

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:25.09.2015

DATED:06.10.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.29964 of 2013

and

M.P.Nos.1 of 2013 and 1 of 2014

M/s.Rane Brake Linings Ltd.,
Plot No.30, Industrial Estate,
Ambattur, Chennai- 600 058.
rep.by Mr.T. Solaiappan,
Senior Vice president Operations

...Petitioner

Vs.

- 1.The presiding officer
II Additional Labour Court, Chennai.
- 2.D.Isaach Caleb
- 3.T.S.Sundarapandian
- 4.N.Kasiviswanathan
- 5.S.Arjunan
- 6.K.Moses
- 7.P.Saravanan
- 8.V.Mahadevan
- 9.C.Saravanakumar
- 10.A.Palani
- 11.V.Duraiaraj
- 12.D.Thulasiram
- 13.N.V.Vajravelu
- 14.K.Krishnamoorthy
- 15.K.Prabhakaran
- 16.L.Sankaran
- 17.M.Palani
- 18.A.Ananthan
- 19.G.Panchayuthan
- 20.N.Kannan
- 21.V.Muniraghavaraju
22. L.Raja
- 23.T.Jayaraman
- 24.D.Gurubaran
- 25.S.Gurunathan

26.M.Sridhar
27.S.Muthusamy
28.C.Selvamani
29.R.Saravanan

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records and quash the common order dated 31.07.2013 passed in I.D.23 to 52 of 2011 except in so far as it relates to I.D.No.36/11 and I.D.No.40/11 on the file of the 1st respondent, Presiding Officer, II Additional Labour Court, Chennai.

For Petitioner: Mr.Gupta and Ravi

For Respondents: Mr.R.M.D.Nastallah
for Mr.K.V.Shanmuganathan
for R2 to R29
R1-Labour Court

O R D E R

The respondents/workforce have filed a batch of cases in I.D.Nos.23 of 2011 to 52 of 2011, on the file of the II Additional Labour Court, Chennai, against the writ petitioner herein stating that the Management / writ petitioner had dismissed the employees. Hence, the employees have filed cases in their individual names respectively in the above I.D. Numbers. The management also had filed counter statement and resisted the cases filed by the employees.

2.The employee namely T.S.Sundara Pandian has filed a memo in I.D.No.24 of 2011 stating that he was terminated from services by the management on 19.08.2009 after a sham enquiry. The said enquiry was not conducted in a full and proper manner. The enquiry was not conducted in accordance with the principles of natural justice. The petitioner has challenged the validity of the domestic enquiry held by the management on various grounds in his claim statement. Therefore, it is just and necessary that validity of the domestic enquiry has to be decided as a preliminary issue, unless a preliminary issue with regards to the validity of the domestic enquiry is framed and decided on the petitioner will be exposed to severe hardship. Hence, the employee prayed before the trial Court to frame a preliminary issue with regard to the validity of the domestic enquiry and decide the same in the first instance.

3.The management has filed common objections in I.D.No.23 of 2011 to I.D.No.52 of 2011 and revealed that the management has no objection to allow the memo filed by the employees to frame a

preliminary issue with regard to the validity of the domestic enquiry.

4. After hearing the arguments from both sides and on perusing the citations submitted by both parties, the trial Court had observed that a domestic enquiry is imperative as per the principle of natural justice, however, the domestic enquiry conducted by the management was in a fair manner and the same was submitted by the management and to that effect the management has filed all relevant documents before the Labour Court. Therefore, the trial Court has directed the management to adduce evidence on initial mode of presentation, since the management has to mark relevant records regarding preliminary issue pertaining to fair / unfair enquiry / a comprehensive enquiry.

5. Against the said order, the management has filed the above writ petition and challenging the same. The highly competent counsel Mr. Gupta submits that the workforce was dismissed from service for grave and serious acts of misconduct committed by them on 19.08.2009. Before passing dismissal order, the management issued individual charge sheet to all the employees setting out the charges levelled against them and conducted a comprehensive domestic enquiry after offering sufficient opportunities to the employees in accordance with the principles of natural justice. The employees challenged the dismissal order before the Conciliation Officer, wherein no settlement was forthcoming from the parties, hence, the conciliation officer declared it a failure. Thereafter, the employees have filed cases under the Industrial Disputes Act before the II Additional Labour Court. The management has also filed a detailed counter statement and resisted the said cases.

6. The very competent counsel further submits that before starting an enquiry, the employees have filed a memo stating that the domestic enquiry was not conducted in a fair manner, hence, they entreats the Labour Court to direct the management to conduct a domestic enquiry. The management is willing to conduct an enquiry once again. However, the trial Court had taken alternative decision and directed the management/ respondent to enter the witness box first, since the management has filed connected documents pertaining to the domestic enquiry report. The learned counsel further submits that the usual procedure is that the employees should enter the witness box first, after their Chief and cross examination besides any supporting witnesses. After claimants enquiry being over then only the management and respondent will enter into the witness box to adduce their evidence, this is the mode of procedure of the trial Court. In the instant case, if the same procedure is followed then no one will be prejudiced and the character of the

case will not be affected. Hence, the very competent counsel entreats the Court to set aside the impugned order of the trial Court.

7.The very competent counsel Mr.K.V.Shanmuganathan appearing for the respondents submit that the management had not conducted an enquiry in a proper manner without giving opportunities to the employees and dismissed them from service in an arbitrary manner, as such the principle of natural justice has been violated.

