IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2007

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THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

W.A.No.2282 of 2001

Subramani .. Appellant/2nd Respondent.

Versus

1.The Presiding Officer,
II Additional Labour Court,
Chennai-104.

2.The Special Officer
Madurantakam Co-operative
Sugar Mills Ltd.,
Padalam Post,
Madurantakam Taluk,
Chingleput .. Respondents/1st Respondent/
Petitioner.

Prayer:- This writ appeal has been preferred against the order dated 23.2.1999 passed by Hon'ble Mr.Justice Y.Venkatachalam in W.P.No.12855 of 1991, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent herein in CP.No.898/1986 and quash the order passed therein dated 5.6.1990.

For Appellant : Mr.D.Hari Parandaman, Advocate
For respondents : Mr.N.Balasubramanian
Mr.S.S.Venkataraman for R2

JUDGMENT

A.C.ARUMUGAPERUMAL ADITYAN, J.

This writ appeal has been preferred against the order passed by a learned Judge of this Court in W.P.No.12855 of 1991, dated 23.2.1999, under Article 226 of the Constitution of India. This is a writ of certiorari calling for the records of the 1st respondent in C.P.No.898 of 1996 and to quash the order passed therein dated 5.6.1990.

2.1 The Claim Petition No.898 of 1986 was filed by the petitioner/respondent under Section 33(C)(2) of the Industrial Disputes Act claiming that the petitioner as a driver under the respondent-2 / Special Officer, Madurantakam Co-operative Suger Mills Ltd., Paladam Post,

had worked for more than 8 hours and hence, he is entitled to double the pay. But the 2nd respondent herein had stopped the additional pay paid by him from October, 1985. Claiming Rs.16,649.21 towards additional pay for the period from October, 1985 to August, 1986, the said application was filed.

2.2 It was contended on behalf of the 2nd respondent herein / employer that the petition itself is not maintainable under Section 33 (C) (2) of the Industrial Disputes Act and that the petitioner is not working in an Industry, since he is in no way connected with the protection of the respondent's factory in any manner.

2.3 After going through the averments in the petition and the counter and after taking into consideration the evidence both oral and documentary, the learned Additional Labour Judge, Chennai, has allowed the petition filed by the petitioner granting the relief of additional pay of Rs.16,649.21 as prayed for. Aggrieved by the findings of the learned Labour Judge, the employer had preferred the writ petition No.12855 of 1991. After going through the merits and demerits of the case, the learned single Judge of this Court has come to the conclusion that the impugned order passed by the learned Labour Judge under Section 33 (C)(2) of the Industrial Disputes Act is not maintainable on the ground that the employer / Co-operative Sugar Mill will be governed by the by-laws and also the circular issued by the Registrar of Co-operative Society alone and that being the position, the order of the learned Labour Judge, under challenge, is not sustainable and consequently allowed the Writ Petition setting aside the award passed by the learned Labour Judge in C.P.No.898 of 1986 on the file of the Presiding Officer, II Additional Labour Court, Chennai, which necessitated the employer to prefer this writ appeal.

3.We have heard the learned counsel appearing for the appellant Mr.D.Hari Parandaman, learned counsel appearing for the appellant and Mr.N.Balasubramanian learned counsel appearing for the 1st respondent and Mr.S.S.Venkataraman learned counsel appearing for the 2nd respondent and considered their respective submissions.

4.The only point for determination in this writ appeal is whether section 32(C)(2) of the Industrial Disputes Act will be applicable to the present facts of the case?

5.The learned counsel appearing for the appellant would contend that even though the Government had declined to refer the matter for adjudication under Section 10 of the Industrial Dispute Act, it is not an embargo for the appellant under Section 33 (C)(2) of the Industrial Dispute Act to move before the Labour Court. In support of this contention, the learned counsel for the appellant would rely on a decision of a Bench of this Court in W.A.No.189 of 2000, dated 10.2.2000, wherein the observation made relevant for the purpose of deciding this writ appeal runs as follows:-

> "Making complaint for contravention of the provisions under Section 33(2)(b) of the said Act by the appellant is a statutory

right to an employee, and, merely because the Government refused to refer the matter to the Tribunal exercising powers under Section 10 of the said Act, exercising such a right by the employee under Section 33A of the said Act cannot be denied."

