

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03..03..2016

Reserved on : 04.07.2014

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.35054 of 2013
M.P.Nos.1 of 2013 and 1 of 2014

The Management of
G.T.N. Engineering (India) Ltd.,
rep. by its Managaer : HR
18, K.R.Puram Road,
Ganapathy,
Coimbatore - 641 006. ... Petitioner

Vs.

1. The Labour Court,
Coimbatore.
2. Tr.A.E.Vijayakumar
3. Tr.S.F.Jayakumar
4. Tr.S.Balashanmugam ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records relating to I.D.Nos.283/2005, 10/2006 and 14/2006 on the file of the Labour Court, Coimbatore, the first respondent, and quash the Common Preliminary Award dated 13.03.2013.

For Petitioner : Mr.Sanjay Mohan
for M/s.R.Asokan

For Respondents : R1- Court

Mr.Mohd. Nazoorullah
for M/s.K.V.Shanmuganathan
for RR 2 to 4

O R D E R

The question that arises for consideration in this writ petition is as to whether this Court shall refuse to intervene at the preliminary stage of the industrial adjudication.

2. This question is particularly often agitated by the employers to unsettle the settled law on the subject. In the words of the Apex Court in *D.P.Maheshwari V. Delhi Administration and Others* reported in (1983) 4 SCC 293, there was a time when it was thought prudent and wise policy to decide preliminary issues first. But the Apex Court has ruled in that judgment that the time appears to have arrived for reversal of that policy. The said pronouncement was made, taking note of the dilatory tactics that were adopted by the employers by raising all preliminary objections such as (i) that the person concerned in the dispute is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act') ; (ii) that the establishment concerned in the dispute is not an industry under Section 2(j) of the ID Act ; (iii) that the industrial dispute that was pending adjudication before the industrial forum is not an industrial dispute under Section 2(k) or 2-A of ID Act and (iv) that they take up the matter from one stage to another upto the Apex Court and thereby thwarted the effective adjudication of the issue on merits.

3. Hence, it was held in *D.P.Maheshwari V. Delhi Administration and Others* reported in (1983) 4 SCC 293 as well as in *S.K.Verma V. Mahesh Chandra and Another*, reported in (1983) 4 SCC 214, that such preliminary issues have to be decided along with the main issues and even if a decision is rendered on preliminary issues, the High Court or the Apex Court shall not intervene at that stage so that the decision would be rendered on merits in the industrial adjudication. The said judgments still hold the field.

4. The only issue that has to be necessarily decided as a preliminary issue is the validity of domestic enquiry conducted prior to the dismissal of workman, if the workman questions the validity of the enquiry in the adjudication relating to his non-employment before the Labour Courts. That is, the Labour Court has to render a finding as to whether the domestic enquiry was fairly conducted in accordance with the principles of natural justice and following the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, giving fair opportunity to the workman in the domestic enquiry to defend his case.

5.1. In the event of the Labour Court rendering a finding that the enquiry is defective for one reason or the other, the employer could be given opportunity to lead evidence to sustain the dismissal order by proving the charges before the Labour Court and the workman could be given opportunity to lead rebuttal evidence. Of course, the employer shall seek for an opportunity to lead evidence by way of pleading before the Labour Court stating that in the event of the Labour Court coming to the conclusion in the preliminary issue that the enquiry is defective, an opportunity could be given to substantiate the order of dismissal. Just because, the enquiry is declared as defective in a finding recorded by the Labour Court/Industrial Tribunal on the preliminary issue as to the validity of the enquiry, the workman could not get the benefit of reinstatement, as in the case of Government employees.

5.2. Even if no enquiry was held prior to dismissal or the employer admitted that the enquiry was a defective one, the workman would not get an order of reinstatement and the employer has right to sustain the dismissal order by letting in evidence before the Labour Court.

6.1. In fact, a plea was made by the workmen to interpret Section 11-A of the ID Act, when the same was inserted in the Statute Book, and the same was put to challenge by the employer in the The Workmen of M/s.Firestone Tyre and Rubber Co. of India (Pvt) Ltd. V. The Management, reported in (1973) 1 SCC 813 that in the case of dismissal of workman based on no enquiry or defective enquiry, the workman shall be reinstated with all benefits, like Government employees. Such a plea is found in paragraphs 37 and 43 of the said judgment. The Apex Court categorically rejected the said plea in paragraphs 45-46 in the following words :

"A similar contention, though in a different form, advanced on behalf of the workmen was rejected by this Court in Workmen Vs. Motipur Sugar Factory, AIR 1965 SC 1803."