8.The very competent counsel further submits that about 900 employees working with the management under various categories, out of them 1/3 of the employees are made permanent while the rest of them are kept temporarily on long periods. The office bearers of the employees union have filed cases before this Court and Labour Court for the welfare of the employees and protection of their rights. The management also reduced the employees as lay-off and also asked the employees to go on voluntary retirement. Under these circumstances, the management had issued charge sheet and show cause notice against false allegations stating that the employees had committed misconduct and dismissed from service without any procedural enquiry. Further, the management had not provided any opportunities to participate in the domestic enquiry in person, therefore, the dismissal order arrived as exparte, hence a fresh domestic comprehensive enquired is most essential. Therefore, the employees have filed a memo before the Labour Court and requested the trial Court to direct the management to conduct a fair and impartial enquiry in accordance with the principles of natural justice. This is the main / preliminary issue, the management also exposed that they have no objection to frame a preliminary issue with regard to the validity of the domestic enquiry but the trial Court has given an alternative view for which the same has not been prayed for by the parties.

9.From the above discussion, this Court is of the view that:

(1)The employees have filed a batch of cases against the management and challenged the dismissal order under the Industrial Disputes Act. The employees were dismissed on 19.08.2009. The claim petitions filed by the employees in the year 2011. At the time of the trial, the employees have filed a memo and requested the Court, the validity of the domestic enquiry has to be decided as a preliminary issue, the same was not objected by the management, however, the trial Court has taken an alternative view stating that all the relevant documents with the management pertaining to all issues in the instant case, therefore, the management / respondent should enter into witness box in order to decide the preliminary issue i.e. the validity of the domestic enquiry.

(2)The usual procedure of the Court, the petitioner / claimant should enter into the witness box first for adducing evidence and thereafter the respondent / Management should go to the witness box for adducing evidence in a similar way.

(3)The dismissal order was passed on 19.08.2009, therefore in order to avoid delay to decide all issues arising from the said case after recording the evidence of both sides and accordingly passing orders on merits. The employees have raised preliminary issues with regard to the validity of the domestic enquiry. The domestic enquiry is not maintainable under law which is an advantage point to the employees. Therefore, the main cases shall be decided on priority basis without any further delay since the employees are seeking relief from the management from the date of dismissal i.e. 19.08.2009. Hence, a speedy trial is necessary as per article 21 of the Constitution.

10.Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set of papers and the views of this Court as (1) to (3) given above, this Court directs the first respondent / the Presiding Officer, II Additional Labour Court, Chennai, to frame all necessary issues in the instant case and decide the same on merits after recording the statement of the employees first and then after record the statement of the management and follow the subsequent procedure and decide the case on merits within a period of three months from the date of receipt of this order.

11.In the result, the above writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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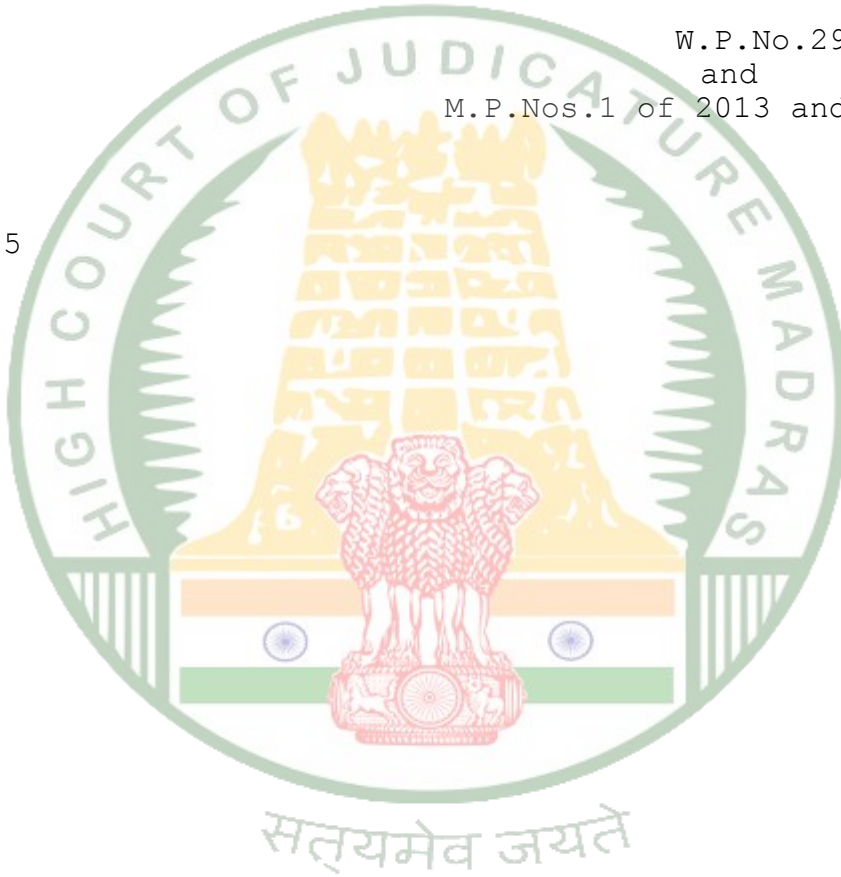
The presiding Officer,
II Additional Labour Court, Chennai.

+ 1 cc to M/s Gupta And Ravi, Advocate Sr. 54118

W.P.No.29964 of 2013
and

M.P.Nos.1 of 2013 and 1 of 2014

MG (CO)
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