

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.29122 of 2015
and
M.P.No.1 of 2015

The Management Madras Gymkhana Club,
rep. by the Honorary Secretary,
The Island Grounds, No.1, Anna Salai,
Chennai - 600 002.

...Petitioner

Vs.

1. Mr.Ravi Arockiasamy
2. The Presiding Officer,
II Additional Labour Court,
Chennai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records connected with I.A.No.71 of 2014, in I.D.No.67 of 2013, and to quash the order, dated 30.04.2015, passed by the second respondent, i.e., The Presiding Officer, II Additional Labour Court, Chennai.

For Petitioner : Mr.Sanjai Mohan
for M/s.S.Ramasubramaniam Associates

For Respondent-1 : Mr.K.Bharathi

For Respondent-2 : Labour Court

ORDER

The petitioner is the Management of the Madras Gymkhana Club, and the challenge in this Writ Petition is to an order passed by II Additional Labour Court, Chennai, in I.A.No.71 of 2014, in I.D.No.67 of 2013, dated 30.04.2015.

2. The first respondent/workman had raised a dispute before the Labour Court, challenging his non employment on the ground that the Management has not obtained approval under Section 33 (2)

(b) of the Industrial Disputes Act, 1947 (hereinafter, referred to as 'I.D.. Act'), prior to deny employment to him. The Management has filed a preliminary counter statement in connection to the said Dispute during the year 2013, after which, the workman has filed an Interlocutory Application, in I.A.No.71 of 2014. In the said Application, the workman prayed that the issue, viz., whether the Management was proper and justified in terminating the service of the workman, without obtaining approval under Section 33 (2) (b) of I.D. Act, has to be decided as a preliminary issue. The Management resisted the said Interlocutory Application by filing their counter affidavit, contending that the workman was not terminated during the pendency of the conciliation proceedings before the Conciliation Officer, and hence, the question of filing of Approval Petition does not arise. In support thereof, reliance was placed on the case reported in (2002) 1 L.L.N 639 in (Jaipur Zilla Sahakari Boomi Vikas Bank Ltd., Vs. Ramgopal Sharma and others). Further, an averment was made that, when the Management terminated the workman, there was no conciliation proceedings pending before any forum, and there was no violation of Section 33 (2) (b) of I.D. Act. On these pleadings, the Labour Court considered the matter and allowed the Interlocutory Application, and framed three issues to be taken up as preliminary issues.

3. Challenging the order passed by the Labour Court in the aforesaid Interlocutory Application, the present Writ Petition is filed by the Management, by stating that, in labour matters, there cannot be any preliminary issue, and in this regard, reliance has been placed on the decision of this Court in (Muthiah Vs Management of Seethalakshmi Mills and another) reported in (2004) II Labour Law Journal 229 and submitted that, notwithstanding there being a technical violation, assuming there is one in the present case, it will still be open to the Labour Court to consider the acts of misconduct indulged by the employee to see whether the act of misconduct has been proved or not, and in case, it has been proved, notwithstanding that there is supposedly a violation of Section 33 (2) (b) of I.D. Act, yet, it could grant relief that need not necessarily be the relief of reinstatement.

4. Heard the learned counsel appearing for the parties and perused the materials placed on record.

5. At the time, when the Writ Petition was entertained, this Court, taking note of another decision of the Hon'ble Supreme Court in (M/s.Cipla Ltd. and others Vs. Ripu Daman Bhanot & Another) reported in (1999) 4 S.C.C. 188, granted interim stay.

6. The learned counsel appearing for the first respondent/workman on instructions from his client/workman submits that the first respondent is willing to get along with the

dispute, and the Labour Court may be directed to decide the matter at one go and the workman is not insisting that the Labour Court should decide the preliminary issue raised by him at the first instance. In other words, the workman is ready and willing to give up the prayer sought for in the Interlocutory Application, and get along with the matter, so that the Labour Court may proceed with all the issues. This Court had ascertained as to whether the learned counsel has got instructions from his client/workman to the said effect and the learned counsel has affirmed that he has got necessary instructions so as to make such submission.

