

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 14.05.2009

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The Honourable Mr. Justice P. JYOTHIMANI
and
The Honourable Mr. Justice T.S.SIVAGNANAM

W.A. Nos.619 and 631 of 2009
and
M.P. Nos.1 and 1 of 2009

W.A.No.619 of 2009:

The Management of
Bata India Limited,
Plot NO.73 & 74,
Sipcot Industrial Complex,
Hosur 635 126

... Appellant

VS

1. The Presiding Officer,
Industrial Tribunal,
Tamil nadu,
Chennai.600104.

2. The Workmen rep. By
Podhu Seyalalar,
Hosur Bata Employees Union,
Door No.1/484, M.G.R. Nagar,
Mookandapalli, Hosur-635 126

... Respondents.

W.A.NO.631 OF 2009:

The Workmen rep. By
Podhu Seyalalar,
Hosur Bata Employees Union,
Door No.1/484, M.G.R. Nagar,
Mookandapalli, Hosur-635 126

... Appellant

.Vs..

1.The Management of
Bata India Limited,
Plot NO.73 & i4,
Sipcot Industrial Complex,
Hosur 635 126

2. The Presiding Officer,
Industrial Tribunal,
Tamil nadu,
Chennai.600104.

... Respondents

PRAYER: Appeals filed under Clause 15 of the Letters Patent against the order dated 15.04.2009 made in M.P.No.1 of 2009 in W.p.No.4938 of 2009 by the learned single Judge of this Court. Writ Petition presented under Article 226 of Constitution of India to issue a writ of certiorari calling for the records of the first respondent in I.D.No.29/2006, and quash its award dated.12.2.2009.

For Appellant in
W.A.619/09 & the
1st respondent in
W.P.No.631/09 : Mr. A.L.Somaiyajee S.C for
Mr.V.karthick &
M/S.T.S.Gopalan

For appellant in
W.A.631/09 and the
2nd respondent in
W.P.No.619/09 : Mr.N.G.R.Prasad, for
Ms.Ramapriya Gopalakrishnan

For the 1st Respondents in
W.A.619/09 & 2nd
respondent in 631/09 : . . .

JUDGMENT

(Judgment was delivered by P. JYOTHIMANI, J.)

These two appeals are directed against the order passed by the learned single Judge in M.P.No.1 of 2009 in W.P.4938/2009 dated 15.04.2009, by which the learned Judge while granting an order of stay, passed the following Order:

"1. The petitioner management is directed to pay the arrears of wages to the workmen directly at the rate of Rs.1,500/- per month from 01.04.2006 in two monthly instalments, the first of which shall be paid on or before 15.05.2009 and the second instalment has to be paid on or before 15.06.2009. This indulgence is shown on the request made on behalf of the petitioners.

ii)The petitioner management shall pay the said amount every month starting from June 2009;

iii) It is needless to say that if the petitioner succeeds in the writ petition, they will have the liberty to recover the same from the workmen The application for stay is disposed off accordingly. Post the Writ petition for final hearing on 25.06.2009."

Both the Management and the Workmen are affected by the above said order and hence, they have filed two separate appeals against the said interim order.

2. It is seen that at the instance of the workmen of the Batta India Limited, Hosur, an industrial dispute was raised regarding the wage revision. Basically, the dispute was raised by the workmen for the increase of basic wages to Rs.4,000/- per month, apart from the increase of Dearness Allowance, variable Dearness Allowance, increase in the House Rent Allowance etc. The Labour Court, by an award dated 12.02.2009, has passed the following order, giving effect from 01.04.2006:

"In the result, award is passed holding that the petitioner Union is entitled for the following reliefs from 01.04.2006 onwards.

1. Increase in the basic wages : Rs.750/-
2. Increase in V.D.A : Rs.1128/-
3. H.R.A. :Rs.1000/- (Rs.1275/-)
4. Increment is fixed as Rs.40/- for 'A' Grade, Rs.35/- for 'B' and 'C' Grade workers from January 2009 onwards.
5. Snacks allowance : Rs.270/- (Rs.490/-)
6. SHSCHC (Adhoc) Allowance : Rs.750/-
7. Conveyance Allowance : Rs.101/- (Rs.10600 A Grade)

Rs.3,999/-

An incentive bonus 100% to be added along with the above said wages (Minimum Rs.900/-p.m work to be given for every worker for a month.)

8. The petitioners are entitled for one pair of shoes with socks and one pair of sandal for alternative years. All other issues have been answered negatively. No costs."

