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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.01.2025
Pronounced on : 29.04.2025

Coram:
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.15674 of 2014
and
M.P.No.1 of 2014 and W.M.P.No.22170 of 2020

The Management of Emmessen Exports Limited
now known as Aryan Granites & Monuments P. Ltd.,
Pudhupakkam,
Kancheepuram ... Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.An.Alagappan ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records and quash the order dated 22.07.2013 in C.P.No.514 of 2005 on the file of the first respondent.

For petitioner : Ms.D.Veda

For R2 : Mr.V.Ajay Khose

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O R D E R

This Writ Petition has been filed challenging the order passed in claim petition in C.P.No.514 of 2005 on the file of the Labour Court, Chennai, dated 22.07.2013, wherein the respondent herein has filed a claim petition for the computation of monitory benefit of Rs.5,41,411/- and the same was allowed by the Labour Court along with interest at 12% p.a. The Management now challenged the said order in respect of awarding interest.

2. The case of the petitioner is that the second respondent was an employee as Secondary Electrical Engineer from 1990 with the erstwhile management and continued with the present management, Aryan Granites on a consolidated salary of Rs.3,450/- p.m. The erstwhile management offered voluntary retirement to him due to heavy financial crunch. The second respondent neither reported for duty nor accepted the offer offered him by the Management, but raised dispute before the Conciliation Officer to re-instate and thereafter, the matter was referred to the Labour Court in I.D.No.695 of 1998 and the Labour Court passed an award on 29.04.2005

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directed the Writ Petitioner to pay backwages from the date of termination till the date of filing counter, i.e., 26.04.1998 to 19.01.2001. As against the denial of backwages from 19.01.2001, the second respondent filed a Writ Petition W.P.No.2732 of 2008 and the same was dismissed by this Court on 21.12.2010. Thereby, the second respondent *inter alia* filed a claim petition in C.P.No.514 of 2005 and calculated the claim amount of Rs.5,41,411/-. The petitioner already paid a sum of Rs.1,12,245/- towards backwages and bonus. Therefore, the due was Rs.1,01,895/- together with the bonus for the period i.e., Rs.10,350/-. Totally, the amount would come to a sum of Rs.1,12,245/-. The Tribunal held that the petitioner is entitled to a sum of Rs.5,41,411/- on par with his junior one Dhevasahayam, who was paid more than the second respondent and also awarded the interest at the rate of 12% p.a. The abovesaid order passed by the Tribunal is contrary to law. The Tribunal ought not to have awarded the interest since no any award was passed in respect of interest. While dealing with the petition under Section 33C (2) of Industrial Dispute Act, the Tribunal cannot adjudicate the matters and has no power to award interest. Therefore, the order passed by the Tribunal is liable to be set aside.

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3. The learned counsel for the petitioner would submit that the second respondent filed a claim petition alleging that he is entitled to salary on par with the junior namely, Dhevasehayam and also to award interest at 12% p.a. While dealing with the petition under Section 33C (2) of Industrial Dispute Act, the Tribunal cannot adjudicate the dispute as there is no interest awarded in the award. Therefore, the order passed by the Tribunal is liable to be quashed.

4. The learned counsel for the second respondent would submit that the Tribunal, after taking into consideration the evidence adduced in both sides and documents filed by both the parties, computed the monitory benefit of Rs.5,41,411/- and awarded 12% interest per annum. The Tribunal was taking into consideration of the admission made by the Management in para 9 of its counter that other allowances from No.12 and 14 mentioned in the 'Key Note' cannot be claimed as such allowances are based on user basis. Once It is admitted that continuity of service was awarded to the petitioner, the petitioner is entitled to claim all those allowances and also the Tribunal held that it is admitted fact that his last drawn salary is Rs.3,450/- p.m. and the petitioner cannot go back to the

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claim of other allowances from the respondent Management. However, the petitioner's junior one Dhevasahayam was awarded more salary and bonus and other reliefs than the petitioner and as per the award of the Tribunal, the petitioner is entitled to claim increment and other allowances. Therefore, the Tribunal calculated the wages as Rs.5,41,411/-. As far as interest is concerned, after relying upon the judgement of Hon'ble Supreme Court in ***2006 (6) SCC 130*** and also ***1999 (6) SCC 106***, the Tribunal awarded interest of 12% p.a.

5. This Court heard both sides and perused the records.

6. In this case, the main grievance of the petitioner is that the Tribunal had computed the amount on par with the junior’s salary to the second respondent and main contention is that the Tribunal cannot award interest, wherein the award itself has no any interest. As far as the fixation of salary on par with junior of the petitioner is concerned, it is admitted fact that the petitioner’s last drawal is Rs.3,450/- p.m., and thereafter, the petitioner was removed from service and as per order of the Labour Court, he was reinstated into the service with backwages. Therefore, the

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petitioner is entitled to the salary on par with junior. Therefore, the computation of the award amount is in order and does not warrant interference. As far as awarding interest in concerned, it is a well settled law that while adjudicating the petition under Section 33C (2) of Industrial Dispute Act, the Court has to act as Executing Court and without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable and the benefit sought to be enforced under Section 33C (2) of Industrial Dispute Act is necessary pre-existing benefit or one flowing from a pre-existing right. In this case, already the award was passed and while computing the monitory benefits, the Tribunal can only go by the award already passed by the Tribunal. In this case, the tribunal, while passing award, not ordered in respect of interest.

7. Therefore, the Tribunal, in the petition filed under Section 33C (2) of Industrial Dispute Act, cannot award interest. At this juncture, the learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court in ***Bombay Chemical Industries vs. Deputy Labour***

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Commissioner and another (Civil Appeal No.813 of 2022, decided on 22.04.2024) and the judgement of Allahabad High Court in ***Executive Manager Electricity Transmission Division vs. Mahes Chandra and another (Writ C.No.61111 of 2012, decided on 04.02.2022)***.

8. On a careful perusal of the judgements, it is clear that the benefit sought to be enforced under Section 33C (2) of Industrial Dispute Act is necessarily a pre-existing benefits or one flowing from a pre-existing right. The difference between right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising power under Section 33C(2) of Industrial Dispute Act, while the latter does not and also it is clear that the entire mechanism as provided under Section 33C of Industrial Dispute Act in the form of execution, either in sub-section (1), which is the recovery of the amount quantified in the award or settlement or under sub-section (2), where the workman is entitled to receive any money or benefit which is capable of being computed in terms of money from the employer and the provision does not provide for awarding interest. Therefore, the Tribunal cannot award interest, while computing

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amount under Section 33C(2) of Industrial Dispute Act. In the case on hand, there is no interest as per award, but while computing amount, the Tribunal awarded interest for the second respondent. Further, in the judgement of ***Central Bank of India Ltd. vs. P.S.Rajagopalan*** reported in ***AIR 1964 SC 743***, the Hon'ble Supreme Court held that when Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the executing Court to interpret the decree for the purpose of execution. In this case, there is no any interpretation by the Tribunal in awarding interest and there is no any interest awarded in the main award. Therefore, the award passed by the Tribunal in awarding interest is not sustainable and the same is liable to be set aside. In view of the same, this Court is of the opinion that this petition is liable to be allowed in part as stated above.

9. Accordingly, this Writ Petition is partly allowed and the award passed by the Tribunal in C.P.No.514 of 2005 by computing the amount is confirmed. However, the awarding of interest of 12% p.a. for the amount is set aside. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
apd

To

The Presiding Officer,
I Additional Labour Court,
Chennai.

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P.DHANABAL,J

apd

Pre-Delivery Judgment in
W.P.No.15674 of 2014

29.04.2025

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