Section 33(C)(2) of the Industrial Disputes Act runs as follows:-

"where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government, (within a period not exceeding three months),

Provided that where the presiding officer of a Labour court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

It was contended on behalf of the respondent that for the purpose of enforcing the existing right and when the existence of that right itself is not questioned, the Labour Court is totally in out of order in granting the interim relief. But in the Counter filed in C.P.No.898 of 1986 itself the employer/respondent herein had admitted that if an employee has worked for more than 10 hours he has been paid extra wages proportionate to the extra hours of work he has done and that in September-1975, the drivers of the respondent had raised a demand of double wages for over time work beyond 8 hours and also for wage revision with weightage and that there was mediation took place between the employer and the drivers' association and the Director of Sugars at the request of the drivers had enhanced the extra monetary allowance of Rs.30/- to Rs.60 per month for the overtime work subject to the condition that the drivers who are eligible for this allowance for their odd hours duty should work for at least 5 days in a month during odd hours instead of 10 days and a circular which was applicable to all co-operative and public sector sugar mills was brought to the notice of all the drivers through an order No.650/85-86-E dated 7.7.1986 by which they were informed that they will be paid extra monetary allowance of Rs.60/- per month if they work during odd hours atleast for 5 days in a month and that they are not entitled to any other extra wages. They would further admit that the petitioner has not received the extra monetary allowance of Rs.60/- per month from 1.4.1986 and out of 8 drivers only 4 drivers have received the same. So, under such circumstances, it cannot be contended that Section 33(C)(2) of the Industrial Dispute Act will not be applicable to the present facts of the case because under C.P.No.898 of 1986, the petitioner has claimed only over time wages to which he is entitled to.

6.Relying on 1977(2) LLJ 274 (General Manager, Co-operative Super Market, Madurai Vs. Additional Labour Court, Madurai and another), the learned counsel for the appellant would contend that in the said ratio the question that arose for consideration whether the claim for refund of security deposit can be the subject matter of the claim petition under Section 33(C)(2) of the Industrial Dispute Act and whether the Labour

Court has got jurisdiction to try the same, were considered in the affirmative as follows:-

> "No doubt, in the instant case, the second respondent, when he was issued Ex.M.3, did not furnish the necessary explanation. However, that would not enable the Society to contend that the second respondent is not entitled to the return of the secutiry deposit. Ramakrishna, J., in Kodaikanal Motor Union vs. Nallathambi (1969-II LLJ 141 at page 144 = 1969 Lab. IC. 1314 at page 1318) held :
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> > With regard to the claim for repayment of the security amount, it is urged by the learned counsel for the management that since the order of dismissal involves a finding that the worker had caused loss to the management, the management would be entitled to retain the security amount as a set off against that loss. Here, however, the position is different from the case of bonus prima facie the money belongs to the worker and in the normal course he would be entitled to get a refund of it. It was for the management to prove satisfactorily when the matter came before the Labour Court in a claim petition under Section 33 (C)(2), that the management had a lien on that money for loss caused to it by the worker's misconduct. Necessary evidence establishing the link between the worker's conduct and the loss to the management should have been adduced in the context of the return of the security money,"

Under such circumstances, we are of the considered view that the findings of the learned single Judge that the Labour Court has no jurisdiction to entertain the petition filed under Section 33(C)(2) of the Industrial Disputes Act cannot be sustainable and warrants interference.

7.In fine, the writ appeal is allowed and the order passed in W.P.No.12855 of 1991 is hereby set aside and the order of the learned Labour Court in C.P.No.898 of 1986 is restored. Time for payment is one month.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To
1.The Presiding Officer,
II Additional Labour Court,
Chennai-104.

2.The Special Officer
Madurantakam Co-operative
Sugar Mills Ltd.,
Padalam Post,
Madurantakam Taluk,
Chingleput.

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