7. Thus, taking note of the submission/concession made by the learned counsel appearing for the first respondent/workman, this Writ Petition is allowed. Consequently, the order passed in I.A.No.71 of 2014 stands dismissed, and the findings rendered by the Labour Court in I.A.No.71 of 2014 stand vacated, and the Labour Court is directed to decide all the issues, which that may be framed and take a final decision in the matter on merits and in accordance with law after affording full opportunities to the parties.

8. The learned counsel appearing for the first respondent/workman submits that the Labour Court may be directed to complete the trial of the dispute within a specified time limit. However, considering the fact that the dispute is of the year, 2013, it is not known as to how many cases are pending before the said Court, and how many of them are old cases, which are over five years old. Hence, this Court is not inclined to give any specified time limit to the Labour Court to dispose of the matter, (viz., I.D.No.67 of 2013) however, would make an observation that the Labour Court, Chennai, shall endeavour to conclude the dispute at the earliest.

9. In the result, the Writ Petition is allowed, as stated above. No costs. Consequently, connected Miscellaneous Petition is closed.

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Asst.Registrar (CCC)

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Sub Asst. Registrar

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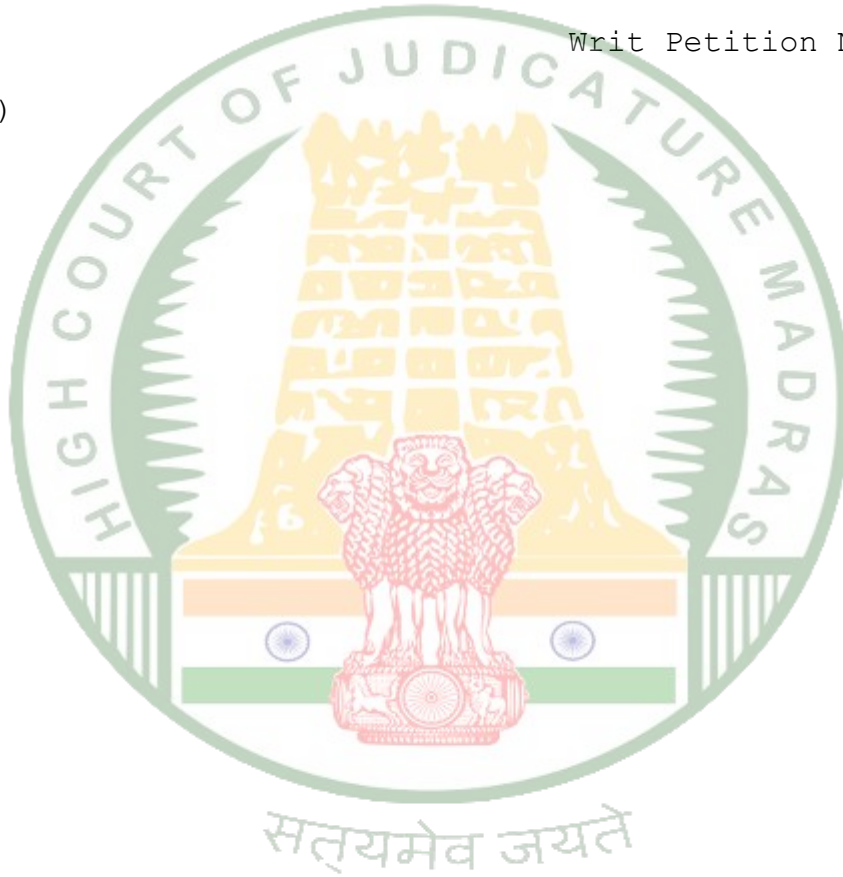
To

The Presiding Officer,
II Additional Labour Court,
Chennai.

1 cc to M/s.S. Ramasubramaniam, Associates, Sr. 22563
1 cc to M/s.K. Bharthi , Advocate, Sr. 21992

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