

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.6617 of 2015

E.I.D.Parry (India) Ltd.,
Ariyur Sugar Factory,
Rep. by its General Manager -
Works & Unit Head,
Villianur Commune,
Puducherry - 605 110. ... Petitioner

Vs

- 1.The Presiding Officer,
Industrial Tribunal,
Pudhucherry.
- 2.EID Parry (India) Ltd.,
Ariyur Sugar Factory,
Anna Thozhil Sangam,
2, Govinda Chettiar Thottam,
Vanarapet, Puducherry - 605 001.
Rep. by its Secretary
K.Krishnamoorthy
- 3.Anna Thozhil Sangam Peravai,
Represented by its Secretary
Pappusamy
38, North Street,
Ariyur, Villianur Commune,
Puducherry. ... Respondents

Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari
calling for the records of the 1st respondent in I.A.No.151 of
2015 in I.D.(T) No.6 of 2014 and quash its order dated
05.03.2015.

For Petitioner : Mr.V.Karthik
for M/s.T.S.Gopalan & Co.,
R1 - Tribunal
For Respondents 2 & 3: Mr.J.Abishek
for Mr.A.Jenasenan

ORDER

By consent of the learned counsel on either side, this writ petitions is taken up for final disposal.

2. Heard Mr.V.Karthik, learned counsel appearing for the petitioner and Mr.J.Abishek, learned counsel appearing on behalf of Mr.A.Jenasenan, learned counsel on record for respondents 2 and 3.

3. The petitioner-Management has filed this Writ Petition challenging the order passed by the Industrial Tribunal, Pondicherry, in I.A.No.151 of 2015 in ID(T) No.6/2014 dated 05.03.2015. In the said application the petitioner Management sought for a direction, before the Tribunal to decide as preliminary issue the fairness of the settlement and pass an award in terms of the settlement dated 26.02.2015 and prayed for an award in terms of Clause 11 of the Settlement.

4. The Industrial Tribunal by the impugned order rejected the said petition as not maintainable and further observed that the petitioner-Management has opportunity to file documents for proper adjudication of the case, particularly, when the witnesses are being examined.

5. Mr.V.Karthik, the learned counsel appearing for the petitioner submitted that the petitioner had taken over the Sugar Mill, pursuant to the purchase made in an auction initiated under SARFAESI Act and Sale Certificate was issued in favour of the petitioner on 23.08.2006. The dispute, which is now pending before the Tribunal is with regard to the age of retirement of workmen. The workmen would contend that as per the Standing Orders of erstwhile Management, the age of retirement was sixty years. However, in the appointment orders issued by the petitioner, after they purchased the Sugar Mill, the age of retirement was mentioned as fifty eight years. The workmen concerned, having accepted the order of appointment, raised an industrial dispute, claiming that the age of retirement should be maintained as sixty years. Since Conciliation failed and failure report was submitted by the Government, the Government being satisfied with the existing of an industrial dispute, by G.O.Rt.No.82/AIL/LA8/J/2014 dated 12.05.2014, referred the following dispute for adjudication by the Tribunal :

(a) Whether the claim of the E.I.D. Parry (I) Ltd., Ariyur Sugar Mill, Anna Thozhir Sangam that the employees of E.I.D. Parry (I) Ltd., Ariyur to be retired only at the age of 60 years as per the provisions of Industrial Employment Standing Orders of the company is justified.

(b) If justified, what relief they are entitled to ?

(c) Whether the claim of the union that refusal of employment to their union workmen Tvl.T.Maiyel. 2.R.Jothy E. 3.P.Saravanamoorthy, & 4.M.Mubarakh by giving retirement at the age of 58 years instead of 60 years, which is against the provisions of Standing Orders of the Company is justified.

(d) If justified, what relief they are entitled to ?

(e) To compute the relief, if any awarded in terms of money, if it can be so computed. "

6. Pursuant to the order of reference, the respondents 2 and 3 have filed a claim statement and a counter has also been filed by the petitioner-Management. It is not in dispute that on behalf of the workmen, two witnesses have been examined and ten documents have been marked and the cross-examination of the workmen witness are already over and the petitioner-Management is in the process of leading evidence both oral and documentary. At that stage, the petitioner-Management filed I.A.No.151/2015 in ID(T) No.6/2014, requesting the Tribunal to decide the fairness of the settlement dated 26.02.2015. That application has been dismissed as not maintainable. Challenging the said order, the petitioner is before this Court.

7. The learned counsel appearing for the petitioner after elaborately referring to the facts and circumstances of the case submitted that the order passed by the Tribunal is not sustainable, in the light of the decision laid down by the Hon'ble Supreme Court in Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, reported in [1976 4 SCC 736]; Tata Engineering and Locomotive Co. Ltd. Vs. Their Workmen in [1981 4 SCC 627] and the judgment of this Court in Management of EID Parry (India) Ltd., Ranipet Vs. Presiding Officer Labour Court, Vellore and another [2005 (1) LLN 288].

