



W.P.No.32858 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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The General Secretary,
Erode Mavatta Kahitha Alai Thozhilalar Sangam,
Reg.No.306/Erode,
No.7/301, 3 Nehru Nagar,
Punchaipuliampatti - 638 459,
Erode District.

2. Subramaniam.V
3. Duraisamy.L
4. Duraisamy Ayyavu
5. Natarajan.P.R
6. Sesuraj.A
7. Varghese.M
8. Subbaiyan.D
9. Mohan Duraisamy
10. Nanjundappan.D
11. Lakshmi Raji

.. Petitioners

(P2 to P11 are substituted in the place of P1,
as per order dated 10.09.2024 in W.M.P.No.24452
of 2024 in W.P.No32858 of 2014)

Versus



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1. The Management,

Balkart Brothers (India) Pvt. Ltd.,
Pungar Village, Bhavani Sagar (viz),
Erode District.

2. The Presiding Officer,
Labour Court, Salem.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records and quash the award of the Labour Court, Salem, dated 18.10.2012 in I.D.No.387 of 2002 and direct the 1st respondent to reinstate the workers with back wages and all other consequential and attendant benefits or in the alternative to pay the workers all statutory liabilities such as retrenchment compensation/closure compensation, gratuity and all other terminal benefits.

For Petitioner : Mrs.D.Nagasaila,
for M/s.N.Beulah John Selvaraj

For Respondents : Mr.S.Ravindran, Senior Counsel,
Asst. by Mr.P.Nehru, for R1

: R2 - Labour Court

ORDER

This Writ Petition is filed challenging the award of the Labour Court,

<https://www.mhc.tn.gov.in/judis>



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dated 18.10.2012 made in I.D.No.387 of 2002. By the said award, the claim of the workmen to declare the lockout as illegal and pay all the benefits to them was negated by the Labour Court.

2. The brief factual background, in which, the Writ Petition arises is that the 10 workmen, who are now pursuing the Writ Petition, were originally the employees of the first respondent management which is a paper mill. It is seen from the records that originally, the mill was run by a Company known as T.T.K. Company and that there was a transfer of undertaking in the year 1999. Immediately, after the purchase of the mill, the new management resorted to making certain changes in the functioning of the mill which seemed to be objected to by the common group formed by the trade union.

3. Under the said circumstances, it is seen that the management, immediately after the purchase, realised that the quantum of output and the



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market price of the paper and the cost price do not match and every month, there will be a huge loss. Taking stock of the said situation, they shut the unit for maintenance. During the maintenance, when the various designations of the workmen were not given effect and all of them were directed to do some of the work that was available during the maintenance shutdown, the workmen agitated and that was pursued to be a strike and the conflict escalated.

4. While so, the management announced the suspension of operation.

The workmen raised a dispute stating that the lockout was illegal and without following the procedure contemplated under the Act. There have been peace talks and conciliation proceedings are also going on. While so, the management also announced the closure of the mill itself. Under the said circumstances, upon receipt of the failure report, the Government, by G.O.D.No.605, dated 29.07.2002, referred the dispute for adjudication of the Labour Court, Salem. The following question was referred for



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adjudication:-

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"நிர்வாகம் தற்காலிக உற்பத்தி நிறுத்தம்
என்ற பெயரில் 27.02.2000 முதல் சட்டத்திற்கு
விரோதமாக கதவடைப்பு செய்துள்ளதை ரத்து
செய்து 27.02.2000 தேதி முதல் அனைத்து
தொழிலாளர்களும் பின் சம்பளம்,
பணித்தொடர்ச்சியுடன் மீண்டும் வேலை
வழங்கப்படவேண்டும் என்ற தொழிற்சங்கத்தின்
கோரிக்கை நியாயம் தானா? ஆம் எனில் உரிய
உத்தரவு பிறப்பிக்க"

5. A Claim Petition was filed in detail by the workmen which was resisted by a detailed counter statement. The Labour Court took up the matter for enquiry. The union office bearer namely, one *Mohan Kumar*, was examined as *W.W.1* on behalf of the workmen and *Exs.W-1* to *W-43* were marked. No oral evidence was let in on behalf of the management and *Exs.M-1* to *M-2* were marked on behalf of the management. The Labour Court considered the case of the parties. The Labour Court considered the technical objection that was made for the petitioner union to represent the workmen. It found that not even the registration number is mentioned in the various communications and no registration certificate was produced before



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the Labour Court. On merit, it found that the evidence points out towards labour unrest and the workmen failed to prove that there was any illegal lockout from 27.02.2000 and came to the conclusion that no relief can be granted and accordingly, answered the reference. Aggrieved thereby, the union filed the Writ Petition.

6. Pending the Writ Petition, the first respondent management also objected that when the petitioner trade union was not even a registered union at the commencement of proceedings, subsequently, the union was struck off from the rolls and is no longer a registered body and therefore, it could not maintain a Writ Petition. It is at this stage, that the present 10 workmen, who were originally the members of the said union, came forward that since the other workmen went away and were not pursuing, most of them also received the benefits from the management and settled the issue from the management, the said 10 workmen may be substituted as petitioners and be permitted to continue the Writ Petition. Accordingly, an order was passed in



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W.M.P.No.24452 of 2024 and these 10 workmen were substituted as writ petitioners. It is at this stage, that this Writ Petition is now argued before this Court.

