

(2011) 08 MAD CK 0107

In the Madras High Court

Case No : Writ Petition No. 17627 of 2010 and M.P. No's. 1 and 2 of 2010

The Management of Chemech Engineers (P) Ltd. and
Thiru.V.C. Menon Managing Director Chemech Engineers (P)
Ltd. APPELLANT

Vs

The Presiding Officer Principal Labour Court and Others RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 254

Evidence Act, 1872 — Section 92

Industrial Disputes Act, 1947 — Section 12(3), 2, 25(O)(8), 25J(2), 25O

Citation : (2011) 08 MAD CK 0107

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Jayaraman, for H. Balaji, for the Appellant; S. Kumarasamy, for R1, R2 and R37, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The first Petitioner is the management and the second Petitioner is its Managing Director. In this Writ Petition, they have

come forward to challenge a common order passed by the 1st Respondent Labour Court, Chennai in C.P. Nos. 201 to 230, 246 to 248, 255,

263 and 326 of 2006 dated 30.4.2009. By the common order, the Labour Court computed the amount due to each of the contesting Respondents

2 to 37 specifying those amounts in para 12 of the impugned order. Aggrieved by the direction to pay certain amounts, the Writ Petition came to

be filed.

2. The Writ Petition was admitted on 6.8.2010. Interim stay was granted on the same day for a limited period. Subsequently, when the contesting

Respondents filed vacate stay application in M.P. No. 2 of 2010, the matter was not disposed of. But, once again interim stay was extended for two more weeks and thereafter there was No. further extension. It is under the said circumstances, the Writ Petition came to be posted for final disposal.

3. Heard the arguments of Mr. S.Jayarajaman, learned Counsel appearing for Mr. H.Balaji, learned Counsel for the Petitioner and Mr. S. Kumara Amy, learned Counsel appearing for the Respondents 2 to 37.

4. It is the admitted case that the Respondents 2 to 37 except the Respondent No. 12 and Respondent No. 36 were workers in the Petitioner company and the 12th Respondent is the wife of K. Elangovan, who died in the meanwhile and Respondent No. 36 is the wife of D.Raja, who also died during the pendency of the dispute before the Labour Court.

5. In the claim statements filed by each of the contesting Respondents, they had stated that the Petitioner Industry was closed and while they were working as workmen within the meaning of Section 2(s) of the Industrial Disputes Act (hereinafter called as "'I.D.Act'"), the Petitioner company was closed on 26.8.1999 and in the company there were more than 100 workers working on each day during the period of 12 months before 26.8.1999 and the Petitioner company comes within the Industry/establishment within the meaning of Chapter V-B of the Industrial Disputes Act.

Initially the company was closed stating that until further orders it will be closed. But, there is No. Rule meaning in the term "'until further orders'".

Even in the communication sent to the trade union, to which the contesting Respondents belong, it was stated that the company was closed.

6. The workmen raised a dispute regarding the closure of the factory. In the said dispute, as No. compromise was possible, a failure report was sent by the Assistant Director of Labour (Conciliation)-II, Chennai on 8.3.2001. The State Government upon receipt of the said failure report referred the dispute by G.O.(D) No. 884, Labour and Employment Department dated 11.12.2001 for adjudication by the Principal Labour Court, Chennai. The reference was whether the lock out declared by the management with effect from 26.8.1999 was justified. If not, to what relief, the workers are entitled to. The said dispute was taken on file as I.D. No. 40 of 2002 and notice was directed to be served on the Petitioner

management as well as the Chemech Engineers Workers Progressive Union.

7. The said trade union filed a claim statement before the Labour Court. In the claim statement, the trade union contended that in the factory, there

were more than 100 workers and it is an industrial establishment under Chapter V-B of the I.D.Act and due notice under Chapter V-B was not

granted by the management and the management was not willing to reopen the factory on account of financial crisis. In view of the closure being

illegal, as No. prior permission was obtained u/s 25-O of the I.D.Act, the workers are eligible for all consequential benefits.

8. The Petitioner management filed a counter statement dated 25.11.2002. In the counter statement, they have stated that the factory is engaging

only 90 workers and therefore Chapter V-B will not apply to them. It is also stated that the workers had indiscipline in the company and the

workers have also assaulted an officer on 26.8.1999. A complaint was also given to the police station. The workers also prevented the dispatch of

finished goods. Since the accounts pertaining to bonus and wage records were kept in the office premises and it is also closed, they were unable to

run the company.

