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W.P.No.24596 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 11.12.2025

Orders pronounced on : **03.02.2026**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24596 of 2024
and W.M.P.Nos.26912 of 2024 and 2305 of 2025

The Management of MRF Ltd.,
Thiruthani Road,
Ichiputhur,
Arakkonam – 631 003.

.. Petitioner

Versus

T.Sekar

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records from the Industrial Tribunal, Chennai in A.P.No.26 of 2012 and quash its order, dated 19.01.2024.

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

For Respondent : Mr.V.Prakash,
Senior Counsel,
for Mr.D.Christopher



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ORDER

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This Writ Petition is filed for a Writ of Certiorari to call for the records relating to the award, dated 19.01.2024 made in A.P.No.26 of 2012 by the Industrial Tribunal, Chennai and to quash the same.

2. The case of the petitioner management is that it is having a factory at Ichiputhur, Arakkonam, where it manufactures tyres, tubes and conveyor belts. The respondent workman was employed as a Mechanic in Engineering Department, Zone-I. Owing to his trade union activities, the respondent behaved in an indifferent way on many occasions resulting in imposition of minor punishments for low performance, stay in strike, negligence in work and unauthorised absenteeism on several occasions. While so, on 03.11.2010, while working in the second shift, the respondent came near OGTP/IGTP area along with a group of workmen and instigated the workmen in that area to stop the work and also prevented the union workmen from performing the work. The area incharge made a complaint on the same day.

3. A show-cause notice was issued on 08.11.2010 and the workman submitted an explanation on 07.12.2010 refuting the allegations.



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In view thereof, one *J.Kumaran* was appointed as an Enquiry Officer.

After a full-fledged enquiry of examining the witnesses and marking documents, the Enquiry Officer, by his report, dated 17.03.2012 returned the finding holding the workman guilty of charges. A second show-cause notice, dated 28.04.2012 was issued to which the workman submitted his further explanation on 02.06.2012. After considering the same, the workman was terminated from the services by the order, dated 20.06.2012. Since a general charter of demands raised by the union was pending before the Industrial Tribunal, Chennai, the management had to seek approval of the order of dismissal of the workman. As such, along with the order of dismissal, a cheque for Rs.8,181/-, representing one month wages was sent to the workman and the Approval Application was simultaneously filed before the Industrial Tribunal, Chennai.

4. The Approval Application was taken on file as A.P.No.26 of 2012. The same was resisted by the workman by filing a counter statement. During the course of the enquiry, one *J.Maria Susai*, was examined on behalf of the management as *P.W.1* and ***Ex.M-1*** to ***Ex.M-54*** were marked. The workman was examined as *R.W.1* and ***Ex.R-1*** to ***Ex.R-9*** were marked. Thereafter, the Industrial Tribunal considered the



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petition as per the dictum of the Hon'ble Supreme Court of India in **Lalla Ram Vs. D.C.M.Chemical Works Ltd.**,¹ and framed five points. While it answered the point Nos.1 and 2 that the management had made out a *prima facie* case against the workman and that it was not due to any victimisation, while answering point No.3, it held that the amount of Rs.8,181/- paid by the management does not represent one month wages payable to the workman and therefore, answered the point No.3 in favour of the workman. It answered the point No.4 by holding that the application was simultaneously filed. Accordingly, by answering the point No.5, it held that the approval cannot be granted and dismissed the petition. Aggrieved by which, the present Writ Petition is filed.

5. According to the petitioner management, the finding of the Industrial Tribunal with reference to the point No.3 relating to one month wages is erroneous, on facts and in law and the actual monthly wage payable to the workman was only Rs.7,981.71 ps. However, a higher sum of Rs.8,181/- was paid.

6. The Writ Petition is resisted by the respondent/workman by

¹ (1978) 3 SCC 1



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filing a counter-affidavit. According to the workman, the amount that is paid is without considering the Dearness Allowance, Variable Dearness Allowance etc. This apart, the average is also wrongly calculated without any basis whatsoever. Further, it is the case of the workman that the principles of natural justice were also not complied with and the findings of the Enquiry Officer are perverse in nature.