6.2. At this juncture, it is useful to extract the following passages in paragraphs 11 and 12 of the judgment of the Apex Court in Workmen Vs. Motipur Sugar Factory, AIR 1965 SC 1803 in this regard as hereunder :

"11. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.

12. If it is held that in cases where the

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employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself."

6.3. Hence, in the case of no enquiry or defective enquiry, the employer could lead evidence before the Tribunal to sustain the order of dismissal by making proper request in the counter-statement.

7. In the case on hand, the respondents 2 to 4 were dismissed by the writ petitioner by an order dated 01.06.2004 based on a domestic enquiry. In the industrial adjudication relating to their non-employment in I.D.Nos.283 of 2005, 10 of 2006 and 14 of 2006 before the Labour Court, the workmen questioned that the enquiry was not conducted fairly and properly. The Labour Court, after hearing both sides, recorded a finding in the Common Preliminary Order dated 13.03.2013, on the preliminary issue, that the enquiry conducted by the employer was not fair. The said Common Preliminary Order is now put to challenge in this writ petition.

8.1. I am not going into the merits of the matter relating to the order under challenge, in view of my conclusion that it is not necessary to interfere with the industrial adjudication at this stage, as the industrial dispute has not yet been finally adjudicated upon and even ultimately if an Award is passed against the management, it is open to them to challenge the final award as well as this preliminary order, as held by the Apex Court as early as in the year 1975 in the judgment in Cooper Engineering Limited V. P. P. Mundhe, reported in (1975) 2 SCC 661 and the said

judgment is followed by various Division Benches of this Court.

8.2. However, it is necessary to say a few facts of the case.

9.1. According to the petitioner management, the second respondent workman came to the factory on 30.05.2003 at 11.35 am and informed the Security Guard that he would seek leave. But instead of going to the Personnel Department, he went to the workplace of the third and fourth respondents inside the factory premises and took them to the workplace of one Mr.Kathirvel and all the three intimidated Mr.Kathirvel and forced him to stop the Control Panel and the same resulted in huge loss.

9.2. According to the respondents 2 to 4, they were framed for having formed a Trade Union and demanding their legitimate rights.

9.3. An enquiry was ordered. Initially one Advocate conducted the enquiry. However, virtually, no significant progress did take place in the enquiry and only the Presenting Officer was examined as M.W.1.

9.4. While so, another Advocate was appointed as Enquiry Officer and he commenced the proceedings on 10.03.2004.

9.5. According to these workmen, on 10.03.2004, at one stage of the proceeding, the new Enquiry Officer did not permit them to effectively cross-examine the witness and further forced them to admit the charges. The workmen sent a letter dated 10.03.2004 immediately complaining about the said allegation.

9.6. On the other hand, an allegation is made by the Enquiry Officer that these workmen abused him. When the Enquiry Officer recorded that the workmen abused him, the workmen refused to sign those enquiry proceeding.

9.7. Again when the mater was posted on 13.03.2004, the same thing was repeated. That is, it is the allegation of the Enquiry Officer that these workmen abused him and on the other hand, it is the allegation of the workmen that the Enquiry Officer acted in a partisan manner and he pressurised them to admit the charge. Here again, the workmen sent a letter dated 15.03.2004 making allegations against the conduct of the Enquiry Officer on 13.03.2004.

9.8. In those circumstances, the workmen were set ex-parte on 13.03.2004. The petitioner management examined 6 witnesses and marked 22 documents in the domestic enquiry.

9.9. The Enquiry Officer gave a report holding that the charges were proved.

9.10. Based on the same, the respondents 2 to 4 were dismissed from service on 01.06.2004.

9.11. They took up the dispute relating to their non-employment before the Labour Court, after the conciliatory efforts failed, in I.D.Nos.283 of 2005, 10 of 2006 and 14 of 2006.