9. It is also admitted that the Provident Fund authorities have sealed the premises for non-payment of provident fund dues. Even while the dispute

was pending before the Labour Court, the workmen tendered resignation during May 2003. It is due to acute economic hardship, as the company

was closed, the workers were not receiving any payment for over four years. Therefore, the workmen in their representation to the Petitioner

company stated that though the closure was illegal, but yet due to the acute economic hardship, the workers tendered resignation and they also

demand payment of gratuity to which they are entitled to in the event of their resignation. But, in that letter they had stated that the resignation

was tendered without prejudice to their right to claim amounts for the period in which the factory was under closure.

10. The matter was also taken before the Joint Commissioner of Labour at Chennai by a dispute raised by trade union. The Joint Commissioner of

Labour after having parleys between the two parties allowed both parties to enter into a settlement u/s 12(3) of the I.D.Act on 15.7.2005. The

said settlement provided for the payment of gratuity in terms of the Payment of

Gratuity Act, 1972 for the purpose of calculating the service of the workmen, the service was directed to be accounted up to August 1999 and the last drawn wage was to be calculated on the basis of the workers

drawing salary in December 1998. The management also agreed to pay gratuity on or before 27th October 2005 in respect of the workmen

whose names are mentioned in the Annexure to the said settlement and there were as many as 97 workers" names were referred to therein.

11. In the preamble to the said settlement, it was stated that 60 workers resigned during May 2003 and the others resigned during the period

2004-2005 claiming gratuity and other benefits. The Form -N Notice was also sent to the controlling authority. It is under these circumstances, the

settlement came to be signed.

12. After getting the amounts in terms of the settlement, the contesting Respondents (36 in number) filed Claim Petitions u/s 33-C (2) of the

I.D.Act claiming wages for the period from 1.1.1999 till the date of their resignation and in most cases the resignation was during May 2003. In the

Claim Petitions, they claimed salary on the basis of their last drawn salary and minimum bonus for 6 years and also salary for the earned leave.

These claim petitions were registered and assigned different Claim Petition Numbers and notice was ordered to the petitioner management.

13. In the claim petitions, the workers admitted that though the State Government had referred the dispute only for lock out, whereas the trade

union was demanding a reference on the ground of illegal closure. They also sought for an amendment to the reference and the State Government

did not agree to amend the reference. The workers have decided to withdraw the Industrial Dispute pending before the Labour Court and

accordingly given their consent to the union. Ultimately when the dispute came up on 16.6.2010, the various representative of the union made an

endorsement that they are not pressing the industrial dispute. Accordingly, the Labour Court dismissed the dispute and passed the award on

16.6.2010. In the claim statement, they had stated that the company was having more than 100 workers and it is covered by Chapter V-B and

inasmuch as No. prior approval was obtained u/s 25-O of the I.D.Act, the workers are eligible to get monthly wages in terms of Section 25-O (8)

of the Industrial Disputes Act.

14. On notice from the Labour Court, the Petitioner management filed individual counter statements. In the counter statement, the complaint of the management was that the settlement u/s 12(3) dated 15.7.2005 covers the entire issue relating to the claim of the workmen and since the said

amount having been paid, there is No. further claim that the workers can have and therefore they prayed for the dismissal of the claim statements.

Significantly, in the counter there is No. denial that the company was not having more than 100 workers and it was not covered by Chapter V-B of

the I.D.Act. The entire theme of the counter statement was that the workers through their union demanded settlement of gratuity and at the instance

of Joint Commissioner of Labour, the matter has been settled by 12(3) settlement and therefore the claim was illegal.

15. Before the Labour Court, joint trial was conducted by consolidating all the claim statements. On behalf of the contesting Respondents, all the

34 workers and 2 legal representatives were examined as P.W.1 to P.W.36. On the side of the Petitioner management, Mr. V.C.Menon, who is

the Managing Director of the company was examined as R.W.1. While the workers filed 12 documents, which were marked as Ex.P.1 to

Ex.P.12, on the side of the management, 33 documents were filed and marked as Ex.R.1 to Ex.R.33. Though there are duplication of the

documents, the Labour Court marked the documents on the side of the workmen as also document on the side of the management.

16. In any event, on the basis of the evidence let in (both oral and documentary), the Labour Court rejected the case of the Petitioner management

and accepted the case of the contesting Respondents and computed the amount though not exactly what they had claimed. The Labour Court held

that the Petitioner factory is covered by Chapter V-B of the I.D.Act and since the condition precedent of giving notice and obtaining approval from

the competent authority was not followed, the closure was illegal and therefore the workers are entitled for payment u/s 25-O(8) of the I.D.Act.

