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W.P.No.11522 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.11522 of 2020

and

WMP.No.14081 of 2020

The Management,
Madras Race Club,
Guindy,
Chennai -32.
Rep.by its Chief Executive Officer and Secretary.

...Petitioner

Vs

1. The President,
Madras Race Club Employees Union,
3/2, Race park,
Guindy,
Chennai -32.

2. Madras Race Club Staff Welfare Association,
Rep.by its Secretary E.Shanmugam,
No.12, Parasuramar Street,
Gandhi Salai, Velachery,
Chennai - 600 042.

...Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, Calling for the records of the I-Additional Labour Court, Chennai in I.D.No. 278/2013 and quash its award dated 27.01.2020.

For Petitioner : Mr.G.Anandakrishnan
for M/s.T.S.Gopalan and Co.

For Respondents : Mr.V.Prakash, Senior Counsel
for Mr.V.Manogar

ORDER

Writ petition is filed challenging the Award of the Labour Court in I.D.No.278 of 2013 dated 27.01.2020.

2. The petitioner is a registered company and a non-profit organisation. The petitioner is a recognised body for conducting Horse Races and is registered with the term Turf Authority of India. The petitioner states that because of the increase in racing activities the requirement of temporary security guards increased. The said temporary guards were appointed on fixed terms and extension was granted as per



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requirement. Because of an unfortunate crime of murder in July 2012, the security system was reviewed and the engagement of 110 temporary security guard's was terminated. A dispute was raised by the 110 temporary security guards whose engagement was put an end to. On 17.11.2012 the president of the 1st respondent Union filed an application before the Assistant Commissioner of Labour stating that the members of the Union were terminated by the management and various demands were presented before the Assistant commissioner which are as follows:

" I. From 30.08.2012 till the date of reinstatement, its members should be awarded full back wages.

II. Reinstatement of its 110 members of the union.

III. They should be paid back wages.

IV. Wage revision should be done for its members in every 3 years.

V. Minimum wages should be increased to Rs.10,000/-

VI. Service weightage.

VII. HRA should be increased to Rs.3000/-"



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As there was no amicable settlement before the Labour officer, the Assistant Commissioner of Labour, the Government of Tamil Nadu vide order dated 09.07.2013 referred the dispute for adjudication to the Labour Court, Chennai. The dispute was taken up on file in I.D.No.278 of 2013 by the Labour Court. During the pendency of the dispute, the management on legal advise in July 2016 sent notices to 106 out of 110 employees asking them to report for duty. As 4 employees retired, no notices were sent to them. Out of the 106 employees, 69 of them reported for duty. The management in view of the above filed memo before the Labour Court expressing its willingness to provide employment to all 106 employees to whom notices were sent asking them to report for duty on 16.08.2016. The memo also clearly stated that few of the employees did not receive the notice and therefore the Union was requested to inform them. On 17.08.2016, another memo was filed stating that out of 106 employees only 69 employees reported for duty.



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3. According to the petitioner a Settlement under Section 12(3) of the I.D. Act was entered between the Management and Union on 26.12.2017 and therefore an application was filed praying to pass an Award in terms of the 12(3) Settlement. It was the petitioner's further case that even though the names of the 110 employees did not find place in the settlement, the settlement nevertheless covered them. But the Labour Court rejected the said plea. Out of the aforesaid five demands of the Union, the Labour Court did not answer demand number one. As regards demands 2 and 3 the Labour Court directed the reinstatement of 69 employees and granted superannuation benefits to 14 employees who had retired. The Labour Court further directed the reinstatement of 27 employees who did not report for duty inspite of notice. The Labour Court took up demands 4, 5, 6 and 7 together and allowed the same. Aggrieved by the Award of the Labour Court, the petitioner has filed the above writ petition for the aforesaid relief.



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4. The learned counsel for the petitioner fairly submitted that he was not pressing demands 5, 6 and 7. Therefore the only demands that remain to be examined are as regards demand Nos. 2 and 4.

5. The learned counsel for the petitioner submits that out of the 106 employees 69 employees reported for duty in pursuance of the notices sent by the Management and the Management also reinstated them. Out of the remaining employees 14 retired and therefore the Management is ready to pay the benefits to them as directed by the Labour Court. According to the learned counsel the dispute is only with regard to the 27 employees who in spite of the notices sent to them did not report for duty. The learned counsel submitted that the Labour Court was not justified in directing the Management to reinstate those 27 employees. The learned counsel further submits that the direction of the Labour Court on demand No. 4 regarding wage revision for the employees once in 3 years is unjustified and hence liable to be set aside.



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6. The learned Senior counsel for the respondents on the other hand submits that Award of the Labour Court cannot be faulted as it is fair. The learned Senior counsel submits that he is not in a position to verify whether the 27 employees who did not report for duty approached the Management for reinstatement in pursuance of the Award of the Labour Court. The learned Senior counsel submits that the reasoning of the Labour Court for its conclusion that the Management should revise wages once in 3 years was justified. The learned Senior counsel submits that the Labour Court had rightly considered the non revision of wages for several years inspite of increase in cost of living index every year. The learned Senior counsel therefore submits that no fault can be found in the finding of the Labour Court on demand No. 4.

7. I have heard both the learned counsels and have perused the entire materials placed on record.



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8. As already mentioned the Management does not dispute the reinstatement of 69 employees who reported for work in pursuance of the notices sent by it and also the payment of superannuation benefits to the 14 employees who had retired. The dispute is with regard to the reinstatement of the 27 employees who did not report for duty inspite of notices sent to them. In my view when the Management had as early as on 16.08.2016 offered reinstatement to all the employees and a majority i.e. 69 employees responded by reporting for work, the 27 employees who did not report inspite of notice should not be treated on par with the 69 employees and 14 retired employees who responded immediately to the Management's offer.

9. It is pertinent to note that even now i.e. after lapse of almost 4 years from the date of the Award the learned Senior counsel for the respondents is not in a position to clarify whether these 27 employees are available and whether they approached the Management for reinstatement



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in pursuance of the Award. The order of the Labour Court as far as 27 workers are concerned is as follows:

“ The other workers except 69 workers who were already reinstated shall be reinstated within three months from today.”

It is strange to note that the Labour Court states that other employees who were already reinstated shall be reinstated within three months. When they were already reinstated where is the question of reinstating them again? Be that as it may, the 27 employees who did not report for duty in pursuance of the notices of the Management dated 16.08.2016, in my opinion would not be entitled to reinstatement and the Labour Court has erred in directing their reinstatement. The fact that the learned Senior counsel for the respondents is not able to tell this Court whether the 27 employees are available itself shows that the direction would be futile. Therefore the Award of the Labour Court in so far as 27 employees are concerned is set aside.



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10. Demand No. 4 : it is no doubt true that the Labour Court reasoned that due to the long delay in revising the wages of the employees by the Management and also the increase in cost index, the demand for increase in wages for every 3 years was reasonable. In my view there is no dispute that the employees would be entitled to revision of wages but fixing a static period of 3 years for wage revision cannot be upheld because several factors may come into play while revising the wages and the period may also vary depending on the various factors. Hence regarding the revision of wages, instead of fixing a static period it would be more appropriate to direct the parties to workout their remedy as per law as and when the demand for revision arises.

11. In view of the above, the Award of the Labour Court with regard to demand No. 4 is set aside with a direction to the parties concerned to workout their remedy before appropriate forum in accordance with law as and when the need for revision arises.



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Accordingly, writ petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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N.MALA,J.

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To
The I-Additional Labour Court,
Chennai.

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