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W.P.No.19490 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.19490 of 2020

and

WMP.Nos.24095 of 2020 and 10776 of 2021

M/s.Sun Pharmaceutical Industries Ltd.,
Represented by its General Manager,
Dadha Nagar, Nandanam,
Chennai 600 074.

...Petitioner

vs.

Mr.G.D.Murugan

...Respondent

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 II Additional Labour Court, Chennai in C.P.No.220 of 2018 and quash its order dated 20.03.2020.

For Petitioner : Mr.S.Ravichandran, Senior counsel
for Mr.M.Suresh

For Respondent : Mr.V.Prakash, Senior Counsel
for M/s.K.Krishnamoorthy



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ORDER

Writ petition is filed challenging the order made in C.P.No.220 of 2018 dated 20.03.2020.

2. The facts in a nut shell are that the respondent was originally an employee of the Tamil Nadu Dadha Pharmaceuticals Limited, which was merged with the petitioner under the scheme of amalgamation. As per the terms of the amalgamation scheme, the employees of the transferred company became the employees of the transferee company. The respondent along with 100 other workers was transferred to the petitioner factory at Silvassa, Gujarat. The respondent along with 29 other workers raised Industrial Dispute, alleging that it was illegal retrenchment. The I.D. was registered in I.D.No.1581 of 1998 and the Labour Court vide its order dated 15.12.2003 dismissed the I.D. Aggrieved by the dismissal of the I.D. by the Labour Court, the respondent and other workmen filed writ petition in W.P.No.9770 of 2004. This Court vide order dated 13.03.2013 allowed the



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writ petition by setting aside the order of the Labour Court and further directed the 3rd respondent therein to consider the case of the petitioners therein forthwith.

3. According to the petitioner, except the respondent all other workman settled the matter with the petitioner. Though the respondent was offered a settlement of Rs.18,292/-, the respondent refused to accept the same. The respondent thereafter filed the claim petition in C.P.No.220 of 2018 claiming a sum of Rs.8,57,716/- with interest. The petitioner filed counter and thereafter the Labour Court passed an Award on 20.03.2020, directing the payment of Rs.3,12,840/- together with cost in all a sum of Rs.4,00,000/- to the respondent herein. Aggrieved by the Award passed by the Labour Court in the said C.P., the petitioner has filed the writ petition for the aforesaid relief.



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4. The respondent reiterating the facts of the case starting from the raising of dispute and culminating in the order passed in the writ petition, submitted that as the petitioner did not comply with the order of this Court, he was constrained to file contempt petition in Cont.P.No.42 of 2015 and thereafter withdrew the same on advise. The respondent thereafter issued a lawyers notice on 28.07.2018 for reinstatement and settlement of Rs.8,27,258/- together with interest for the period from September 1998 till June 2018. The petitioner replied to the legal notice denying its liability. The respondent was therefore constrained to file the C.P claiming arrears of backwages for the period from September 1998 to September 2018 for a sum of Rs.8,57,716/- along with 12% interest per annum under Section 33(C)(2) of the I.D. Act.

5. The Labour Court on consideration of the entire materials on record partly allowed the C.P, directing the petitioner to settle a sum of Rs.4,00,000/- to the respondent including cost within 3 months from the



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date of the order.

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6. The learned counsel for the petitioner submitted that the Labour Court erred in awarding the amount claimed in the claim petition over looking the order by this Court in W.P.No.9770 pf 2004. According to the learned counsel, on the representation of the petitioner that claim of 65 workmen was already settled by the petitioner, a direction was issued by this Court in the writ petition to consider the case of the petitioner. The learned counsel therefore submitted that the claim for wages made by the petitioner for the period from September 1998 to September 2018 was untenable, as no positive direction was issued by this Court in the aforesaid writ petition. The learned counsel further submitted that in terms of the order of this Court in the aforesaid writ petition, the petitioner was offered a sum of Rs.18,292/- on the basis of similar settlement of the claims of the other workman, but the same was declined by the respondent. The learned counsel therefore submitted that the respondent was not entitled to



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claim arrears of backwages as the direction was only to consider the claim for settlement of all the respondent's claim similar to the settlement entered into with the other workman.