10.1. According to the respondents 2 to 4/workmen, they were not furnished with the basic documents, that were the basis for the charges that led to dismissal. The allegation made against the workmen was that on 30.05.2003, the second respondent/workman went to the factory and informed the Security Guard that he wanted to apply leave, but he went into the factory premises by pushing the Security Guard aside. But the compliant given by the Security Guard was not furnished to the second respondent/workman. After going into the factory premises, the second respondent went to the work spot of the third and fourth respondents and took them to the work spot of one Mr.Kathirvel and all the three threatened Mr.Kathirvel and interfered with his work. This was the crux of the allegation that led to the dismissal of the workmen. The grievance of the workmen was that the complaint given by Mr.Kathirvel was not furnished to them. According to them, they requested to give those complaints so as to give explanation to the charge memo. But those documents were not furnished to them.

10.2. It is also their grievance that while the management was represented by a Presenting Officer, they were only permitted to have an Observer.

10.3. It is also their case that the copies of the proceedings of the enquiry were not furnished to them, in spite of their request and they were also willing to pay necessary cost in this regard.

10.4. More importantly, they made allegation against the Enquiry Officer that he set them ex-parte in a partisan manner, when they refused to agree with him to plead guilty of all the charges.

10.5. These were all the issues raised by the workmen before the Labour Court to hold that the enquiry was not conducted in a fair manner.

11. On the other hand, the petitioner employer pleaded that a fair enquiry was conducted and a reasonable opportunity was given to the respondents 2 to 4/workmen. The documents were also furnished to them. The Observer of the workmen noted the enquiry proceedings and therefore, they

could not ask for the copies of the enquiry proceedings. It was pleaded that the workmen abused the Enquiry Officer and therefore, they were set ex-parte.

12.1. In those circumstances, the Labour Court recorded a finding on the preliminary issue on 13.03.2013 that the enquiry was not fairly conducted. The Labour Court held that there were allegations and counter-allegations as to the conduct of the Enquiry Officer as well as the conduct of the workmen in the enquiry and the workmen wrote a letter dated 10.03.2004 (Ex.W.29) alleging that on that day, i.e., 10.03.2004, the Enquiry Officer forced them to admit the charges. Likewise, the Labour Court referred to Ex.W.33, letter dated 15.03.2004 written by the Workmen alleging that on 13.03.2004 the Enquiry Officer forced them to admit the charges and they refused to give such kind of letter, as the Enquiry Officer required, admitting the charges, and hence, they were set ex-parate. The Labour Court held that the Enquiry Officer made allegation against the workmen that they abused him and in turn, the workmen made allegations against the Enquiry Officer and it was not known as to what actually happened on 10.03.2004 and 13.03.2004 and based on the ex-parte evidence, the workmen were dismissed.

12.2. The Labour Court recorded a finding that the vital documents, namely, the complaint of the Security Guard and the complaint of Mr.Kathirvel were not furnished to the workmen and the Labour Court also recorded a finding that the enquiry proceedings were not furnished to the workmen, though they requested for a copy in their letter dated 07.02.2004, marked as Ex.W.20.

13. Questioning the aforesaid Preliminary Order dated 13.03.2013 in I.D.Nos.283 of 2005, 10 of 2006 and 14 of 2006, this writ petition is filed.

14. The learned counsel for the petitioner/management has vehemently contended that it is not the law laid down by the Apex Court or this Court that the writ petition could not be entertained at the preliminary stage and this Court has unfettered power under Article 226 of the Constitution to interfere with the interim order passed by the Labour Court holding that the enquiry is not fair. He placed heavy reliance on the judgment of Division Bench of this Court in State Bank of India V. Presiding Officer, Industrial Tribunal, Madras and another, reported in 2007-II-LLJ 968 and the order of a learned single Judge of this Court in The Management, HH 256, Nedumpirai Primary Agricultural Co-op. Bank Limited rep. by its Special Officer, V. The Presiding Officer, Labour Court, reported in MANU/TN/0328/2008.

15.1. On the other hand, the learned counsel for the workmen contended that this Court may not interfere in the order of the Labour Court at the preliminary stage as the same would cause undue delay in the disposal of the industrial adjudication on merits and sought for dismissal of this writ petition.