7. *Mr.Anand Gopalan*, learned Counsel for the petitioner management would submit that the scope of enquiry on merits in an Approval Petition under Section 33(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') is limited as the workman always has the opportunity to raise a dispute before the appropriate forum and canvass as to the adequacy of evidence etc., in the manner known to law. As far as the proof and the fairness of enquiry is concerned, it is only a *prima facie* satisfaction that is required for grant of approval ensuring that there is no victimisation.

8. As far as the one month wage is concerned, the workman is a piece-rate worker. In this case, the workman entered into wage settlement under Section 18(1) of the Act in the year 2001 and it expired on

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31.12.2004. Clause – 9.6 of the said settlement categorically mentions that the workman will be paid Variable Dearness Allowance based on the last quarter of the year 2004 until a new settlement is signed. Now, the workman before the Industrial Tribunal has claimed the Variable Dearness Allowance on par with the other workman who had entered into subsequent settlements. The same is not permissible. Since the petitioner is a piece-rate worker, his delay wages have to be arrived at by considering the average pay. The average pay of last three months was taken into account by dividing the average pay by 26, the daily wage was arrived at and again by multiplying the same with 26, the amount was calculated and paid. There is no error whatsoever in the procedure adopted by the management.

9. The learned Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in *Bharat Electronics Limited Vs. Industrial Tribunal, Karnataka, Bangalore and Anr.*². The learned Counsel drew the attention to the manner of calculation. The learned Counsel would point out to the proof affidavit that was filed on behalf of the management to demonstrate that the wages were rightly calculated and

² (1990) 2 SCC 314



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paid to the workman. Therefore, he requests that the Writ Petition be allowed.

10. Per *contra*, *Mr.V.Prakash*, learned Senior Counsel for the respondent/workman would submit that on the face of it, the arguments of the learned Counsel for the management relating to the variable Dearness Allowance should not be accepted as the variable Dearness Allowance has been granted by the management according to the index base even for the previous month before the dismissal order. The management is contradicting itself by contending that the variable Dearness Allowance should be calculated only on the basis of the year 2004. Secondly, when the management has sought to pay by resorting to calculation of three months average, the same was willfully done because in the month of August, 2010, the workman was kept under suspension and was permitted to work only for a few days. Therefore, the average of August month does not reflect the correct status. The workman had duly pleaded and proved that the one month wages granted to him was erroneously calculated and lesser amount was only paid. The payment of one month wages is mandatory as per Section 33(2). The same is reiterated by the Hon'ble Supreme Court of India in the judgment in *Bharat Electronics Limited's*



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case (cited *supra*).

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11. The learned Senior Counsel would also submit that de hors the monthly wages, the workman is also aggrieved by the findings with reference to the other points. He would submit that the Industrial Tribunal did not appreciate the evidence on record and it must be seen that the entire action of the management is nothing but victimisation for the trade union activities of the workman. Secondly, upon reading of oral and documentary evidence that were adduced during the course of enquiry it would be clear that there is no proof at all for the charges levelled. Therefore, the finding of the Labour Court was perverse and without any *prima facie* evidence, the learned Senior counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Management of Sundaram Industries Limited Vs. Sundaram Industries Employees Union***³. The learned Senior Counsel would also rely upon the judgment of this Court in ***M.Madhan Vs. Management of MRF Limited, Represented by its Managing Director***⁴ more particularly paragraph Nos.10 and 15 of the said judgment. The learned Senior Counsel would also rely upon the judgment of this Court, dated 21.11.2025 in ***L.Suresh Vs. Unipres India***

³ (2014) 2 SCC 600

⁴ 2024 SCC OnLine Mad 5376



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Pvt. Ltd., (W.P.No.5713 of 2021) to contend that in this case, the charge memo itself is vague and contain only general statements and therefore, on that score also, the approval is liable to be refused.

