



W.P.No.995 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.995 of 2011
and M.P.No.1 of 2011**

The Management,
M/s.E.I.D.Party (India) Limited,
Nellikuppam -607 105,
rep.by its Vice President.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.P.Ariyath
3.P.John Sagayaraj
4.P.Eruthiya Raj
5.Mari Prasalla
6.Charles
7.Ellith Poriyala

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in C.P.No.146 of 2008 and quash its order dated 28.09.2010.



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For Petitioner : Mr.Anand Gopalan
for M/s.Agam Legal Advocates

For Respondents : R1-Labour Court
Mr.R.N.Amarnath for R2

ORDER

This Writ Petition has been filed challenging the award dated 28.09.2010 passed in C.P.No.146 of 2008 by the first respondent.

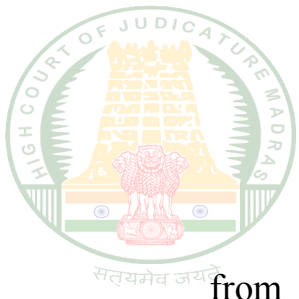
2. It is the case of the petitioner that the workman, who is the deceased and has been represented by the legal representatives, namely, the respondents 2 to 7, was working in Nellikuppam Factory as non-covenanted staff. On the basis of the order of the Hon'ble Apex Court dated 10.08.1983, the Establishment was closed with effect from 25.08.1983 and 950 workmen including the deceased workman were terminated from service and they were given all the terminal benefits, namely, gratuity, closure compensation etc., The deceased and several other workmen filed claim petitions under Section 33(C)(2) of the Industrial Disputes Act claiming retiring allowance in terms of General Office Order No.26, in which, the first respondent passed order dated 29.04.1994, against which, the petitioner



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preferred W.P.No.6438 of 1995 and thereafter, the matter was taken in appeal before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court, vide its order dated 21.03.1997, advertng to the order of the Hon'ble Division Bench, in W.P.No.4969 of 1975 dated 19.10.1978 held that all other claimants/employees who ceased to be in service for any reason whatsoever except on superannuation, voluntary retirement shall not be entitled to any relief. Therefore, based on the orders of the Hon'ble Supreme Court, the claim raised by the deceased/first respondent for claiming the benefits under Section 33(C)(2) of the Industrial Disputes Act cannot be countenanced. However, without following the said order, the earlier claim petition filed by the deceased workman was agitated by the legal heirs who were bound by the order of the Hon'ble Supreme Court of India and the Labour Court, without properly appreciating the fact that the deceased workman was terminated from service on the basis of the orders of the Hon'ble Apex Court and all these terminal benefits were paid in full erroneously, has partly allowed the computation petition directing the petitioner Management to pay a sum of Rs.20,271/- with interest at 10%



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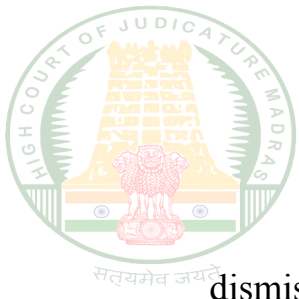
from 02.05.1991 till the date of payment which is grossly erroneous.

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Aggrieved by the said order, this Writ Petition has been filed.

3. The learned counsel appearing for the petitioner submits that based on the orders of the Hon'ble Apex Court, the employees who have either superannuated or gone on voluntary retirement are only entitled to claim any relief as per G.O.O.No.26 and the deceased/workman having been terminated from service on the basis of this order cannot claim the benefit of retiring allowance by resorting to G.O.O.No.26. When the Hon'ble Supreme Court held so, the Labour Court without properly appreciating the aforesaid fact, has granted the benefit under Section 33(C)(2) of the Industrial Disputes Act by computing the same in monetary terms which is perverse and arbitrary and the same deserves to be set aside.

4. Per contra, the learned counsel appearing for the respondent Nos.2 to 7 submitted that the termination of the deceased employee would also be deemed to be retirement as the deceased employee was not



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dismissed from service but has been terminated from service on the closure of the Establishment. Therefore, appreciating the distinction and the distinguishing the decision of the Hon'ble Apex Court, the Labour Court has partly allowed the computation petition which does not require any interference.

5. Heard both sides and perused the materials available on record.

6. Section 33C(2) of the Industrial Disputes Act, 1947, allows a workman to seek the computation of benefits due to them based on pre existing right, arising from an award, settlement or predetermined benefits. The Labour Court's jurisdiction is limited only to determining the amount due on the basis of the pre-existing.

7. Section 33C(2) provides a mechanism for the workman to seek recovery of benefits on a monetary basis that are due to him, which provision is essentially a form of execution proceedings against the employer.



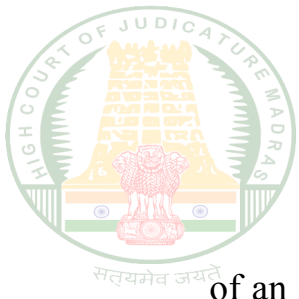
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8. The Labour Court's role under this section is limited to the extent of determining if any benefit computable in terms of money or benefit due to the workman and the duty of the Labour Court does not traverse to find out and decide whether the workman is entitled to it in the first place. The above is the ratio laid down by the Courts in a catena of decisions and the Labour Court is bound to follow the said ratio as a matter of judicial discipline.

9. This Court gave its anxious consideration to the submissions advanced on behalf of the parties and also perused the materials available on record.

10. The main aim of Section 33(C)(2) is only for creating a mechanism for providing the benefits with regard to the pre-existing rights to an employee, which are computable in terms of money. Therefore, the main ingredient that forms part of Section 33(C)(2) is the pre-existing right

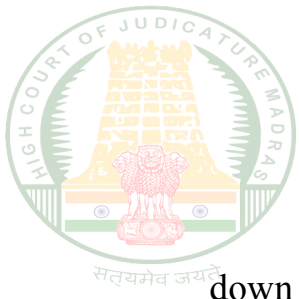


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of an employee to receive a benefit requires to be established. Therefore, it becomes incumbent on the part of the employee to establish through materials his pre-existing right to a certain benefit, which alone would clothe the Labour Court with power to grant the benefit and there is no iota of adjudication which is required to be made by the Labour Court.

11. In the present case, the deceased/workman has neither superannuated nor had gone on voluntary retirement on the basis of the order of the Hon'ble Supreme Court and the Establishment was closed and the deceased workman was terminated from service and he had been paid all the terminal benefits including the gratuity and closure compensation etc., The termination of the workman cannot be brought within the ambit of retirement simplicity. Only to that effect, the Hon'ble Supreme Court has clearly held that the persons excluding those who have gone on voluntary retirement could not be entitled to get the benefit of G.O.O.No.26. When the Hon'ble Supreme Court has clearly held that G.O.O.No.26 is not applicable to such of those persons, the Labour Court cannot go beyond the ratio laid



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down by the Apex Court and grant a relief which is not available to the deceased workman. In the present case, the deceased workman having been terminated from service, would not get any pre-existing right to claim retrial allowance and without properly appreciating the said fact, the Labour Court has granted the benefit erroneously which is perverse and not reasonable and the same requires interference.

12. Accordingly, this Writ Petition is allowed and the order dated 28.09.2010 passed in C.P.No.146 of 2008 by the first respondent is set aside. There shall be no order as to costs. Connected miscellaneous petition is closed.

05.02.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
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M.DHANDAPANI, J.

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To
The Presiding Officer,
Labour Court,
Cuddalore.

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