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W.P.Nos.6478 & 6480 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 17.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 6478 & 6480 of 2021
and
W.M.P.No. 7057 of 2021

The General Secretary,
Dakshin Bharat Hindi Prachar Sabha,
Thanikachalam Road,
T.Nagar,
Chennai – 600017.

...Petitioner in both Wps

Vs.

K.Ethiraj
No.2, New Boag Road,
Lalithapuram,
T.Nagar,
Chennai – 600017.

...Respondent in both Wps

Prayer in W.P.No.6478 of 2021

To issue appropriate writs, orders or directions more particularly a writ in the nature of Certiorari, calling for the concerned records from the II Additional Labour Court and quash the order of the II Additional Labour Court, Chennai in C.P.No.195 of 2016 dated 08.01.2021 as illegal, arbitrary and contrary to law, and pass such other orders or directions as this Hon'ble Court may deem



W.P.Nos.6478 & 6480 of 2021

fit in the circumstances of the case, award cost.

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Prayer in W.P.No. 6480 of 2021

To issue appropriate writs, orders or directions more particularly a writ in the nature of Certiorarified Mandamus, calling for the concerned records from the II Additional Labour Court, Chennai in Sr.No. 143 of 2021 in unnumbered I.A.in C.P.No.195 of 2016 dated 22.01.2021 as illegal, arbitrary and contrary to law and consequently direct the II Additional Labour Court to number the I.A.Sr.No.143 of 2021 to set aside the ex parte order in C.P.No. 195 of 2016 dated 8.1.2021 and decide the petition on its merits and in accordance with law and pass orders on the same, and pass such other orders or directions as this Hon'ble Court may deem fit in the circumstances of the case, award cost and render justice.

Prayer in W.M.P. No.7057 of 2021 (in W.P.No. 6478 of 2021)

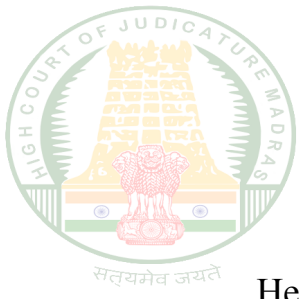
To stay the operation of the order of the II Additional Labour Court Chennai dated 8.1.2021 in C.P.No. 195 of 2016 pending disposal of the writ petition

Appearance of Parties:

For Petitioner: M/s.Balan Haridas and R.Kamatchi Sundaresan, Advocates

For Respondent: M/s. B.L.Jayakandan and T.Pushpavathi, Advocates

J U D G E M E N T



W.P.Nos.6478 & 6480 of 2021

Heard.

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2.The petitioner in both writ petitions is the same organization, and the contesting respondent is also common to both cases. In the first writ petition, the petitioner challenges the order dated 08.01.2021 passed by the II Additional Labour Court, Chennai in C.P. No. 195 of 2016, whereby the Labour Court allowed the claim made by the contesting respondent and directed the petitioner to pay a sum of Rs.5,97,307/-, along with costs of Rs.50,000/-.

3.The petitioner contended that the hearing in the claim petition was unilaterally closed on 24.11.2020, and after hearing the arguments of the respondent on 15.12.2020, the Labour Court erroneously recorded that the petitioner had also argued the matter on 21.12.2020. Thereafter, the Labour Court proceeded to pass final orders in the claim petition on 08.01.2021. Aggrieved, the petitioner filed I.A. No. ____ of 2021 (SR No. 143/2021) seeking to set aside the ex parte order; however, the said application was rejected by order dated 22.01.2021. Challenging this rejection, the petitioner filed the

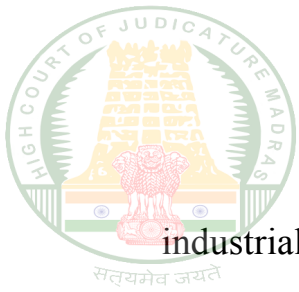


W.P.Nos.6478 & 6480 of 2021

second writ petition. Both writ petitions were admitted on 12.03.2021, and an interim stay was granted in the connected writ miscellaneous petition. Upon notice, the respondent entered appearance and also filed a statement detailing the arrears of salary and pension allegedly due to the contesting respondent.

4.The respondent filed a claim petition under Section 33C(2) of the Industrial Disputes Act, 1947 before the II Additional Labour Court, seeking a sum of Rs.5,97,307/-. According to the respondent, he was initially engaged as an attender on daily wages in the petitioner-Sabha in the year 1977. He was subsequently made permanent in 1982, brought under the time scale of pay, and promoted as a Grade I Clerk from the year 1983 onwards. However, pursuant to disciplinary proceedings initiated against him, he was dismissed from service on 18.07.2007.

5.At the time of his dismissal, an industrial dispute in I.D. No. 154 of 2007 was pending between the workers' union and the petitioner-Sabha. As the respondent was a workman concerned in the said dispute, the Sabha, in purported compliance with Section 33(2)(b) of the Industrial Disputes Act, paid him one month's wages. However, since he was a protected workman and the



W.P.Nos.6478 & 6480 of 2021

industrial dispute was pending before the Conciliation Officer, the respondent filed a complaint under Section 33A of the Act, vide his representation dated 27.12.2007. By order dated 31.03.2008, the authority held that the respondent was indeed a protected workman and that the petitioner-Sabha's action in terminating his services without prior approval was in contravention of Section 33(1)(b) of the Act.

