

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18-08-2016

DELIVERED ON: 26-08-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM
AND
THE HONOURABLE MR. JUSTICE P. KALAIYARASAN

W.A.No.267 of 2012
and M.P.No.1 OF 2012

Axles India Workers' Union
(Regd.No.CPT/952)
Rep. by its Secretary
3, Kambar Street, Gandhi Nagar
Sriperumbudur, Kancheepuram District... Appellant/Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Principal Secretary to Govt.
Labour & Employment Department
Fort St. George
Chennai - 600 009
2. The Presiding Officer
Industrial Tribunal, Tamil Nadu
High Court Buildings
Chennai- 600 104
3. The Presiding Officer
I Addl. Labour Court
High Court Buildings
Chennai - 600 104
4. The Management of Axles India Limited
Singaperumal Koil Road
Sriperumbudur - 602 105
Kancheepuram District ... Respondents/Respondents

Writ Appeal under Clause 15 of the Letters Patent against
the order dated 20-10-2011 in W.P.No.23864 of 2011

WP.No.23864/2011: Petition under article 226 of the
Constitution of India, praying for issue of writ of
Prohibiting the 2nd respondent Tribunal from adjudicating
upon A.P.Nos.5 to 12 of 2007.

For appellant :: Mr. K.M. Ramesh

For respondent :: Mr. N. Balasubramanian for R4
No appearance for R1
RR2 and 3 - Court

JUDGMENT

(Order of the Court was made by A. SELVAM, J.)

This writ appeal has been directed against the order dated 20-10-2011 passed in W.P.No.23864 of 2011 by the learned Single Judge of this Court.

2. The appellant herein as petitioner has filed W.P.No.23864 of 2011 on the file of this Court under Article 226 of the Constitution of India praying to issue a Writ of Prohibition so as to prohibit the second respondent herein from adjudicating A.P.Nos.5 to 12 of 2007 wherein the present respondents have been shown as respondents.

3. The material averments made in the writ petition are that the petitioner is nothing but Union of Workmen, employed by the fourth respondent's Management for its factories situate at Sriperumpudur and Gummidipoondi. Some of the workmen of the fourth respondent have been dismissed from service and for getting approval of the dismissal, relevant applications have been filed on the file of the third respondent viz., the first Additional Labour Court, Chennai and subsequently, the same have been withdrawn and transferred to the file of the second respondent. The second respondent has no locustandi to entertain those applications. Under the said circumstances, the present writ petition has been filed for getting the relief sought therein.

4. The learned Single Judge after considering the contentions put forth on either side has dismissed the writ petition by way of passing the impugned order and the same is being challenged in the present writ appeal.

5. Before contemplating the rival submissions made on either side, the Court has to narrate the circumstances under which A.P.Nos.5 to 12 of 2007 have been withdrawn from the file of the third respondent and transferred to the file of the second respondent.

6. It is an admitted fact that the first respondent has passed G.O.(D)No.279, Labour and Employment (A2) Department dated 15-09-2011 and the same reads as follows:

"WHEREAS the Management of M/s.Axles India Limited, Sriperumpudur has requested the Government to transfer the approval petitions Nos.4 of 2007 to 12 of 2007 in I.D.No.34/2005 pending before the First Additional Labour Court, Chennai to Industrial Tribunal, Chennai, where I.D.No.34/2004 and I.D.No.22/2005 filed by Axles India Workers Union under section 33-A of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) are pending for adjudication.

WHEREAS the Commissioner of Labour, Chennai has recommended to transfer the proceedings under section 33(2)(b) of the said Act pending before the First Additional Labour Court, Chennai to Industrial Tribunal, Chennai in exercise of the powers vested with the Government under section 33-B of the said Act, citing the observation of Industrial Tribunal, Chennai in its order, dated 12.10.2009 in Complaint Nos.6 to 14 of 2007 that approval application of the management ought to have been filed only before the Industrial Tribunal, where the industrial disputes connected with the matter on employees are pending, which has been upheld by the High Court, Madras in its common order, dated 09.06.2010 in W.P.Nos.24827 to 24834 of 2009.