17. With reference to the settlement filed before the Labour Court as Ex.P.9 (same as Ex.R.24), the Labour Court held that the settlement only

relates to gratuity claim and it does not cover the present claim of the workmen. On the question of estoppel and acquiescence, the Labour Court

placed reliance upon the judgment of the Supreme Court in *Oswal Agro Furane Ltd., and Anr. v. Oswal Agra Furane Workers Union and Ors.*

reported in 2005 (1) LLJ 1117. Challenging this common order dated 30.4.2009, the present Writ Petition came to be filed.

18. Mr. S. Jayaraman assailing the order passed by the Labour Court contended that the Labour Court u/s 33-C (2) of the I.D.Act cannot

determine a disputed question of fact and in the present case under the teeth of the settlement u/s 12(3), the claim is not maintainable.

19. In this context, he placed reliance upon the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Ganesh Razak and Anr.*

reported in 1995 (1) LLJ 395 for the purpose of contending that the Labour Court cannot determine the dispute of entitlement or the basis of claim

in the absence of prior adjudication or recognition by employer.

20. The learned Counsel also referred to the judgment of the Supreme Court in *State Bank of India Vs. Ram Chandra Dubey and Others*, . It is

also for the very same proposition that the pre-requisite for maintenance of petition u/s 33-C (2) must be a pre existing benefit or pre existing right

must be available to the worker and in the absence of such pre-existing right, the claim petition is not maintainable. It is only in a case of reference

u/s 10, all incidental questions can be determined by the Labour Court and in a petition u/s 33-C (2) of the I.D.Act, the Labour Court cannot

assume any incidental jurisdiction.

21. The learned Counsel also placed reliance upon the judgment of the Supreme Court in *State of Uttar Pradesh and Another Vs. Brijpal Singh*, .

In this case, the Supreme Court made a distinction between the pre-existing right or benefit and one which is considered just and fair. The

Supreme Court held that it was not competent for the Labour Court to exercise jurisdiction u/s 33-C (2) to arrogate to itself functions of Industrial

Tribunal and entertain a claim which is not based on an existing right but which may appropriately be made the subject matter of an industrial

dispute. In essence, the Labour Court cannot first decide workman's entitlement and then compute the benefit. It is only when the entitlement has

been earlier adjudicated or recognised by the employer, then for the purpose of any further interpretation required, the incidental power is available

to the worker u/s 33-C (2) of the I.D.Act.

22. The learned Counsel also placed reliance upon the Division Bench judgment of this Court in *Management of Binny Ltd., v. Presiding Officer*,

Principal Labour Court and Ors. reported in 2009 (1) LLN 340 for the very same purpose.

23. The learned Counsel for the Petitioner also submitted that the workers having raised a dispute, it was referred only on the question of lock out,

and pending on the file of the Labour Court as I.D. No. 40 of 2002, the workers did not pursue the claim to come to its logical end and the

dispute itself has been withdrawn and therefore for all the more reasons, the Labour Court should not compute the amount.

24. Per contra, Mr. S.Kumaraswamy, learned Counsel appearing for the workmen referred to the judgment of the Supreme Court in *Oswal Agro*

Furane Ltd., and Anr. v. Oswal Agra Furane Workers Union and Ors. reported in 2005 (1) LLJ 1117. In that case, the Supreme Court

categorically held that the claim under Chapter V-B cannot be defeated by any settlement reached between the parties. The Supreme Court also

referred to Section 25-O of the I.D.Act and held that it requires an employer to issue notice on closure and get prior approval from the

appropriate Government. In parargrah Nos. 14 to 19, it was stated as follows:

14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves No. manner of doubt that the employer who intends

to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior

permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a

valid closure, whereas the provisions of Section 25-N of the Act provide for conditions precedent to retrenchment; Section 25-O speaks of

procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in

character.

15. A settlement within the meaning of Section 2(p) read with Sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the

question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied

with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in

case of an industrial dispute. An industrial dispute may arise as regards the

validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regards retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may be, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

16. It is trite that having regard to the maxim *#ex turpi causa non oritur actio#*, an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of No. effect. Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of Sub-section (7) of Section 25-N and Sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well known. (See *East End Dwellings Company Ltd. v. Finsbury Borough Council*, *Om Hemrajani v. State of U.P.* and *Maruti Udyog Ltd. v. Ram Lal.*)]

17. The consequences flowing from such mandatory requirements as contained in Sections 25-N and 25-O must, therefore, be given full effect. The decision of this Court in *P. Virudhachalam* relied upon by Mr Puri does not advance the case of the Appellant herein. In that case, this Court was concerned with a settlement arrived at in terms of Section 25-C of the Act.