15.2. Apart from the reasonings given by the Labour Court, the learned counsel for the workmen also submitted that the order could be supported on other grounds such as that when the employer was permitted to have a Presenting Officer without any limitations to his participation in the enquiry, the workmen were only permitted an Observer and he could have only limited role and he could not do cross-examination of the witnesses.

15.3. He placed heavy reliance on the judgment of the Apex Court in Cooper Engineering Limited V. P.P.Mundhe, reported in (1975) 2 SCC 661 and the following four judgments of Division Benches of this Court and the order of a learned Single Judge of this Court :

- i. Agro Cargo Transport Limited, Tuticorin V. E.Murugesan, reported in 1995-I-LLJ-544;
- ii. N.Gurumurthy V. Second Additional labour Court, Madras, reported in 1995-I-L.L.N. 1022 ;
- iii. Engine Valves Limited V. Industrial Tribunal, Madras, reported in 1996-I-L.L.N. 167 ;
- iv. Shree Kumar Textiles (P) Ltd., V. Labour Court, reported in 1997 (3) L.L.N 376 ; and
- v. the order of a learned Single Judge in NEPC Textiles Limited, rep. by its Manger (Personnel and Administration) V. The Presiding Officer, Labour Court, reported in MANU/TN/8980/2006.

16. I have considered the submissions made by either side.

17.1. In this case, the dismissal order was passed as early as in the year 2004. Now the preliminary issue is being agitated without going into the merits of the main issue.

17.2. As I have already indicated, I am not going into the merits of the matter. But, I have no hesitation to hold that the preliminary order of the Labour Court dated 13.03.2013, holding that the enquiry is not held fairly, is a speaking order and thus, contain reasons and in my view, the correctness or otherwise of those reasons could be gone into after passing of the final Award by the Labour Court and the same would not cause any prejudice to the petitioner management, since they are entitled to let-in evidence before the Labour Court to sustain the dismissal order in support of the charges, as pleaded in their counter

statements, as per the Constitution Bench judgment of the Apex Court in Karnataka State Road Transport Corporation V. Lakshmiddevamma, reported in (2001) 5 SCC 433.

18.1. At the outset, it is relevant to refer to the categorical pronouncement of the Apex Court in Cooper Engineering Limited V. P.P.Mundhe, reported in (1975) 2 SCC 661 holding that it is legitimate for the High Court to refuse to intervene at the preliminary stage. It is useful to extract paragraph 22 of the judgment of the Apex Court in Cooper Engineering's case as hereunder :

"22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

The judgment in Cooper Engineering's case holds the field till date. The anxiety expressed by the Apex Court that there could be no undue delay in the industrial adjudication cannot be brushed aside.

18.2. The workmen were dismissed in the year 2004. The preliminary order was passed on 13.03.2013. That is, it was passed after about 9 years of dismissal. Thereafter, the matter is pending for the past three years before this Court and this Court also contributed some delay due to the unavoidable reasons, particularly, due to my ill-health in the intervening period for sometime. Now, more than 12 years have lapsed, after passing of the dismissal order and the respondents 2 to 4/workmen are out of employment for the past

12 years. It is not known as to when the final adjudication would get concluded.

18.3. In my view, if the writ petition is entertained at the preliminary stage, the same would only help the attempts made by the management to stall the proceedings, so that the final award could not be passed as long as possible. If the final Award is passed reinstating the workmen, the workmen could get the benefit of Section 17-B of ID Act during the pendency of the writ proceeding questioning the final award. In order to thwart the finality of the adjudication, the matter is agitated at the preliminary stage, though the employer could very well challenge this preliminary order along with the final award, as held by the Apex Court in Cooper Engineering's case.

18.4. At this juncture, it is useful to take note of the statutory intention of Section 10(2A) of the ID Act, according to which, the industrial dispute relating to non-employment shall be completed and award shall be passed by the Labour Court/Industrial Tribunal within a period of three months. But it takes three decades for completion of the proceedings upto the Apex Court and therefore, the Apex Court declared the law that it would be legitimate for the High Court to refuse to interfere at the preliminary stage, particularly, no prejudice would be caused to the management, as no reinstatement could be ordered based on the preliminary order holding that the enquiry was not fair and the employer could sustain the dismissal order by letting in evidence before the Labour Court to establish their case.