NOW, THEREFORE in exercise of the powers conferred by sub-section (1) of section 33-B of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Tamil Nadu, for the reasons stated above, hereby withdraws the proceedings of Approval Petitions Nos.5 to 12 of 2007 in I.D.No.34/2005 under the said Act, pending before the First Additional Labour Court, Chennai and transfer the same to the Industrial Tribunal, Chennai for disposal."

7. From a mere perusal of the said Government Order, it is clear that the same has been passed under Section 33 of the Industrial Disputes Act, 1947 (Central Act, 24/1947). Further, it is seen from the said Government Order, that the appellant/petitioner herein has already filed I.D.Nos.34 of 2004 and 22 of 2005 on the file of the second respondent for adjudication.

8. The learned counsel appearing for the appellant/petitioner has contended with great vehemence to the effect that A.P.Nos.5 to 12 of 2007 originally filed on the file of the third respondent viz., the First Additional Labour Court, Chennai and the first respondent without considering judicial orders has erroneously passed G.O.(D)No.279 dated 15-09-2011. Under the said circumstances, the Writ Petition

No.23864 of 2011 has been filed. But the learned Single Judge without considering the relevant provisions of law and also without considering that G.O.(D).No.279 dated 15-09-2011 is totally erroneous has dismissed the writ petition. Under the said circumstances, the dismissal order passed in the writ petition is liable to be set aside and the writ petition is liable to be allowed.

9. In support of his argument, he has drawn the attention of the Court to the decision reported in 2002 STPL 1895 SC (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., V. Shri Ram Gopal Sharma and others), wherein at Paragraph No.13, the Honourable Supreme Court has observed as follows:

"The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords

protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman."

10. Per contra, the learned counsel appearing for the fourth respondent has befittingly contended that the present writ petition has been filed so as to prohibit the second respondent from adjudicating A.P.Nos.5 to 12 of 2007. The second respondent has been empowered to deal with A.P.Nos.5 to 12 of 2007 only in pursuance of the order passed in G.O.(D) No.279 dated 15-09-2011 and the same has not at all been challenged. Under the said circumstances, consequential orders cannot be challenged without attacking the main orders and therefore, the present writ petition is not legally maintainable.

11. In support of the contention put forth on the side of the fourth respondent, the decision reported in 2010 I SCC 756 (Edukanti Kistamma kVs. S. Venkatareddy) is relied upon, wherein at Paragraph Nos.22 and 23, the Honourable Supreme Court has held as follows:

" 22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide P. Chithranja Menon & Ors. v. A. Balakrishnan & Ors., AIR 1977 SC 1720; H.V. Pardasani etc. v. Union of India & Ors., AIR 1985 SC 781; and Government of Maharashtra & Ors. v. Deokars Distillery, AIR 2003 SC 1216).

23. Undisputedly, the grant of a right or a permit/licence under any statutory provision requires determination of rights and entitlement of the parties. Once such a right is determined, the

issuance of the order on the basis of such determination remains a ministerial act."

12. Even from a cursory look of the decision referred to supra the settled position is that a challenge cannot be made in respect of consequential order without challenging the basic order/statutory provision on the basis of which the concerned order is passed.

13. In the instant case as mentioned supra, the second respondent has been empowered to deal with A.P.Nos.5 to 12 of 2007 only in pursuance of G.O.(D).No.279 dated 15-09-2011. But the appellant/petitioner has not challenged the same. In fact, the said Government Order has been passed on the basis of earlier judicial pronouncements and also on the basis of pendency of some petitions for adjudication on the file of the second respondent.

14. The learned counsel appearing for the appellant/petitioner has made an inert attempt to the effect that the appellant/petitioner need not challenge G.O.(D).No.279 dated 15-09-2011.

15. On the basis of the verdict given by the Honourable Supreme Court, this Court is of the considered view that without touching the main proceedings, the consequential proceedings cannot be challenged and therefore, the main contention urged on the side of the fourth respondent is really having merit and on that score alone, Writ Petition No.23864 of 2011 is liable to be dismissed.