7. Heard *Mrs.D.Nagasaila*, learned Counsel for the workmen and *Mr.S.Ravindran*, learned Senior Counsel for the first respondent management.

8. The learned Counsel for the workmen, by taking this Court, through the various correspondences, which were marked as documents before the Labour Court, would submit that the management which purchased the mill, immediately after the purchase, started making drastic changes to create unrest. From the documents, it can be seen that it had financial difficulties to operate the mill. Further, the mill was shut down only for maintenance and the work in the boiler was not over and it could not restart. Therefore, when the management resorted to the temporary shutdown for its reasons,



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the same was nothing but a lockout. The same was not done as per law.

Therefore, initial lockout is illegal and therefore, the workmen are entitled to compensation. After the subsequent closure also, no compensation whatsoever was granted to the workmen. Accordingly, the action of the management ought to have been held illegal by the Labour Court and the relief should have been granted by the Court.

9. Per *contra*, the learned Counsel for the management would submit that when the representation by the union itself was found to be incorrect and when there is no *locus standi*, no relief could have been granted. Even on merits, the Labour Court appreciated the evidence and concluded that the workmen did not prove the fact that there was a lockout. The availability of the work was very much there. It is only the workmen who did not want to perform the alternative work and therefore, they are not entitled to any relief whatsoever.



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10. Be that as it may, the entire episode happened in the year 1999-2001. Now, we are in the year 2025. Dehors the technical objection raised by the management, when most of the workmen have settled with the management and gone away and only the present 10 workmen alone are claiming further benefits and are before this Court, the entire issue, at the relevant point of time, whether the trade union was having *locus standi* to represent the workmen by going into detail, the provisions as to Section 2qq, Section 2k of the Industrial Disputes Act, 1947 and Section 2h of the Trade Unions Act, 1926 read with Section 4, 5 and 6 etc., need not be made at this stage.

11. Secondly, concerning merits, the question, of whether the workmen could have taken up alternative employment whether there was any lockout at all and whether it is illegal at all, need not also be gone into great detail because subsequently, it is the very case of the management that the unit itself is closed. Admittedly, no compensation was received by these



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workmen. It is the case of the management that by taking their date of superannuation earlier also, the gratuity amounts were sent and the workmen did not receive the same. In that scenario, I am of the view that without going into the legality or otherwise of the very many findings of the Labour Court, I am of the view that when the 10 workmen before this Court were the regular workmen under the management, the fact remains that they become non-employed from the year 2000 and they have not received any kind of compensation, be it gratuity or closure compensation. In that regard, when this Court enquired, a list was furnished by the learned Senior Counsel for the management concerning the dates of superannuation of these 10 workmen. It can be seen that most of these workmen also attained the age of superannuation before the year 2010 itself and the quantum of gratuity they may receive by taking into account their full service is also furnished in the list.

12. The following are the names of the workmen and the amount of



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gratuity they would have been receiving, had they been in service:-

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Sl.No.	Name	Gratuity amount on retirement (Rs.)
1	S.Raju	61531
2	M.Vargheese	50455
3	D.Mohan	53163
4	A.Jesuraj	51171
5	T.Nanjundappan	45467
6	V.Subramanian	48223
7	T.Subbayan	52356
8	A.Doraisamy	49601
9	L.Doraisamy	48223
10	P.R.Nataraj	51655

Therefore, that amount is due to the workmen.

13. Secondly, the fact that originally, the gratuity amount was sent and the workmen did not accept the same, is also borne in mind. Thirdly, no closure compensation whatsoever was paid and the sum roughly to the equivalent amount of gratuity, can also be granted. Because the gratuity was offered, but, it was not accepted at the same time and the money was with the management, some amount can also be added towards the interest



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portion. I am of the view that in the peculiar facts and circumstances of the case, considering the nature of arguments advanced in respect of these 10 workmen alone, without pronouncing on any legality of the issue or otherwise, I am of the view that the management can be ordered to pay a sum of Rs.1,50,000/- each to the workmen towards all claims of gratuity, reinstatement with back-wages or any other claim whatsoever as full quit. This order is passed only to resolve the dispute that has been pending from the year 1999 onwards and shall not be taken as precedent by any other workmen and it is passed in the peculiar facts and circumstances of the case to give a quietus to the matter that is pending in the Courts for 25 years.

14. In view thereof, this Writ Petition is disposed of on the following terms:-

(i) The management is directed to pay a sum of Rs.1,50,000/- each to the petitioner/workmen mentioned in paragraph No.12 above within four weeks from the date of receipt/production of a web copy of this order



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without waiting for a certified copy of this order;

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(ii) There shall be no order as to costs.

27.01.2025

Neutral Citation : yes
grs

To

The Presiding Officer,
Labour Court, Salem.

D.BHARATHA CHAKRAVARTHY, J.

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