3. Challenging the said award, the Management filed a Writ petition in W.P.No.4938 of 2009 and pending writ petition, a miscellaneous petition was filed and in the said miscellaneous petition, the learned single Judge passed the above said order, against which, both the Management and the Employees Union have filed the present writ appeals.

4. Mr.A.L.Somayajee, learned Senior Counsel appearing for the Employer-Management would submit that prima-facie, the award is not valid in the sense that while admittedly, the wages are payable to workmen bi-monthly, the Labour Court has taken it as if the payment of wages is on weekly basis. That apart, learned Senior Counsel would submit that there are certain claims which are not even made by the workmen like SHSCHC allowance and such allowance has been given to an extent of Rs.750/- per month. It is his further submission that all the Units of the employer in the Tamil Nadu are paid at the same rate and there cannot be any difference in Hosur Unit alone, since the entire management lies with the same employer.

5. On the other hand, it is the contention of Mr.N.G.R.Prasad, learned counsel appearing for the Union that the Labour Court, on the face of it, has relied upon the Pay Slips marked as Exs.M.14 and 15 in respect of other companies situated in Hosur Area and on a comparison, has found that the wages paid to the workmen of the Batta India Ltd. in Hosur, are comparatively low and therefore, the Labour Court has come to the conclusion that it is a fit case for wage revision. The learned counsel would also submit that document filed on the side of the Management under Ex.M.29, a Pay Slip of an employee in Bangalore unit, would go to show the discrimination shown in respect of Hosur Unit. He would also submit that there are various records including Exs.M.35 and 36 filed on the side of the Management to show that the re-fixation of wages is on sound principles.

6. We have heard the learned Senior Counsel appearing for the employer as well as the learned counsel appearing for the Union and gave our anxious thoughts to the same.

7. It is seen that the Labour Court, while passing the award has directed the Management to give effect the re-fixation of wages from 01.04.2006. It is also clear from the records that the Union has filed a claim petition on 13.03.2007. The point to be decided while considering the validity of the order passed by the learned single Judge is, as to whether, prima-facie, such order is

maintainable, pending disposal of the main writ petition, wherein the substantial issue regarding the validity or otherwise of the Labour Court award is in question.

8. The Labour court in the award while taking into consideration the Exhibits marked on the side of the Management as well as the workmen, on a comparison of the structure of wages paid and taking note of the expenses incurred by the Management as it is seen from Ex.M.20, has decided that there has been variation of wages in Hosur Unit when compared to the other Units. It is stated in paragraph 37 of the Award that the wages in Hosur unit is 1.23% while in Bangalore Unit it is 4.5%; in Faridabad 6.6%; in Bihar 9.42%; in Kolkota 24.72% and in Bihar KVT 26.92% and it is taking note of the said discrimination, which has been made among the workers of the same Employer, the Labour Court has come to the conclusion that the wages paid to the employees of Hosur Unit is very minimum, namely 1.23%. It is also seen that the Labour Court has taken note of other similar companies situated in Hosur area like AVTEC Ltd (Power production), Titan Co., Ashok Leyland, Nippon Electricals (Home appliances), Easun Group of Cos., TTK Prestige, Hindustan Level Co (in 2006) and ICICI Bank etc. and found on record as per Ex.W.16 that the wages paid to those workers in respect of other Companies in Hosur area are much more when compared to the wages paid to the workers of the Batta India Ltd. in Hosur area. It is true that while construing Exs.M.35 and M.36, the Labour Court has committed a mistake in the sense that when admittedly, the wages payable to the workers of Batta group in Hosur Unit are bi-monthly, the same has been taken as if it is a weekly basis. A reference to Exs.M.35 and 36 would make it clear that the wages are paid bi-monthly basis. But the question is that even if it is taken that there is a mistake committed by the Labour Court in construing Exs.M.35 and 36, that cannot take away the right of the workers who have got an award in their favour. It is seen that in respect of three categories, namely, 'A', 'B' and 'C' , in Hosur area, there are as on date, 122 workers who are affected, namely, in 'A' category--4 employees, in 'B' category--94 employees and in 'C' category--24 employees and the Labour Court has fixed the salary at the rate of Rs.10,600/-, 10,500/- and Rs.10,4500/- respectively in respect of such categories of workers. Merely because, there has been some discrepancy in respect of fixation of revised pay, regarding allowances etc., it is not possible for this Court to accept the contention of the learned Senior Counsel for the employer to ignore the effect of the award as such.

