.2007. A Writ Appeal No.490 of 2007 was preferred by the Management and the same was dismissed against which the Management preferred S.L.P.(Civil).No.7947 of 2008 and the same was dismissed vide order dated 07.12.2009. All the above judgments were produced before the second respondent Labour Court and the Labour Court without following the principles laid down in those judgments, simply dismissed the petitioner Union Claim Petitions. The present Union has filed the Claim Petition on behalf of 74 workmen out of which most of them were retired and some of them were dismissed from service and the Industrial Disputes were pending against their dismissal. Hence, there was some delay in referring the Claim



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Petition before the authority and the delay is not deliberate. The Labour Court without considering the documents, had passed the impugned order rejecting the claim of the petitioner. Hence, the petitioner Union prayed to allow the Writ Petitions and direct the respondents to grant the benefits of the settlement.

3. The first respondent has filed a detailed counter, wherein it is stated that the allegations that the office bearers of the recognized Union were selected by the respondent Management, the allegations of unfair labour practices against the members of the petitioner Union by abusing disciplinary powers, transfers powers etc. are denied as false. The first respondent contended that the writ petitioner Union (Coach Factory) has preferred the Writ Petition in W.P.No.19743 of 1990 is a misleading version. The said Writ Petition was filed by the petitioner Union separately against the Management of Rubber Factory Division alone and it was specifically about the demands of the workmen belonging to Sundaram Industries Limited Rubber Factory on behalf of its members working in the Rubber Division only. The first respondent, Sundaram Industries Limited (Coach Division) is not a party in the above Writ Petition. The petitioner allegations that subsequent to the filing of W.P.No.19743 of 1990, another Writ Petition in W.P.Nos.20871 and



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20872 of 1993 were filed are factually inconsistent, because, the Writ Petition in W.P.Nos.20871 and 20872 of 1993 were filed separately by the petitioner Union on behalf of its members working in the Coach Division alone. Hence, citing of observations in W.P.No.19743 of 1990 in the present case was totally irrelevant.

4. Further, the issues pertaining to settlement dated 03.02.1988 as far as it is concerned with the workers of the first respondent company, the issue was already dealt with W.P.No.20871 of 1993 dated 13.03.1998 and the writ petitioner purposely has concealed the observations and the reasons assigned by the Hon'ble High Court while dismissing the Writ Petition. The writ petitioner has not filed any Writ Appeal against the order passed in W.P.No.20871 of 1993 and it has attained finality. The allegations are that the benefits of the settlement were given by the respondent Management selectively is denied. The benefits of the settlement were given to all the workers, whoever, accepted the settlement and the membership of the workmen in Union whatsoever was totally irrelevant criteria for conferring benefits of the settlement. A copy was not served or displayed in the notice board is false. The very fact that the writ petitioner has let in evidence through its office bearers in series of cases that they have not accepted the



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settlement. Before the conciliation officer, a separate Charter of Demands were placed after settlement would be evident that the petitioner Union is aware of the contentions of the settlement. Moreover, the Tamil Nadu Government declining to refer the dispute, wherein a specific observation was made above the factum of settlement dated 03.12.1988. From this also, it is evident that the claim of the petitioner regarding a copy was not served, is an inconsistent stand. The next allegation is that for the same work load, the respondents have not paid the allowance to the workmen, is irrelevant and it is false. The Government Order has mentioned that the section of workmen belonging to the petitioner Union functioning in the respondent Division have not co-operated with the Management to achieve the productivity and hence they are were not entitled to the benefits of the settlement. This observation would clearly state the stand of the petitioner Union. The petitioner Union has subsequently submitted the letters of acceptance to the terms of the subsequent settlement would clearly indicates that the petitioner Union did not accept the settlement dated 03.12.1988. This would reveal that the petitioner has come out with unclean hands by suppressing the material particulars. The claim in C.P.No.4 of 2001 is based on the orders passed in W.P.No.19743 of 1990, however, the said Writ Petition was filed by the