19.1. The issue as to the entertainment of writ petition questioning the preliminary order came up for consideration before the First Bench of this Court in Agro Cargo Transport Limited, Tuticorin, V. E.Murugesan, reported in 1995-I-L.L.J. 544.

19.2. The employer therein challenged the preliminary order holding that the enquiry was not fair. The First Bench refused to interfere with the industrial adjudication at the preliminary stage relying on the judgment of the Apex Court in Cooper Engineering's case. The relevant passages from paragraphs 4 and 5 of the said judgment in Agro Cargo Transport Limited's case are extracted hereunder :

"4. Learned Single Judge has held that it is not the stage to record a finding in one way or the other, as the dispute is still pending before the Labour Court and, therefore, dismissed the writ petition.

5. It is also the established legal position that normally the High Court, under Article 226 of the Constitution, does not

interfere at the stage, as it is in the present case, on a finding recorded on a preliminary issue because it is open to the management to take up all the contentions at the later stage, if the award goes against it. As such, the management does not lose the right to challenge the correctness of the finding recorded by the Labour Court. Here, it may be relevant to notice a decision of the Supreme Court, in Cooper Engineering Limited V. P.P.Mundhe 1975 -II-LLJ-379 wherein it has been held that it will be legitimate for the High Court to refuse to intervene at this stage of the proceeding before the Labour Court on a finding recorded on a preliminary issue."

20.1. Again the same issue was decided by the First Bench of this Court in N.Gurumurthy V. Second Additional Labour Court, Madras, reported in 1995-I-L.L.N. 1022.

20.2. The management vehemently contended that no law is laid down that writ petition should not be entertained against the findings recorded on a preliminary issue relating to the validity of the domestic inquiry.

20.3. Rejecting such contentions, by placing reliance on the judgments of the Apex Court in Cooper Engineering's case (cited supra), in D.P.Maheshwari V. Delhi Administration and others, 1984-I-L.L.N. 1 = 1983 (4) SCC 293, and in S.K.Verma V. Mahesh Chandra and another, 1983-II-L.L.N. 637 = (1983) 4 SCC 214, the First Bench categorically held that the writ petition cannot be entertained at the preliminary stage.

20.4. However, the Division Bench carved out two exceptions and those exceptions are : (i) that the interference could be called for, if the preliminary order was passed without notice to one of the parties ; and (ii) that the entertainment of writ petition could be made, if the preliminary order does not contain any reason for its conclusion.

20.5. Applying the said principle, I am not inclined to interfere with the preliminary order of the Labour Court at the interim stage. It is useful to extract the following passage from paragraph 4 of the judgment, wherein, the arguments of the learned counsel for the management was extracted :

"4. On the contrary, it is contended by learned counsel for the management that it has been rightly held that the domestic inquiry was fair and proper. However, on the question whether this Court should exercise

jurisdiction under Art. 226 of the Constitution in matters relating to preliminary issues decided by the Labour Court in an industrial dispute, it is submitted that it would not be in the interest of justice to lay down the law that no writ petition should be entertained against the findings recorded on preliminary issues affecting the domestic inquiry or affecting the jurisdiction of the Labour Court."

20.6. Thereafter, the point, that arose for consideration in the writ appeal, is dealt with in paragraph 5 of the judgment and the same is extracted hereunder :

"5. Therefore, the point that would arise for consideration is as follows : Whether it is appropriate for this Court in a petition under Art.226 of the Constitution to interfere within preliminary order passed by the Labour Court either on the question as to whether the domestic inquiry has been fair and proper or relating to jurisdiction of Labour Court."

20.7. In paragraph 6, after referring to the judgment in Cooper Engineering's case (cited supra) and Agro Cargo Transport Limited V. E.Murugesan, reported in 1995-I-L.L.J.544, the First Bench held as follows :

"6. ... this very Bench has, after referring to Para.22 of the judgment of the Supreme Court in Cooper Engineering Ltd V. P.P.Mundhe [1975-II-L.L.N. 321], declined to interfere with the finding recorded on the preliminary points. It may be pointed out here that the Labour Court are presided over by judicial officers of the rank of District Judges. The proceedings before the Labour Court are conducted strictly in accordance with the norms of the judicial proceedings under the Industrial Disputes Act. An award is also required to be passed within a period of three months. If this Court were to interfere in each and every case wherein findings are recorded relating to jurisdiction of the Labour Court or the fairness or otherwise of the domestic inquiry, it would not be possible to pass an award within a period of three months. In addition to this, the finding recorded on such preliminary issues will not become final merely because such findings are not challenged before the award is passed. Those findings will become part of the final award that would be passed and it would be open to the aggrieved party to challenge the same, while challenging the main award itself. Such a course would avoid

prolongation of the proceedings and would curtail the period of litigation and at the same time would enable the Labour Court to pass the award as far as possible within the period prescribed by the Act."