12. I have considered the rival submissions made on either side and perused the material records of the case.

13. Firstly, the approval is sought for under Section 33(2) of the Act. It is essential to extract Section 33(2) of the Act which reads as follows:-

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.

.
. .

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages



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for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

14. Thus, it can be seen that the payment of one month wages is mandatory. Therefore, the Hon’ble Supreme Court of India in **Lalla Ram**’s case (cited *supra*) had expressly mandated framing of the said point and answering the same as to whether the one month wages have been paid to the workman.

15. As far as the term ‘wages’ is concerned, the same is defined under Section 2(rr) of the Act and the same is extracted hereunder for ready reference:-

“2. Definitions.—

.
. .

(rr) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes—

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;



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(iv) any commission payable on the promotion of sales or business or both; but does not include—

(a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;”

16. At this juncture, it is also essential to note the definition of the term ‘average pay’ that is contained in Section 2(aaa) of the Act which reads as follows:-

“2. Definitions.—

(aaa) “average pay” means the average of the wages payable to a workman —

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;”

17. As far as the payment of one month wages is concerned, it is held to be mandatory and even if one rupee is less, it would be fatal for the permission sought. It is relevant to extract paragraph No.17 of the



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judgment in **Bharat Electronics Limited's** case (cited *supra*) which reads as follows:-

“17. Before concluding the judgment the observations in **Syndicate Bank** case [(1967-68) 32 FJR 490, 497: (1968) 1 SCR 327: AIR 1968 SC 231], aforequoted, are again to be borne in mind. In the facts and circumstances of this case the management paid to the workman a sum of Rs 607.90 as a month's salary “to soften the rigour of unemployment that will face the workman”. How could a short payment of Rs 12 be said to have lessened the softening of such rigour is thought stirring. Viewed in the context, there could genuinely be a dispute, as in the present case, as to whether a particular sum was due as wages. It is, of course, risky for the management to raise it as to pay even a paisa less than the month's wages due under Section 33(2)(b), would be fatal to its permission sought. But at the same time it needs to be clarified that it is for the management to establish, when questioned, that the sum paid to the workman under Section 33(2)(b) represented full wages of the month following the date of discharge or dismissal, as conceived of in the provision and as interpreted by us in entwining the ratios in **Bennett Coleman** case [(1969) 2 SCC 1: (1970) 1 SCR 181] (*supra*) and **Dilbagh Rai Jarry** case [(1974) 3 SCC 554: 1974 SCC (L&S) 89: (1974) 2 SCR 178] and adding something ourselves thereto.”

18. The Division Bench of this Court in **M.Madhan's** case (cited *supra*) had held as follows in paragraph No.11:-

“11. Thus, the law is well established making it compulsory for the Management to pay the full wages of a month, for which the workman would be entitled to under the express or implied terms of employment.”

Therefore, the mandatory nature and the fact that it was



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obligatory on the part of the management, is well settled.

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19. With reference to the month wages, it is essential to extract paragraph No.10 of the judgment of the Hon'ble Supreme Court of India in ***Bharat Electronics Limited***'s case (cited *supra*) and the same is as follows:-

“10. The definition of the word “wages”, as given in clause (rr) of Section 2 is comprehensive enough to include (vide inclusion 1) such of the allowances as the workman is for the time being entitled. Yet, despite such comprehension, the inclusive meaning is subject to a meaningful change if there is anything repugnant in the subject or context. The proviso to Section 33(2)(b) mandates that unless the workman is paid wages for one month and an application as contemplated is made by the employer for approval of his action, no such workman can be discharged or dismissed. The intention of the legislature in providing for such a contingency is not far to seek and as was pointed out by this Court in the case of ***Syndicate Bank Limited v. Ramanath V. Bhat*** [(1967-68) 32 FJR 490, 497: (1968) 1 SCR 327: AIR 1968 SC 231], was “to soften the rigour of unemployment that will face the workman, against whom an order of discharge or dismissal has been passed”. One month's wages as thought and provided to be given are conceptually for the month to follow, the month of unemployment and in the context wages for the month following the date of dismissal and not a repetitive wage of the month previous to the date of dismissal. If the converse is read in the context of the proviso to Section 32(b), it inevitably would have to be read as double the wages as earned in the month previous to the date of dismissal and that would, in our view be reading in the provision something which is not there, either expressly or impliedly. We have thus to blend the contextual interpretation with the conceptual interpretation to come to the view that night shift allowance could never be part of wages, and those