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Rubber Division and hence the said order cannot be applicable for the Coach Division. Hence, the Claim Petition in C.P.No.04 of 2001 was filed without any industrial dispute determining the eligibility of the petitioner Union is not maintainable. The reasons stated for inordinate delay in filing the Writ Petition is hollow and devoid of any merits. The subsequent settlement dated 22.04.1992 under clause 8 it has been clearly stated no claim will be entertained pertaining to the period prior to the settlement shall survive. The members belonging to the petitioner Union has accepted the subsequent settlement in toto and got all the benefits. In such circumstances, the petitioner Union is not entitled to the benefits under the previous settlement. The working sheet filed along with the writ petition mention the names of 74 persons. Out of 74 claimants one name P.Murugesan under Serial No.42 was repeated in Serial No.67 also. Except 11 persons, nobody is in the service of the respondent Management at present. 44 persons were retired and they received retirement benefits. In such circumstances, the Writ Petition will not serve any purpose. The working sheet filed along with the Claim Petition is prepared on the notional basis and the claim is without any basis or data. The claim was for the period from 01.01.1989 to 31.03.1992. During the said period, the members of the petitioner Union went on



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strike and did not attend the work from 15.09.1989 to 10.03.1990. All the individuals filed a batch of claim petitions numbering 68 (C.P.No.333 of 1993 batch) before the second respondent claiming wages for lockout. All Claim Petitions were dismissed by the Labour Court vide order dated 21.08.2001 by applying 'No Work No Wage principles'. The said order was not challenged. Hence, a blanket claim of huge and flat sum just notionally worked was claimed for this lockout period also. Hence, the first respondent submitted that the petitioners are not entitled to benefits and prayed to dismiss this Writ Petition.

5. Heard Mr.V.Prakash, Learned Senior Advocate, for Mr.D.Prabhakar, appearing for the petitioner and Mr.S.Ravindran, Learned Senior Advocate, for Mr.M.N.Ramkumar, appearing for the first respondent and perused the records.

6. Admittedly, a settlement dated 03.12.1988 was signed by Sundaram Industries Limited covering three divisions namely, Coach, Rubber and Retreading with TVS workers Union, Madurai and the settlement is valid from 01.01.1989 to 31.03.1992. In the settlement under clause (7) it is stated that each employees should declare in writing his acceptance of all terms of the settlement



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to avail the benefits under the settlement and the payment due under the settlement is made only to such employees alone. The petitioner Union members have not submitted any such acceptance prior to the date mentioned in the settlement. Moreover because of the subsequent settlement, the impugned settlement is not in existence. However, the learned Senior Counsel appearing for the petitioner Union submitted that there is no time limit prescribed in the settlement which contention was refuted by the first respondent and stated that the settlement has time limit and also states the each employee should submit acceptance letter and the relevant portion is extracted hereunder:

“7. The Union agrees that each employee shall declare in writing his acceptance of all the terms of this settlement to avail the benefits under this settlement and the payment due under this settlement shall be made only to such employee.

8. This settlement will come into effect from 01.01.1989 and shall be in force for a period of three years from the said date.”

On perusal of the said settlement dated 03.12.1988, it is seen under clause 7 and 8, it has been agreed that the employees should submit an individual acceptance letter and the settlement will be in force from 01.01.1989 for the period of 3 years. Therefore, the period of settlement would be alive until



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01.01.1992. The petitioner Union members have submitted letters of acceptance after 01.01.1992 that is on 22.08.1992. In such circumstances, this Court is of the considered opinion that the petitioner Union has not complied with the terms of settlement and has not submitted any acceptance letter on or before 01.01.1992.

7. The next contention that was raised by the petitioner is that even though it is submitted belatedly based on the order passed in W.P.No.19743 of 1990, the Management ought to have granted the benefits. However, for this contention, the first respondent submitted the said order passed in W.P.No.19743 of 1990 is applicable only for the Rubber Division and it cannot be applicable for the Coach Division. When the Coach Division has specifically filed W.P.Nos.20871 and 20872 of 1993 and has suffered a dismissal order against which no appeal was filed, it has attained finality. The Coach Division workers cannot claim any benefits under W.P.No.19743 of 1990. On perusal of these two orders, this Court is of the considered opinion that the Writ Petition in W.P.No.19743 of 1990 was passed only for the Rubber Division and not for the Coach Division. The Coach Division has filed separate Writ Petition in W.P.Nos.20871 and 20872 of 1993 and has suffered an order and has attained finality. In such circumstances, the



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petitioner Union, claims to grant the benefits as per the order passed for the Rubber Division cannot be entertained. Infact, the writ petition filed by the petitioner has not clearly indicated to which division they belong to and hence the petitioner Union is misleading the issue.

8. The next contention that was raised by the Management is that it is a belated claim. The order in W.P.No.19743 of 1990 was passed on 14.10.1998. However, the Claim Petition was filed in the year 2001. Under Section 33C(2) period of limitation was not prescribed and hence the demand of the Union cannot be claimed as belated. However, the claim should be within a period of reasonable time. In the present case, the petitioner Union had filed petition before the High Court and had suffered an order on 14.10.1998. Therefore, this Court is of the considered opinion that the claim is not belated claim.

