

WMP.No.3730 of 2021 in
W.P.No.10833 of 2020

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RESERVED ON : 26.10.2021

PRONOUNCED ON : 01.11.2021

M.S.RAMESH.J,

Heard the learned counsel for the parties.

2. The application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the " ID Act") seeking approval of the dismissal order dated 15.03.2018 of the workman, was rejected on 22.05.2020, which rejection order is under challenge in the main Writ Petition. The present Miscellaneous Petition is one seeking for the last drawn wages under Section 17B of the ID Act.

3. While the petitioner-Management would submit that on 15.07.2020, the Management had ordered for reinstatement and directed the workman to report for duty at their Puducherry factory, the workman had failed to report and therefore, is not entitled for the 17B wages, the learned counsel for the respondent would submit that the last place of employment of the workman was at

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Hosur, the Management had passed the order of reinstatement by directing him to report at Puducherry, which cannot be termed as "an order of reinstatement at all". According to the learned counsel, the Management is required to reinstate the workman in the original place of employment only and the present order cannot be termed as an "order of reinstatement" and therefore, the workman would be entitled for 17B wages.

4. In **P.D.Sharma Vs. State Bank of India** reported in **AIR 1968 SC 985**, the Hon'ble Supreme Court had held that when the application under Section 33(2)(b) is rejected, then the action taken by the employer becomes *ab-initio-void* and the employee will continue in service and his conditions of service will also continue without any break as if the order in question had not been made at all.

5. In the case of **Lakshmi Mills, Ltd., Coimbatore Vs. Labour Court, Coimbatore and another** reported in **1997 (3) L.L.N. 354**, a Hon'ble Division Bench of this Court had held that the term "reinstatement" would mean reinstatement to the original place of employment. The observation of the Hon'ble Division Bench in this regard reads as follows:-

"12. But it remains to be seen that the transfer would affect the employee in the matter of getting the emoluments and reinstatement means reinstatement to the original position. When there is an award directing the management to reinstate him, it is not possible for the management to say that they will transfer him from the place where he was originally working to a new place."

6. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others** reported in **2013 (10) SCC 324**, the Hon'ble Supreme Court had held as follows:-

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."

7. The ratios held in the aforesaid decisions clearly indicates that when the Management chooses to reinstate any of their workmen, such a reinstatement can only be at the place of the concerned workman's original employment, as held by the Hon'ble Supreme Court in *Deepali Gundu Surwase and P.D.Sharma's cases (Supra)*. Likewise, it will not be open to the Management to

reinstate a workman by transferring him to another place from his original place of employment, which ratio had been held by the Hon'ble Division Bench in *Lakshmi Mills' case (supra)*. When the dismissal order itself becomes *ab-initio-void* in view of the rejection of the Approval Petition, reinstating the workman by transferring him to some other place, other than his original place of employment, is an illegal action and totally contrary to the ratio laid down in the aforesaid decision.

8. In this background, the present decision of the Management to reinstate the workman by transferring him from Hosur to Puducherry through the Transfer Order dated 15.07.2020, cannot be deemed to be a "reinstatement order at all". Hence, the question of the workman not reporting for duty at the transferred place does not arise. While that being so, the workman would be entitled for receiving the last drawn wages under Section 17B of the Act. The workman has also filed an affidavit before this Court stating that he has not been gainfully employed from the date of rejection of the Approval Petition.

9. In the light of the above observations, there shall be a direction to the Management to pay the workman namely, Mr.Patil

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Veershetty, his last drawn wages under Section 17B of the ID Act, commencing from 04.08.2020 (i.e.,) from the date of filing of this Writ Petition and continue to pay the same till the final decision of this Court in this Writ Petition.

Registry is directed to post the main Writ Petition on 08.12.2021.

DP

Index:Yes

Order:Speaking

01.11.2021

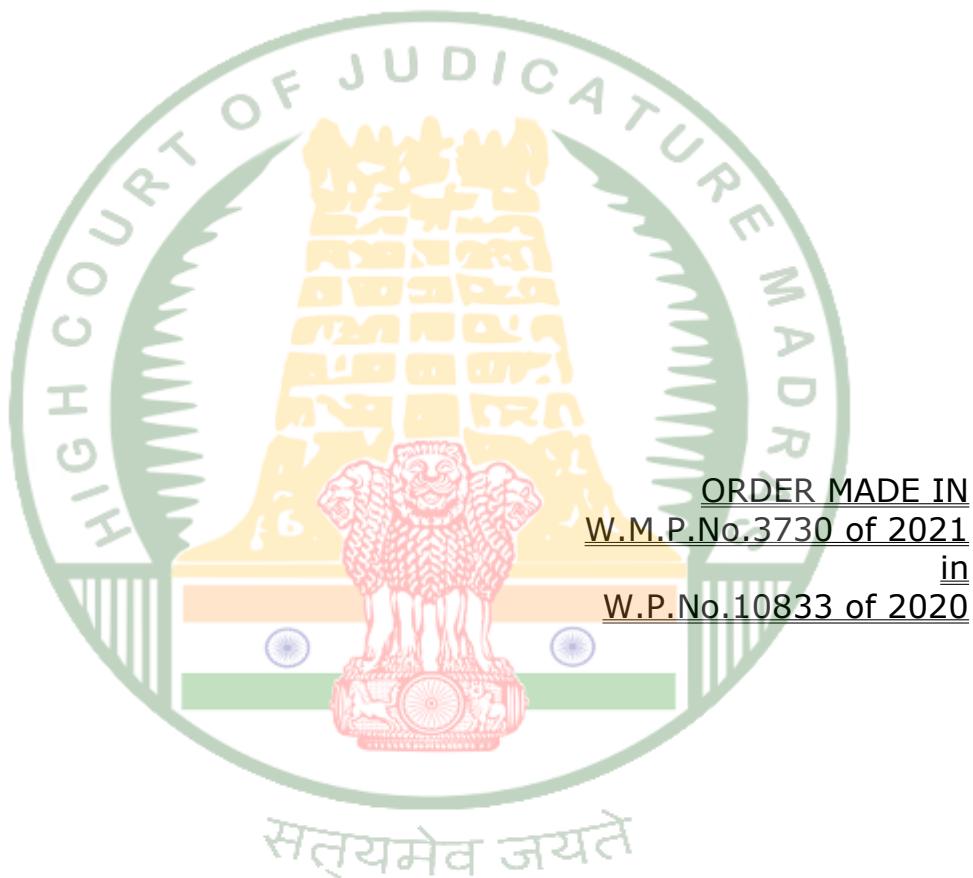


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