6.The order dated 31.03.2008 passed by the Labour Officer, Circle III, was challenged by the petitioner-Sabha in W.P. No. 12657 of 2008. The writ petition was disposed of by order dated 07.03.2011, wherein it was held that while the Conciliation Officer is competent to entertain a complaint under Section 33A of the Industrial Disputes Act, he is not empowered to render an award akin to that of an adjudicating authority. His role is confined to recording the violation in the failure report. In any event, this issue became academic as the petitioner themselves reinstated the respondent on 07.03.2011. The only issue that remained was the respondent's claim for wages for the intervening period between 18.07.2007 and 06.03.2011.

7.The petitioner contended that the period in question constituted a break



W.P.Nos.6478 & 6480 of 2021

in service, as the respondent had been dismissed for misconduct, and further

argued that no approval under Section 33(2)(b) was required since the respondent was not a protected workman. The respondent's claim was taken on file as C.P. No. 195 of 2016, and notice was issued to the petitioner-Sabha. In response, the petitioner Sabha filed a counter statement dated 18.05.2017 opposing the claim. During the proceedings before the Labour Court, the respondent examined himself as PW1 and marked 20 documents in support of his case, which were exhibited as Exs. P1 to P20. On behalf of the petitioner-Sabha, S. Kannan, Manager of the Sabha, and T.S.V. Panduranga Rao were examined as RW1 and RW2, respectively. The petitioner Sabha also filed 11 documents, which were marked as Exs. R1 to R11.

8.The Labour Court found that a collective industrial dispute in I.D. No. 154 of 2007 was pending at the time the respondent's termination was effected. To establish the pendency of the dispute, the award passed in I.D. No. 154 of 2007 was marked as Ex. P20. The Court also noted the admission made by RW1 that the said dispute was indeed pending at the time of the respondent's termination. Although the dispute pertained to the transfer of three workers, it was treated as a collective dispute under Section 2(k) of the Industrial Disputes



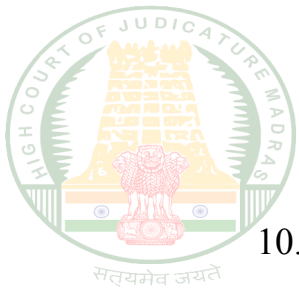
W.P.Nos.6478 & 6480 of 2021

Act, and the respondent was held to be a workman concerned in that dispute.

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Relying on the decision of the Hon'ble Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma**, reported in **(2002) 2 SCC 244**, the Labour Court held that the termination of the respondent, effected without prior approval under Section 33(2)(b), was void ab initio. Consequently, it held that the respondent was entitled to full back wages for the period of non-employment until his reinstatement.

9.The Labour Court observed that RW2, after completing his chief examination, failed to appear for cross-examination, and consequently, his evidence was closed. As there was no objection raised to the proof affidavits filed by the respondent's witnesses, the Labour Court accepted the respondent's computation and quantified the amount payable accordingly, as noted in the order. The petitioner thereafter challenged the order dated 08.01.2021, contending that it was passed ex parte, and filed an application to set it aside. However, the application was dismissed by the Labour Court as being devoid of merit.



W.P.Nos.6478 & 6480 of 2021

10.The Labour Court held that the closure of RW2's evidence was fully

justified. While dismissing the petitioner's application, the Labour Court, in the

second impugned order, recorded the following findings in paragraph 3:-

“Heard. This petition is filed to set aside the exparte order said to be pronounced on 8.1.2021. On perusal of the notes paper i.e. the case dairy, it is noted, on 3.2.2020 the case was posted for order after hearing both sides and since the Judicial Officer was on casual leave, the case was reposted on 11.2.2020. On 11.2.2020, respondent management filed Interim petition for reopen the case to let in further evidence. That petition was allowed and respondent examined one witness RW2 on 18.3.2020 in part. For continuation of RW2 chief was posted on 18.3.2020 and 24.3.2020 and due to covid-19 adjourned till 8.12.2020. But respondent not turned up. No representation for respondent. Hence suo motu RW2 chief closed and posted for argument. But respondent did not turned up till 21.12.2020. So this court closed the argument and reserved for orders on 8.1.2021. On 8.1.2021, orders also pronounced. No representation on management side till yesterday. Today the petitioner management has come forward with this petition stating that it is an exparte order and it has to be set aside. Since petitioner and management witness RW1 was cross examined it is not an exparte order. This court has pronounced AFT order and this petition cannot be numbered to be disposed off in merits.

As a result this petition is rejected as unnumbered.”

11.The circumstances under which a Labour Court may proceed with an enquiry in the absence of one of the parties, or in case of non-cooperation, are



W.P.Nos.6478 & 6480 of 2021

governed by Rule 48(1) of the Tamil Nadu Industrial Disputes Rules, 1958. An

ex parte order may be set aside only upon the party demonstrating sufficient cause for its absence. In the present case, the Labour Court found no such sufficient cause to warrant setting aside its earlier order, which had been passed on merits. The Court's conclusion—that a collective dispute was pending at the time of the respondent's termination and that the petitioner failed to obtain the requisite approval before effecting dismissal—is a valid ground to hold the termination void ab initio. As held in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.'s case (cited supra)***, such a violation entitles the workman to claim back wages.

12.The two impugned orders of the Labour Court, which are under challenge in these writ petitions, do not suffer from any legal infirmity and do not warrant interference by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, both writ petitions stand dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.



W.P.Nos.6478 & 6480 of 2021

29.05.2025

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

The Presiding Officer,
II Additional Labour Court,
Chennai



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W.P.Nos.6478 & 6480 of 2021

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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W.P.Nos.6478 & 6480 of 2021

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