9. The contention raised by the Management is that there is no order under Industrial Dispute in favour of the writ petitioners Union. In such circumstances, filing a petition under Section 33 C(2), which is more of an execution petition is not maintainable. On perusing the facts and the earlier litigations, admittedly the



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petitioner Union had suffered an order in W.P.Nos.20871 and 20872 of 1993 and in such circumstances, straight away filing a petition under Section 33 C(2) by invoking the benefits granted to Rubber Division is not maintainable. Since there is no order in favour of the Coach Division, more so, when the claim of the Coach Division was dismissed in W.P.Nos.20871 and 20872 of 1993, the claim of the petitioner Union in filing a petition under Section 33 C(2) is not maintainable. The contention of the Management is valid.

10. The next contention raised by the Management is that a subsequent settlement dated 22.04.1992 was entered into by the TVS Workers Union and the Management, wherein under clause 7, it is specifically stated that the settlement is applicable for the period from 01.04.1992 to 31.03.1993 to all the three divisions. The said settlement is also applicable to the petitioner Union for Coach Division and the members of the petitioner Union have received the benefits under the said settlement. Having accepted the subsequent settlement, now the petitioner Union cannot re-agitate a claim based on the previous settlement, since in the subsequent settlement under clause 8, it is agreed that the previous settlement will not survive. The said settlement under clause 8 is states as under:



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“7. PERIOD OF THIS SETTLEMENT:

- a. The settlement will come into effect from 01.04.1992 and shall be in force for a period of one year the said date i.e. till 31.03.1993.*
- b. It is clearly agreed that acceptance subject to the conditions stipulated in para 6(c) of the settlement will confer the benefits of only his settlement and not any benefit under the earlier settlement.*
- 8. The various increase in emoluments under this settlement have been agreed to on the clear understanding that the Management has discharged all its obligations, statutory, contractual otherwise towards the workmen for the period upto the date of this settlement, and no claim in respect of any workmen pertaining to the period prior to this settlement shall survive”.*

Wherein, it has been clearly stated that the previous settlement shall not survive. When the previous settlement was completely closed based on the subsequent terms of settlements, the claim made by the petitioner Union is against the settlement which was accepted subsequently. The petitioner Union has not denied this submission submitted by the petitioner Management. Therefore, this Court is of the considered opinion that the claim of the petitioner union is against the terms of the subsequent settlement.



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11. The Learned Senior Counsel had submitted that denying the benefits to the workers belonging to the petitioner union is unfair trade practice by initiating disciplinary proceedings, transfer etc. However, the first respondent submitted that the members of the petitioner Union went on strike and did not attend the work from 15.09.1989 to 10.03.1990 and hence they are not entitled to the benefits and the settlement dated 03.12.1988 is applicable for the period from 01.01.1989 to 01.01.1992.

12. This Court is of the considered opinion that the petitioner's Union had missed the bus and had not submitted the acceptance letter in time. Moreover, had indulged in strike during the relevant period. But the other workers had received the benefits. Hence on equity, this Court is of the considered opinion since the entire worker force have received the amount except the 73 persons belonging to the petitioner Union, that too for a limited period from 1988 to 1992. Therefore, this Court is inclined to grant partial relief.

13. On perusal of the petitions submitted before the Labour Court, the petitioner Union have unilaterally arrived at the arrears of Rs.16,644/- and the



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interest as Rs.57,996.73/- and a total of Rs.74,640.70/- is claimed for each person.

The first respondent Management has stated in their counter affidavit that there is a repetition of workman namely P.Murugesan in Serial No.42 to 67. Moreover only 7 persons are in service and some 44 persons were retired. Since the petitioner Union has not accepted the settlement in time, this Court is of the considered opinion that the members of the petitioner Union are not entitled to any interest portion at all. The said 73 employees (except the repeated employee) are entitled to Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) each without any interest. The same shall be granted within a period of eight (8) weeks from the date of receipt of a copy of this order. This relief is based on peculiar facts and circumstances of the case and hence this shall not be referred as precedent in future.

14. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

08.02.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes

Nsr



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To

- 1.The Managing Director,
The Management of Sundaram Industries,
Limited (Coach Division),
TVS Registered Office,
West Veli Street,
Madurai – 625 001.
- 2.The Presiding Officer,
Labour Court,
Madurai.



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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
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