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would be due only in the event of working. This Court in *Podar Mills Ltd. v. Bhagwan Singh* [(1974) 3 SCC 157: 1973 SCC (L&S) 449] ruled that the date of dismissal under Section 33(2)(b) is the date when the approval application is filed, after dismissal. With effect from that date, the occasion to earn night shift allowance cannot, and will not, arise.”

20. Thus, it can be seen that the Hon’ble Supreme Court of India has interpreted the mandate under Section 33(2) of the Act. It has held that the provision is with a view to soften the rigour of unemployment. The one month’s wage provided to be given is conceptually for the month to follow the month of unemployment and in the context, wages for the month following the date of dismissal to be calculated and given and not a repetitive wage of the month previous to the date of dismissal.

21. Normally, there cannot be any issue with reference to the same. But in this case, the workman was in employment and drew wages for the month of October, 2010 in full. He worked only for one day in the month of November, 2010. Thereafter, he was suspended and ultimately, he was dismissed from service on 20.06.2012. As per the judgment of the Hon’ble Supreme Court of India, it can be seen that the wages conceptually representing the month of July, 2012 has to be paid. If the petitioner was on timescale of pay, the pay and all the permissible



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allowances as per the definition contained in Section 2(rr) of the Act, along with the due increment can be calculated and notionally fixed for the month of July, 2012 and could have been paid. In this case, the petitioner was paid on piece-rate basis. That confounds the problem.

22. As far as the piece-rate workers are concerned, the basic principles to be kept in mind while determining the wages was laid down by the Hon'ble Supreme Court of India in ***Hindustan Hosiery Industries Vs. F.H.Lala and Anr.***⁵ and it is essential to quote paragraph No.18 which reads as under:-

“18. Piece-rate is what is paid by results or out-turn of work which is often described as a “task”. There is greater consideration to quantity in fixing piece-rates in some particular types of work in some industries with a guaranteed minimum. The same standard may not be appropriate in all types of piece work. With reference to particular work the importance of man rather than the machine employed may have to be dealt with differently. Even in piece-rates it will be necessary to look around to find some correlation with time-rates of the same or similar class of workers, for example, the contribution of the worker to the job, the nature of the work, the part played by the machine, the incentive to work and above all protection against any creation of industrial unrest because of the existence side by side of two categories of workers, particularly if there is no possibility of transfer of labour from one type of work to the other from time to time. Again there may be some work where special skill of the worker with or without machine may be necessary and that factor will have to be then considered. It will vary from industry to industry and from one process to

⁵ (1974) 4 SCC 316



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another. No hard and fast rule can be laid down nor is it possible or helpful. The Tribunal, in an industrial adjudication, will have to see that piece-rates do not drive workers to fatigue to the limit of exhaustion and hence will keep an eye on the time factor in work. Then again a guaranteed minimum may also have to be provided so that for no fault of a diligent worker he does not stand to lose on any account. There may be a misty penumbra which has got to be pierced through upon all available materials on record and also on what the Tribunal, in fairness, can lay its hands on, with notice to the parties, for the purpose of fixing the piece-rates balancing all aspects. We have only indicated broadly the bare outlines of approach in a matter so involved and sensitive as wage fixation particularly when no one at the present time can shut one's eyes to the rising spiral of prices of essential commodities. The central figure in the adjudication, however, is the wage earner who should have a fair deal in the bargain in a real sense as far as can be without at the same time ignoring the vital interests of the industry whose viability and prosperity are also the mainstay of labour. How the various competing claims have to be balanced in a given case should mainly be the function of an impartial adjudicator in an industrial proceeding unless the Legislature chooses to adopt other appropriate means and methods. Article 136 of the Constitution does not create a right of appeal in favour of any person. It confers power on the Court which should not be so exercised as to convert the Court into a court of appeal."

