BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.11.2023

PRONOUNCED ON : 31. 01.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.5591 of 2010

The Chairman-cum-Managing Director,
Neyveli Lignite corporatation Limited,
Neyveli – 607 801. . . . Petitioner

Vs

1.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai – 600 006.

2.D.Mani
3.G.Ramalingam
4.S.Velayutham
5.S.Durairajan . . . Respondents

PRAYER: PRAYER: Writ Petition filed u nder Article 226 of the Constitution of India praying for a Writ of Certiorari to call for all the records pertaining to C.P.No.3 of 2009, on the file of the 1st respondent-Labour Court, dated 29.10.2009, and quash the same and pass further other order.

For Petitioner : Mr.N.Nithyanandam

for Mr.N.A.K.Sarma

For R1 : Court
For RR2, 4 and 5 : Mr.V.S.Stalin
for M/s.Row & Reddy
For R3 : Not ready in notice

ORDER

The Writ Petition has been filed challenging the order passed by the first respondent, Labour Court by directing the petitioner to refund the amount deducted and remitted to the execution Court from the salary of the respondents 2 to 5.

2. Heard, Mr.N.Nithiyanandan, learned counsel for Mr.N.A.K.Sarma, learned counsel for the petitioner and Mr.V.Stalin, learned counsel for M/s. Row & Reddy for respondents 2, 4 and 5. During the hearing of Claim Petition the Counsel on record of the respondents 2 to 5 reported that he is not pressing the claim in respect of the third respondent/G.Ramalingam, and the claim against the third respondent was dismissed.

3. The learned counsel for the petitioner would submit that, a former employee (A.Thangaih Samuel) of the petitioner corporation, had availed a chit from one Jayapriya Chits Funds for a sum of Rs.5,00,000/- which was to be repaid within 50 monthly installments. The respondents 2 to 5 who are

also the employees of the petitioner corporation stood as guarantors. The borrower failed to repay the said amount, and the chit funds had filed A.R.C No.543 of 2006 for recovery of the amount due. The Arbitrator passed an *ex-parte* Award for a sum of Rs.5,41,424/- against the borrower and respondents 2 to 5 jointly and severally holding them liable to pay the Award amount to M/s Jayapriya Chit Funds (P) Ltd., Neyveli. Even though the borrower and respondents 2 to 5 were aware of the proceedings before the arbitrator they conveniently remained exparte for the reasons best known to them.

4. He would submit that, the Chit Funds (P) Ltd., had initiated execution proceedings on the file of the District Court, Cuddalore in E.P.No.7 of 2007 to realize the Award amount of Rs.5,41,424/- and the court had passed an order of attachment dated 31.01.2008 against the borrower/A. Thangaiah Samuel and the respondents 2 to 5 with a direction to the petitioner corporation to attach the salary of borrower and the respondents 2 to 5 and to remit the amount deducted into the Court, the amounts to be deducted from the salary of the borrower was Rs.3000/- per month, Rs.3,500/- p.m from the salary of second respondent, Rs.4,000/- from the salary of third respondent and Rs.3,000/- p.m from the salary of fourth and

fifth respondents respectively. The petitioner Corporation from 2008, has been given effect to the order of attachment dated 31.01.2008, against which the respondents 2 to 5 did not take any steps to vary or raise the attachment nor they had not denied or disputed their liability.

5. He would further submit that, the borrower/A.Thangaiah Samuel, died while he was on service on 19.05.2008. The petitioner corporation had withhold the salary of the deceased employee and respondents 2 to 5 in compliance with the Order of Attachment and remitted Rs.38,500/- of the second respondent, Rs.33,000/- of the fourth respondent and Rs.40,000/- of the fifth respondent. Thereafter, in December 2008 respondents 2, 4 & 5 jointly filed a C.P. No.3 of 2009 on the file of the first respondent claiming the amount deducted from their salary. The first respondent Labour Court allowed the C.P.No.3 of 2009 filed by the respondents 2, 4 & 5 with a direction to pay a sum of Rs.42,000/- to the second respondent, Rs.36,000/- to the fourth and fifth respondents each with interest at 6% per annum. Aggrieved by the order of the first respondent the petitioner corporation has filed this Writ Petition.

6. Countering his arguments, the learned counsel for the respondents 2, 4 & 5 would submit that most of the employees of the petitioner corporation has heavily borrowed loans from banks, Cooperative Societies and Chit Funds etc., and the repayment of such loans is effected through salary deductions. As a result, many of the employees receive their monthly salaries in single digits, at many a times not even any amount and the employees are put into untold sufferings. He would submit that the co-employee of the respondents 2, 4 & 5 namely late A. Thangiah Samuel had availed a chit of Rs.5,00,000/- from one Jaya Priya Chit Funds (Pvt) Ltd., Neyveli during May, 2004 for which the respondents 2, 4 & 5 stood as sureties.

