



W.P.(MD) No.31463 of 2024

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 01.04.2025**

**CORAM**

**THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

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and

W.M.P.(MD) Nos.26342 of 2024  
and 3643 of 2025

M/s.DCW Ltd.,  
Sahupuram-628 229,  
Tuticorin District,  
Rep., by its Manager HR (Legal)

... Petitioner

Vs.

DCW Anaithu Paniyalargal Nala Sangam,  
34/94A, Gandhi Street,  
Arumuganeri-628 202,  
Tuticorin District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 04.12.2024 made in E.A.No.1 of 2021 in E.P.No.3 of 2021 by the Labour Court, Tirunelveli.

For Petitioner : Mr.M.E.Ilango



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For Respondent : Mr.S.Balamurugan

### ORDER

The respondent herein filed an Execution Petition in E.P.No.3 of 2021 under Order 21 Rule 37 and Rule 38 of Code of Civil Procedure read with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”) seeking an order to implement the settlement dated 28.06.2019 entered into under Section 12(3) of the ID Act.

2. The petitioner herein, which was arrayed as respondent in the said Execution Petition, filed an Execution Application in E.A.No.1 of 2021 seeking to dismiss the said E.P.No.3 of 2021 “as not maintainable” on various grounds including the ground that the Execution Petition cannot be entertained seeking implementation of a settlement in the absence of quantification of the amount under Section 33C(2) of the ID Act and also on the ground that the respondent-Sangam does not have a minimum required number of workmen in order to be treated as a recognised union and hardly it has six members out of total 355 workmen working in the establishment.



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3. Learned counsel for the petitioner further contended that the respondent-Sangam has only one workmen with it and further asserted that the person who signed the Execution Petition is not the member of the respondent-Sangam. The learned Labour Court examined the matter and by order dated 04.12.2024, refused to consider the said application filed by the petitioner on merits and instead came to the conclusion that the said issue can be decided along with the main Execution Petition. It is aggrieved by the said order dated 04.12.2024, the petitioner approached this Court by filing the present writ petition.

4. Heard Mr.M.E.Ilango, learened counsel for the petitioner and Mr.S.Balamurugan, learned counsel for the respondent and perused the material available on record.

5. The settlement dated 28.06.2019 entered into under Section 12(3) of the ID Act does not specify or quantify any amount that is payable in favour of each of the workman. The respondent-Sangam herein is not a party to the settlement. As pleaded by the petitioner herein, majority workmen



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have settled the matter *de hors* the 12(3) settlement during Covid period and accordingly, they have been receiving their wages without any grievance. In the absence of any quantification of the amount under the 12(3) settlement, it is not understandable as to how an Execution Petition can be entertained seeking implementation of the said settlement. In case, if the respondent-Sangam or any of its members or other workman intends to assert any accrued right under the said settlement, it is for them to make a claim for ascertaining their entitlement under such an accrued right by filing an application under Section 33C(2) and it is only after the monetary entitlement is ascertained after affording opportunity to both the parties, an Execution Petition can be filed seeking execution of the said order. In the instant case, there is no such application made at any point of time.

6. The relief sought in the Execution Petition is only for implementation of the settlement under Section 12(3). The respondent-Sangam while seeking implementation of the said award also sought for arrest of the Senior Executive Vice President (Works) of the petitioner and to send him to a civil jail. Once, the respondent-Sangam is seeking such a



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relief, it is obligatory on the part of the respondent-Sangam to see that the appropriate entitlement is ascertained before filing such an Execution Petition.

7. Be that as it may, a perusal of the Execution Petition does not quantify any amount nor mention the names of the workmen for whose benefit, the said Execution Petition is filed. As contended by the petitioner herein, there is only one workman sailing with the respondent. If that be the case, such workman could have as well join the respondent-Sangam herein or file an independent Execution Petition asserting his rights in accordance with law.

8. In the light of the above, the Execution Petition filed by the respondent-Sangam ought not to have been numbered and entertained by the Execution Court at the initial stage itself. In spite of the petitioner herein bringing the said fact to the notice of the learned Labour Court also, the learned Labour Court failed to appreciate the same in a proper perspective and refused to decide the issue as a preliminary issue and postponed the same



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for considering along with the Execution Petition. In all fairness, the learned Labour Court out to have decided the said issue as a preliminary issue, as the same is going to the root of the matter. In such matters, subjecting the petitioner to unwanted trial is also unnecessary especially in the context of the fact that the petitioner is contending that the wages that are being paid *de horse* the 12(3) settlement to majority workers.

9. Further, this Court after having noticed that the number of workmen sailing with the respondent are very minimul, adjourned the matter to enable the respondent union to make its stand clear. In spite of granting time, the petitioner is not in a position to assert that the respondent-Sangam is having the support of the good number of employees and on the other hand, it is admitted that the respondent-Sangam even according to the learned counsel for the respondent, has only the support of two workmen currently.

10. In the light of the above, this Court is of the considered view that the Execution Petition filed by the respondent ought not to have been entertained by the learned Labour Court.



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11. Accordingly, the impugned order dated 04.12.2024 is quashed and E.A.No.1 of 2021 in E.P.No.3 of 2021, is allowed. It is made clear that if any individual workman is still intends to claim right under the settlement entered into under Section 12(3), it is open for such workmen to take appropriate steps in accordance with law and the order passed in this writ petition shall not come in their way. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**01.04.2025**

NCC : Yes/No  
Index : Yes/No  
Internet : Yes

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**MUMMINENI SUDHEER KUMAR, J.**

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