The validity of such a settlement was upheld in view of the first proviso to Section 25-C of the Act. Having regard to the provisions contained in the first proviso appended to Section 25-C of the Act, this Court observed that Section 25-J thereof would not come in the way of giving effect to such settlement. However, the provisions contained in Sections 25-N and 25-O do not contain any such provision in terms whereof the employer and employees can arrive at a settlement.

18. In *Engg. Kamgar Union*³ the question which fell for consideration of this Court was as to whether in relation to an industry which was governed by the State Act, the provisions of Section 25-O would be attracted. This Court held that having regard to the provisions contained in Article 254 of the Constitution, the provisions of the State Act shall prevail over the parliamentary Act as the former received the assent of the President of India stating: (SCC p. 54, para 40)

40. The contention of Mr Banerji to the effect that Section 25-J of the Central Act has been incorporated by reference in Section 25-S cannot be accepted. Section 25-S does not introduce a non obstante clause as regards Chapter V-A. Furthermore, Section 25-J is not a part of Chapter V-

B. By reason of Section 25-S, the provisions of Chapter V-A were made applicable only in relation to certain establishments referred to in

Chapter V-B. Parliament has deliberately used the words #so far as may be# which would also indicate that provisions of Chapter V-A were to

apply to the industrial establishments mentioned in Chapter V-B. The non obstante clause contained in Section 25-J does not apply to the entire

Chapter V-B. Applicability of Chapter V-A in relation to the industrial establishments covered by Chapter V-B in terms of Section 25-J vis-`-vis

Section 25-S is permissible but the contention cannot be taken any further so as to make Section 25-O of the Central Act prevail over the State

Act by taking recourse to the non obstante clause. Non obstante clause contained in Section 25-J is, thus, required to be kept confined to Chapter

V-A only and in that view of the matter we have No. hesitation in holding that Chapter V-B does not have an overriding effect over the State Act.

19. Indisputably, in this case, the industrial undertaking belonging to the Appellant herein attracts the provisions of Chapter V-B of the Act and

consequently the provisions referred to in Section 2(s) including Section 25-J

shall apply in relation thereto.

25. Therefore, the learned Counsel appearing for the workmen stated that the settlement even assuming was covering the claim made by the

workmen and marked before the Labour Court as Ex.P.9 and equivalent to Ex.R.24, it cannot have any force in the light of the judgment of the

Supreme Court in Oswal Agro Furnane Ltd."s case (cited supra).

26. The second contention is that whether the claim under Chapter V-B can be made in a proceedings u/s 33-c (2) of the I.D.Act. It does not

require any authority because the Supreme Court by an amendment made to the Industrial Disputes Act by amending Act 32 of 196 had made an

amendment to Section 33-C (1), wherein it was stated that in respect of any claim made under Chapter V-A or Chapter V-B, the appropriate

Government can give a revenue recovery certificate with reference to the claim made under the said Chapter. It does not require even competency

by a Labour Court, if there is No. dispute regarding the amount quantified. The question is No. longer res integra.

27. The Supreme Court in Fabril Gasosa Vs. Labour Commissioner and Others, dealt with the similar contention and in paragraphs 19 and 23, it

was held as follows: ""19. Section 33-C is in the nature of execution proceedings designed to recover the dues to the workmen. Vide Sections 33-

C(1) and (2), the legislature has provided a speedy remedy to the workmen to have the benefits of a settlement or award which are due to them

and are capable of being computed in terms of money, be recovered through the proceedings under those Sub-sections. The distinction between

Sub-section (1) and Sub-section (2) of Section 33-C lies mainly in the procedural aspect and not with any substantive rights of workmen as

conferred by these two Sub-sections. Sub-section (1) comes into play when on the application of a workman himself or any other person assigned

by him in writing in this behalf or his assignee or heirs in case of his death, the appropriate Government is satisfied that the amounts so claimed are

due and payable to that workman. On that satisfaction being arrived at, the Government can initiate action under this Sub-section for recovery of

the amount provided the amount is a determined one and requires No. #adjudication#. The appropriate Government does not have the power to

determine the amount due to any workman under Sub-section (1) and that

determination can only be done by the labour court under Sub-section (2) or in a reference u/s 10(1) of the Act. Even after the determination is made by the labour court under Sub-section (2) the amount so determined by the labour court, can be recovered through the summary and speedy procedure provided by Sub-section (1). Sub-section (1) does not control or affect the ambit and operation of Sub-section (2) which is wider in scope than Sub-section (1). Besides the rights conferred u/s 33-C(2) exist in addition to any other mode of recovery which the workman has under the law. An analysis of the scheme of Sections 33-C(1) and 33-C(2) shows that the difference between the two Sub-sections is quite obvious. While the former Sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, Sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmen, flowing from the obligations under a settlement, is predetermined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workmen or not, recourse to the summary proceedings u/s 33-C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33-C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter V-A and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement, an award or under Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by Sub-

section (1) as only a calculation of the amount is required to be made.....