7. He would submit that the borrower had defaulted in paying the monthly installments to the Chit Fund Company and the Chit Fund took steps to recover the arrears of amount through the authorities constituted under the Chit Funds Act, 1982. The Arbitrator, appointed under the Chit Funds Act, set the respondents 2, 4 & 5 herein *ex-parte* and passed an award dated 22.09.2006 in A.R.C. No.543 of 2006 in favour of the Chit Fund company holding the respondents 2, 4 & 5 jointly liable to pay Rs.5,41,424/-. He would further submit that the borrower before his death had undertaken

to settle the payment due to chit company, so the respondents 2, 4 & 5 did not take any steps to challenge the arbitration award dated 22.09.2006. The Chit Fund company refused to settle the matter on a compromise basis, and they filed E.P.No.7 of 2007 before the District Court, Cuddalore for recovery of the decreed award amount and an salary attachment order was passed on 31.01.2008 against the respondents 2, 4 & 5. He would submit that the salary balance is less than the attachment order and the petitioner company should have reported to the court that no balance was available for attachment but the petitioner did not do so. From the month of January 2008 the respondents 2, 4 & 5 were getting their salaries only ranging from few hundreds and the respondents 2, 4 & 5 are not able to run their families with such meagre salary.

8. He would further submit that the total deductions shall not exceed 50% of the salary earned, in cases when there is no deduction made for Co-operative Societies and 25% of the salary when deductions are made towards Co-operative Societies. That the petitioner is not legally bound to effect salary deductions exceeding statutory limits as stipulated under Section 60 (1)(i) of C.P.C, and Section 7 of Payment of Wages Act. The respondents 2, 4 & 5 had issued a legal notice on 12.11.2008 to the petitioner for which

there was no reply. Thereafter the respondents 2 to 5 had filed a Claim Petition in C.P.No.3 of 2009 and by order dated 29.10.2009 the first respondent has made the following findings such as the quantum of money repayable by the respondents 2 to 5 in the claim is restricted only for a period from January to December 2008. Further the first respondent held that the arguments on behalf of the petitioner Management that CPC is not applicable to labour litigations cannot be accepted. The broader principles sub-serving interest of justice on which such rules are based are to be made applicable on matters relating to labour and industrial fields. The first respondent had also taken into consideration Section 60 of CPC and held that certain minimum income or property to the person concerned so as not to interfere with what is needed for his existence in this world cannot be taken away. The first respondent has held that the respondents 2 , 4 & 5 are entitled for refund of amounts and directed the petitioner to pay a sum of Rs.42,000/- to the second respondent, Rs.36,000/- to the fourth and fifth respondents each with an interest of 6% per annum.

9. He would contend that the order of the first respondent directing the petitioner to refund the amount is valid and the writ petition is devoid of merits and seeks to dismiss the same.

10. I have heard the submissions, on behalf of the respective parties and have perused the materials available on record before this Court.

11. The claim of the private respondents 2 to 5 in the claim petition is that the petitioner ought not to have deducted the salary pursuant to the direction issued in the Execution Petition in violation of the statutory provisions. From the order passed in the Execution Petition, directing attachment, it could be seen that the private respondents 2 to 5 had remained *ex-parte* and the Executing Court had passed an order of attachment of their salary with a direction to the petitioner to deduct the said amount. It is not the case of the private respondents 2 to 5 and they were not aware of the proceedings. Even if their claim is to be accepted, that they were not aware of the proceedings once their salary have been attached pursuant to the order of the Executing Court, they could have always approached the Executing court taking out all their objection that they have raised before the Industrial Tribunal and ought to have sought modification of the same. On the contrary, they had approached different authority namely the 1st respondent

herein seeking for a recovery of the excess amount that had been deducted.

12. I would understand, if such deduction have been made by the petitioner on their own volition, but, such deductions have been made on the directions issued by a Civil Court in an execution proceedings which is very much binding on the petitioner. I have already held that it was upon the private respondents 2 to 5 to seek modification of any attachment order having remained *ex-parte* they cannot try to take advantage of a statutory provision to their benefit.

13. In such view of the matter, I find that the order passed by the 1st respondent is wholly perverse. Without considering the fact, that the private respondents 2 to 5 are liable to pay the amount to the decree holder and that by allowing the claim petition, the private respondents 2 to 5 are unjustly enriched and the petitioner is *mulk*ed with the liability which they are not liable to pay.

14. In fine, this Writ Petition is allowed and the impugned order is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31. 01.2024

pbn
Index/ Yes/No
Speaking order: Yes/No
Neutral citation: Yes/ No

To

The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai – 600 006.

K.KUMARESH BABU,J.
pbn

A Pre-delivery order made in

W.P.No.5591 of 2010

31. 01.2024