9. The learned single Judge while granting interim order imposed the abovesaid conditions, without expressing anything about the merits of the case and only considering the prima facie case, we consider that there is no need to interfere with the order of the learned single Judge at this stage, especially when the main writ

petition has been ordered to be posted for final hearing on 25.06.2009. However, we see that the claim petition itself has been filed by the Union on 13.03.2007 and in such view of the matter, instead of giving effect from 1.4.2006, we are of the view that the same should be given effect from 13.3.2007, for the purpose of computing arrears,.

10. The Writ Appeals are disposed of with the following modification in the award of the Labour Court, while confirming the order of the learned single Judge:

(i) The Management is directed to pay the arrears of wages to the workmen at the rate of Rs.1,500/- per month from 13.03.2007 instead of 01.04.2006, in two instalments, of which, the first instalment shall be paid on or before 30.05.2009 and the second instalment to be paid on or before 30.06.2009;

(ii) The Management shall pay the amount as decided by the Labour Court in its award as salary to its workers from June 2009;

(iii) The petitioner Management shall supply shoes to the workmen as per the award;

11. It is made clear that the said directions are purely temporary and the same is subject to the final orders passed in the Writ Petition. It is also made clear that this order shall not be construed as implementation of the award passed by the Labour Court. The above said modification is made on a prima-facie case, subject to the result of the writ petition and considering the balance of convenience.

12. Post Writ Petition No.4938 of 2009 for final hearing on 25.06.2009.

13. With the above observations, the Writ Appeals are disposed of. No costs. The Miscellaneous Petitions are closed.

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Sd/
Vacation Officer

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Sub Asst.Registrar

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To.

1. The Presiding Officer,
Industrial Tribunal,
Tamil nadu,
Chennai.600104.

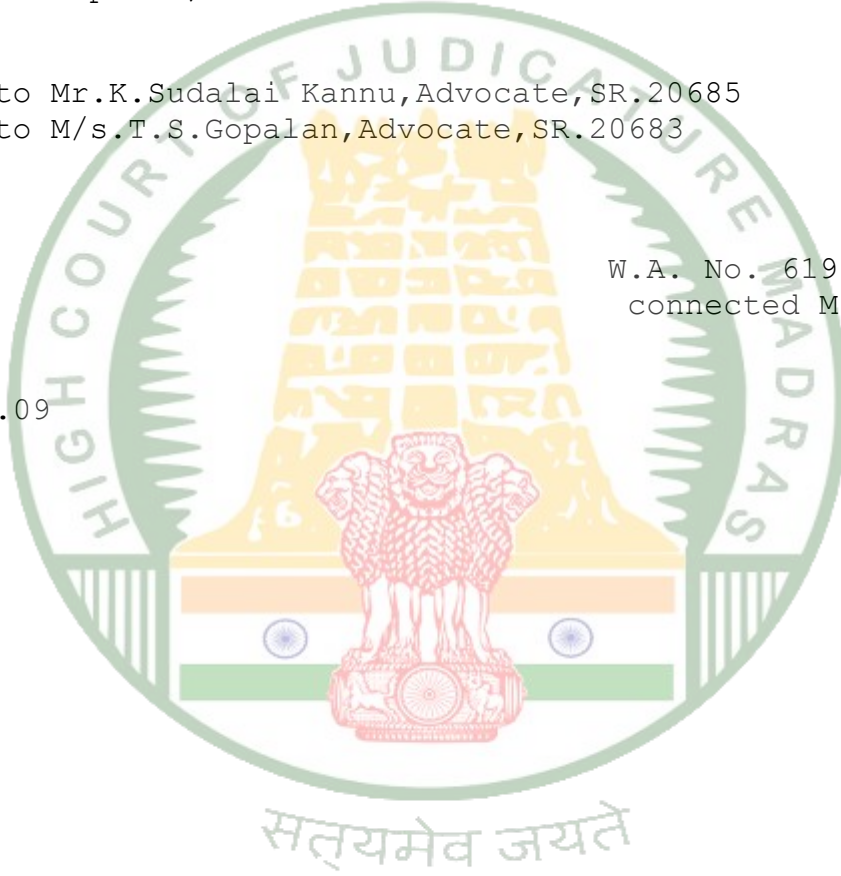
2. The Workmen,
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Door No.1/484, M.G.R. Nagar,
Mookandapalli, Hosur-635 126

+ 1 CC to Mr.K.Sudalai Kannu, Advocate, SR.20685

+ 1 CC to M/s.T.S.Gopalan, Advocate, SR.20683

W.A. No. 619 & 631/09 And
connected M.P.

KSK(CO)
EM/20.5.09



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