7. The learned counsel for the respondent on the other hand submitted that the interpretation put on the order passed in W.P.No.9770 of 2004 by the counsel for the petitioner was erroneous, because this Court had allowed the writ petition by setting aside the impugned order with a direction to the petitioner to consider the case of the respondent forthwith. The learned counsel further submitted that inspite of the respondent's notice dated 13.04.2013, issued one month after the order passed in the writ petition, seeking reinstatement or in the alternative to workout settlement, the petitioner did not reply and so, the respondent filed the claim petition. According to the learned counsel, the petitioner having failed to comply with the order of this Court could not find fault with the order passed in the C.P.



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

9. It is undisputed that a dispute was raised in I.D.Nos.552 of 1998, etc., by the respondent along with other workman for the relief of reinstatement in service with full backwages from the date of illegal non-employment. It is also undisputed that I.D. was dismissed and against I.D., writ petition in W.P.No.9770 of 2004 was filed by the respondent along with other workman for the following relief:

“Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a certiorari to call for the records from the files of the first respondent in I.D.Nos.552/98, 556 to 558, 564, 567, 570, 572, 576 and 577, 581, 583, 588, 597, 603 and 604, 612 and 617, 623 & 624, 627, 735 and 736, 740, 744, 745, 751 and 752 and 755 of 1998 and quash its impugned common Award made therein dated 15.12.2003 insofar as the first respondent has negatived the claim of the petitioners herein for reinstatement of service with continuity of service with back wages and with all other attendant benefits.”



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This Court vide order dated 13.03.2013 passed the following order:

“11. However, it is represented that the claim of 65 workmen have already been settled by the Management. Therefore, the third respondent is directed to consider the claim of the present petitioners also.

12. The writ petition is allowed and the impugned order is set aside with a direction to the third respondent to consider the case of the petitioners forthwith. No costs.”

10. The only point is whether the aforesaid direction of this Court was with reference to settlement of the respondents claim on similar terms to the settlement of claims of 65 workers only or whether the direction to consider included the consideration of the claim of the respondent for reinstatement with continuity of service and backwages and all other attendant benefits also.

11. From a reading of the aforesaid order of this Court, it is clear that



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the writ petition was allowed and the impugned order was set aside with a direction to the 3rd respondent to consider the case of the respondent forthwith. Whereas the petitioner's counsel claims that the direction has to be read in conjunction with para 11 of the order, the learned counsel for the respondent submits that consideration of the claim meant either a settlement similar to that of the other workman or for reinstatement with other consequential benefits.

12. In my view the direction to consider the case of the respondent forthwith should be read in the context of allowing the prayer in the writ petition which was filed for reinstatement with continuity of service and other benefits. At this point, it is relevant to note that soon after the order was passed in the said writ petition, the respondent sent a letter on 13.04.2013 to the petitioner expressing his willingness either to report for work or to discuss with the petitioner for any other mode of settlement, if the petitioner was not willing to reinstate. The petitioner should have



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replied choosing any one of the options. The petitioner for the reasons best known to it did not reply and therefore the respondent filed contempt petition in Cont.P.No.42 of 2015 and later withdrew the same and thereafter filed C.P. It was only after the lawyers notice dated 28.07.2018, claiming a sum of Rs.8,27,258/- towards backwages, that the petitioner sent reply on 09.08.2018 stating that the petitioner was only entitled to legal compensation of Rs.18,292/- on par with the settlement arrived with other workman. Aggrieved by the petitioners reply, the respondent filed C.P.

13. In my view the direction of the Court if interpreted as projected by the petitioner will result in great injustice to the respondent whose writ petition was allowed. Even otherwise, the respondent gave an option to the petitioner to either allow him to report for work or agree for any other mode of settlement, but the petitioner refused to exercise its option either way, and so it does not lie in the mouth of the petitioner to dictate terms after lapse of 5 years from the date of the order passed by this Court.



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14. Though the Labour Court has given its own reasons for allowing the claim petition, in my view for the aforesaid reasons the Award of the Labour Court passed in C.P.No.220 of 2018 does not call for any interference and the same is therefore confirmed.

Accordingly, writ petition is dismissed. No costs. Consequently connected WMP's are closed.

08.03.2024

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N.MALA,J.

dsn

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