23. If the workman was not in suspension, normally the pay of the month of June, 2012 can be taken. The same can be basis for paying the July, 2012 wage and the management has to apply its mind as to if he workman had continued, whether there would have been any increase and if so such increased entitlement can be notionally calculated and paid. In this case, the workman was last in proper employment only for the month



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of October, 2010 and therefore, if that had been taken, there could not have been a fault on the part of the management.

24. In the judgment of the Hon'ble Supreme Court of India in *Jeewanlal Ltd. and Ors. Vs. Appellate Authority under the Payment of Gratuity Act and Ors.*⁶, it was held that to calculate the daily wage, the monthly wages can be divided by 26 as the other 4 days will be mandatorily holidays. Thus, in this case, it can be seen that the petitioner has drawn monthly wages for the month of October, 2010 at Rs.9,363.51 ps, certainly, it could have only been more than had the petitioner continued in service and had conceptually drawn wages for the month of July, 2012. But, the petitioner was paid only Rs.8,181/- and thus, the Industrial Tribunal was right in holding that the mandatory one month's wages was not paid.

25. The basis on which the petitioner management has calculated, is by calculating the average pay. The definition of average pay under the Industrial Disputes Act, 1947 was extracted *supra*. Specifically, with reference to compensation under Section 25(f) of the Act

⁶ (1984) 4 SC 356



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etc., the Act mandates the payment of 'average pay', whereas, under Section 33(2) of the Act, the Act mandates payment of 'wages'. Therefore, when the Act mandates the wages of the month, the action on the part of the management to have calculated average pay is not in accordance with law.

26. Further, even as per the definition, there may be situations where the average pay cannot be calculated. In this case, the salary slips of the months of August, 2010, September, 2010 and October, 2010 have been produced by the management. As per paragraph No.3 of the proof affidavit filed by the management, the following were the wages and the average has been calculated based on the same:-

“3. I state that the Respondent was paid wages on a monthly basis and, in the month of August, September and October 2010, he was paid the following wages:-

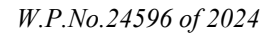
a. August 2010	Rs.5891.01
b. September 2010	Rs.8690.61
c. October 2010	Rs.9363.51”

27. It can be seen from the pay slips that while for the month of September, 2010, it is mentioned that the workman worked for 21 days and for the month of October, 2010, the workman worked for 24 days, in the



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month of August, 2010, the number of working days was only 16 days for the workman. The statement made on behalf of the workman that he was suspended by the management and was not permitted to work on all working days, is not denied by the management. In view thereof, the management chose to risk its own case by calculating the average by taking into account the month of August, 2010 also, in which, it had not permitted the workman to work on all the working days in which the factory was working. Thus, it was unfair on the part of the management to have calculated the average even assuming that the management was right in the exercise of calculating average pay. Thus, viewing from any angle, the finding of the Industrial Tribunal that the payment of Rs.8,181/- does not represent the full monthly wage, cannot be found fault with. Accordingly, this Writ Petition is bound to fail. Similarly, as per the Management, it is basing its calculation by leaving out the variable dearness allowance etc and by freezing the entitlement to the year 2004, while the order that is passed is in the year 2012. The basic factor as directed by the Hon'ble Supreme Court of India that the workman is facing unemployment and that he has to be provided succor for the month succeeding is not borne in mind.



29. *Mr.V.Prakash*, the learned Senior Counsel also argued with to the other points and it was also replied by the learned Counsel petitioner management. In view of the fact that I am agreeing with trial Tribunal with reference to the point relating to the monthly is not necessary to advert to the various contentions on either side rence to the other points as the one month pay has been mandated ction 33(2) of the Act and the management's petition is bound to y event.

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miscellaneous petitions are closed.

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