8. The learned counsel appearing for the respondent-union submitted that the second respondent-Union was established during the year 2013 and it is affiliated to the third respondent-Union which is a Federation and the workmen raised a dispute with regard to age of retirement and though notices were sent by Labour Officers for conciliation, the petitioner-Management never participated in the conciliation proceedings, resulting in, a failure report being filed by the Conciliation Officer on 18.12.2013 and subsequently an order of reference has

been made. Further, it is submitted that the industrial dispute has been taken up for adjudication, and, at the stage when the petitioner-Management has to conclude his evidence, this application in I.A.No.151 of 2015 in ID(T) No.6/2014 has been filed and the Tribunal rightly rejected the application as not maintainable.

9. Heard the learned counsel appearing for the parties and perused the materials placed on record. The Hon'ble Supreme Court in the case of Herbertsons Limited as well in the case of Tata Engineering (referred supra) has held that the settlement arrived at, is between the Management and workmen. It is proper for the Tribunal to examine the fairness of such settlement. Following these decisions, this Court, in the case of Management of EID Parry Vs. Presiding Officer (supra) has held, that the Labour Court should have passed an award on the basis of the settlement, instead, the Labour Court mis-directed itself and held that it cannot pass an award on the basis of the settlement.

10. The core issue would be as to whether the settlement was fair and reasonable, and, since the settlement entered under Section 18(1) of the Industrial Disputes Act 1947 was on 26.02.2015, i.e., when the industrial dispute was pending adjudication before the Tribunal. The Tribunal ought to have considered the application filed by the petitioner and tested the fairness of the settlement. The objection raised by the respondent-Union is by stating that it should not be decided as a preliminary issue. This objection is not tenable, since, if the prayer made by the petitioner-Management was acceded to by the Tribunal, then nothing would remain to be adjudicated by the Tribunal. In other words, if the Tribunal finds that the terms of the settlement dated 26.02.2015 was fair and it binds the workmen, then the Tribunal would necessarily have to pass an award in terms of the settlement. On the other hand, if the Tribunal comes to the conclusion that the settlement was not fair or reasonable or not tenable for some other valid ground, then it goes without saying that the Tribunal can adjudicate upon the issue and pass an award on merits. Therefore, the Tribunal has to essentially consider the effect of the settlement, the reasonableness of the settlement, the fairness of the settlement, and the binding effect of the settlement on the workmen, on behalf of whom the dispute has been raised. Hence, the order passed by the Tribunal rejecting the plea of the petitioner at the threshold is incorrect.

10. In the result, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the Industrial Tribunal for fresh consideration. The Tribunal is directed to consider as to whether the settlement entered on 26.02.2015 is fair and reasonable and for this purpose, permit

both the parties to lead oral and documentary evidence and then come to a conclusion on merits, based on the documents produced and proceed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

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Sub Asst. Registrar

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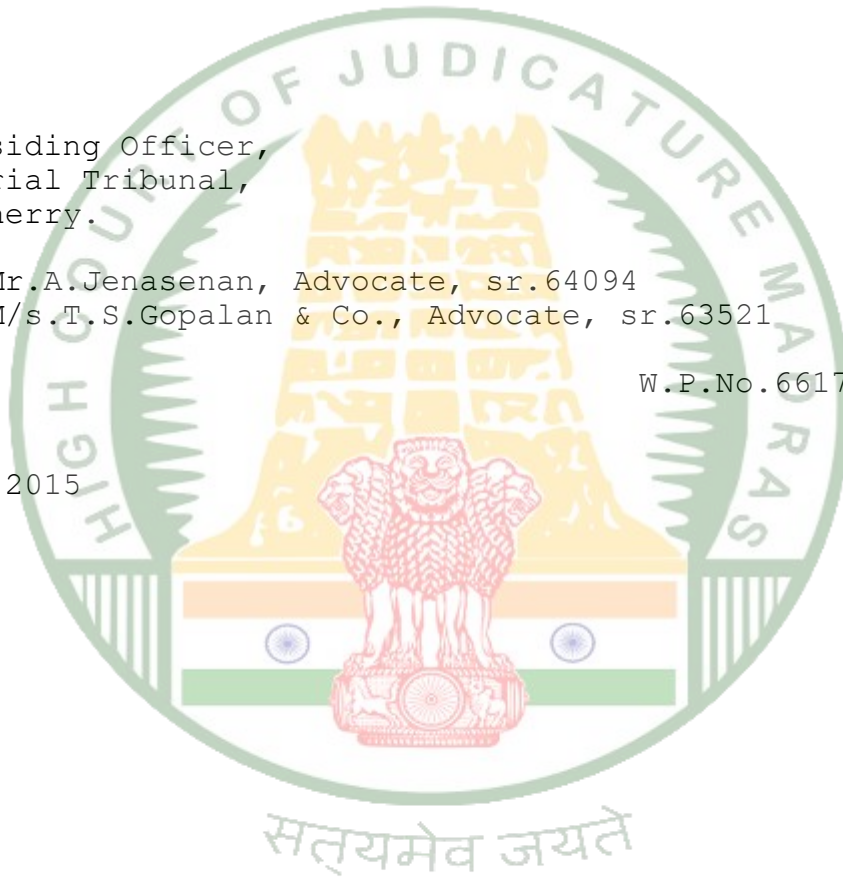
1.The Presiding Officer,
Industrial Tribunal,
Pudhucherry.

+1 cc to Mr.A.Jenasenan, Advocate, sr.64094

+1 cc to M/s.T.S.Gopalan & Co., Advocate, sr.63521

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msm co
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