23. Before parting with the judgment, we would, however, like to clarify that the application which has been filed by the employees' union before

the labour court u/s 33-C(2) of the Act for recovery of benefits/amounts, other than those claimed in their application u/s 33-C(1) of the Act shall

be decided by the labour court on its own merits and the findings recorded by us hereinabove shall be considered as confined only to the recovery

certificates issued by the Labour Commissioner u/s 33-C(1) of the Act, which are the subject-matter of the appeals hereby disposed of by us.

28. Further, the decisions cited by the learned Counsel for the Petitioner referred to above do not deal with the claim under Chapter V-B and they

do not deal with the case projected before this Court. Further, the pre-entitlement of the workmen is also set out u/s 25-O (8) of the I.D.Act,

wherein non-obstante clause is found and Section 25-O (8) reads as follows: ""(8) Where an undertaking is permitted to be closed down under

Sub-section (2) or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that

undertaking immediately before the date of publication for permission under this section, shall be entitled to receive compensation which shall be

equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

29. On the question that the settlement having effected on the claim of the workmen, it must be noted that when the settlement once reduced to

writing, it has to be interpreted only by the terms set out in the settlement and not other wise. The settlement only reflects the claim of the workmen

for getting gratuity because at the relevant time as found from the preamble, 60 workers resigned during May 2003 and the other 37 workers

resigned during 2004-2005 and due to acute economic hardship and suffering over the five years, they were at last demanding their gratuity claim

and they had also sent Form-N Notice to the Controlling Authority and it is the Controlling Authority made reference to the Joint Commissioner so

that the matter can be resolved. When once the settlement has been reduced to writing, No. kind of oral evidence can be let in. The matter on the

said subject is very clear u/s 92 of the Indian Evidence Act#Exclusion of evidence of oral agreement. The evidence in the nature of oral is strictly

prohibited.

30. Therefore, the settlement in the present case only deals with the gratuity and not any other claim and the claim under Chapter V-B also cannot

be compromised, in the light of the non-obstante clause found u/s 25-J (2) of the Industrial Disputes Act.

31. The last question remains for consideration is whether the workers have proved to the satisfaction of the court about the application of Chapter

V-B. It is needless to state that for the application of Chapter V-B, an industry/ establishment must have 100 workers on roll before the date of

closure. In the present case, it must be noted that when the workmen raised a dispute before the Conciliation Officer, it was covered by the failure

report and when they made statement under Rule 24, they had stated that the dispute relates to 105 workers. In the claim statement before the

Labour Court, they had also claimed that there were more than 100 workers. The said claim statement has also been marked as Ex.P.12.

32. Countering the said statement in I.D. No. 40 of 2002, in the counter statement filed by the management, which was filed as Ex.R.16 and once

again marked as Ex.R.31, they had stated that there were only 90 workers. If the statement that there were 90 workers is true, then it is not clear

as to how the management in the annexure to 12(3) settlement agreed to pay gratuity to 97 workers. Therefore, the stand of the management was

shifting from case to case. Further, in each of the claim statements filed before the Labour Court, the workers asserted that there were more than

100 workers in the factory and the factory is covered by Chapter V-B. When the management filed counter statement in each of the claim

petitions, this fact was not denied. Therefore only when there was a denial of a fact, the question of burden of proof will stand shifted on the

workers regarding the application of Chapter V-B of the I.D.Act will arise.

33. Lastly, as rightly found by the Labour Court, R.W.1 Managing Director in his cross-examination had stated that he did not dispute before the

Conciliation Officer about the statement made by the workers regarding the application but he had added saying orally objected to. He also

admitted that there was No. proof for any such oral objection. With reference to the closure, in cross-examination he submitted that though the

factory was closed on 26.8.1999, it was not reopened and there was No.

application made to the Government for granting approval for the closure. The fact that the trade union of the contesting Respondents has withdrawn the dispute in I.D. No. 40 of 2002 had not precluded the workers from making their claim under Chapter V-B of the Industrial Disputes Act.

34. In the light of these facts, it is not a fit case where the claim made by the management can be entertained by this Court. The Labour Court on

the basis of the materials placed before it gave a factual finding. In view of the above, there is No. case made out. Hence, the Writ Petition is

misconceived and bereft of legal reasons. Accordingly, the Writ Petition stands dismissed. No. costs. The connected Miscellaneous Petitions are

closed.