16. The learned counsel appearing for the fourth respondent has also drawn the attention of this Court to the decision reported in 2013 (9) SCC 232 (Rajasthan State Road Transport Corporation Vs. Satya Prakash), wherein the decision referred by the learned counsel appearing for the appellant/petitioner has also been dealt with and at paragraph Nos.21 to 23, the Honourable Supreme Court has observed as follows:

"21. Thereafter while dealing with the scope of the Section 33A, the court surveyed the judgments then holding the field, and held at the end of paragraph 33 in the following words:-

"33..... Thus there can be no doubt that in an enquiry under S. 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of S. 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made

by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under S. 33A. Therefore, we cannot accede to the argument that the enquiry under S. 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of S. 33 has been proved or not." (emphasis supplied) This judgment has been referred to, and the proposition has been once again reiterated by a bench of three Judges in para 7 of Delhi Cloth and General Mills Co. Ltd. vs. Rameshwar Dayal reported in AIR 1961 SC 689.

22. This legal position has been reiterated in the judgment of the Constitution Bench in P.H. Kalyani vs. M/s Air France Calcutta reported in AIR 1963 SC 1756 which has been quoted with approval in paragraph 17 of Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. (supra). In that matter, the respondent employer had applied under Section 33 (2) (b), but the workman had also filed a Compliant under Section 33A which was heard like a Reference. Evidence was led therein by the parties, and on its own appraisal of the evidence the Labour Court had held that the dismissal was justified. This Court accepted that finding, and it was held that the approval when granted will relate back to the date when the order of dismissal was passed. On the other hand, if the employer fails to prove the misconduct, the order of dismissal will become ineffective from the date when the dismissal order was passed by the employee. This legal position has been reiterated from time to time [see for instance Lalla Ram vs. D.C.M. Chemicals Works Ltd. reported in 1978 (3) SCC 1]. In Jaipur Zila Sahakari Bhoomi Vikas Bank (supra) the Constitution Bench endorsed the view taken in Straw board¹ and Tata Iron & Steel Co.² and held that the view expressed in Punjab Beverages³ was not correct.

19. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the Complaint filed by the respondent. It could not have

1 Straw Board Mfg. Co. Ltd. Vs. Govind (AIR 1962 SC 1500)

2 TISCO Ltd., Vs. S.N. Modak (AIR 1966 SC 380)

3 Punjab Beverages (P) Ltd., Vs. Suresh Chand
(1978 (2) SCC 144 : 1978 SCC (L&S) 165)

passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33 (2) (b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the Complaint was filed by the respondent under Section 33A of the Act. That Complaint having been filed, it was adjudicated like a reference as required by the statute. The same having been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged into a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal."

17. The present writ petition has been filed only for getting a Writ of Prohibition so as to prohibit the second respondent from adjudicating A.P.Nos.5 to 12 of 2007. The second respondent is having jurisdiction to deal with A.P.Nos.5 to 12 of 2007 since some proceedings between the parties are already pending before it. Further, even for the sake of argument that second respondent is totally incompetent to deal with A.P.Nos.5 to 12 of 2007 on the basis of jurisdiction, the same can be agitated only before the second respondent. Since the second respondent is empowered to deal with A.P.Nos.5 to 12 of 2007 in pursuance of G.O.(D)No.279 dated 15-09-2011, the relief sought in the writ petition cannot be granted and further, no justifiable grounds are in existence so as to prohibit the second respondent in dealing with A.P.Nos.5 to 12 of 2007. The learned Single Judge, after considering the nature of the relief sought in the writ petition and also after giving a specific finding to the effect that the issue raised on the side of the appellant/petitioner can be raised before the second respondent, has rightly dismissed the writ petition.

18. In view of the discussions made earlier, this Court has not found any error or illegality in the order passed by the learned Single Judge and altogether, the present writ appeal deserves to be dismissed.

In fine, writ appeal is dismissed without costs. The order passed in W.P.No.23864 of 2011 dated 20-10-2011 by the learned Single Judge is confirmed. Consequently, M.P.No.1 of 2012 is also dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Principal Secretary to Govt.
Labour & Employment Department
Fort St. George
Chennai - 600 009

2. The Presiding Officer
Industrial Tribunal, Tamil Nadu
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+1 cc to Mr.K.M.Ramesh,advocate,sr.48291

+1 cc to Mr.N.Balasubramanian,advocate,sr.48367.

vgi(co)
krd 9/9

W.A.No.267 of 2012
and M.P.No.1 OF 2012

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