20.8. Further, the First Bench also gave other reasons for non-interference at the preliminary stage. In this regard, the following passage from paragraph 7 of the judgment is extracted :

"7. Another aspect that should be taken into consideration is that the management will be in a position to drag on the matter as long as it can. The workman will not be in a position to contest the proceedings because he will not be having anything for his subsistence in the case of dismissal or removal or termination from service. In the event an award is passed in favour of the workman and if the management were to challenge the same in a petition under Art.226 of the Constitution, S.17B of the Industrial Disputes Act comes to the aid of the workman and makes the Court to grant relief to the workman, pending disposal of the writ petition in terms of S.17B of the Act, which will provide some means for the workman to subsist. It is to avoid such a liability which would accrue on the passing of the final award, all attempts are made by the management to stall the proceedings as long as possible. Even in a case where an award goes in favour of the workman, the tendency of the management is to drag on the proceedings. It is to curb such tendency and also to ensure that the workman is paid at least the wages last drawn during the pendency of the petition under Art.226 of the Constitution, challenging the award directing reinstatement, S.17B has been incorporated. Further, by entertaining the writ petition on a preliminary finding, this Court will not be advancing the cause before the Labour Court, and it would be only adding to the delay. Taking into consideration all the aspects, the Supreme Court in Cooper Engineering Ltd V. P.P.Mundhe [1975-II-L.L.N. 321] (cited supra) has specifically held thus in Para. 22,"

20.9. Finally, in paragraph 8, the First Bench laid down the law in the following terms :

"8. Taking into consideration all these aspects we are of the view that the findings recorded by the Labour Court on preliminary issues such as whether the domestic inquiry has

been fair or proper or the Labour Court has jurisdiction to entertain the dispute or whether the person claiming the status as a workman is a workman or not, should be not be interfered with, unless such findings are recorded without notice to any one of the parties or recorded without any reason. The point raised for determination is answered accordingly. The preliminary order challenged in the writ petition does not fall in any one of the aforesaid exceptions. Therefore, we see no ground to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeal is rejected. The parties are directed to appear before the Labour Court, on 3 January 1995 and from that date, within three months, the Labour Court shall decide the case. The civil miscellaneous petition is rejected. However, there will be no order as to costs."

21.1. Again, the issue was dealt with by the First Bench of this Court in Engine Valves Limited V. Industrial Tribunal, reported in 1996-I-LLN-167.

21.2. In that case, an attempt was made by the employer pleading prejudice that based on the preliminary order holding that the enquiry is not fair, the workmen could ask, as a matter of right, for some interim relief in the adjudication proceeding before the Labour Court. The management relied on the judgment of the Apex Court in Desh Raj Gupta V. Fourth Industrial Tribunal, Lucknow, 1991-I-L.L.N. 965. The said contention was also rejected by the Division Bench holding that the question as to whether the workmen is entitled to interim relief or not is a matter, which Tribunal has to decide on the facts and circumstances of the case and not on the basis of preliminary finding recorded.

21.3. It is useful to extract the following passage from paragraph 5 of the judgment of the First Bench of this Court in Engine Valves's case (cited supra) :

"..... 5. We may point out here that the fact that this Court does not interfere with such preliminary order and keeps all the contentions open, is only intended to ensure that there is no delay caused in the disposal of the dispute by the Tribunal or Labour Court, and it does not in any way affect the right of the Management to challenge the validity of the order, in the event it becomes necessary for it to challenge the award."

21.4. The First Bench also held that the issue was dealt with in detail in N.Gurumurthy V. II Additional Labour Court, Madras and another reported in 1995-I-L.L.N. 1022. and refused to interfere with the industrial adjudication at the preliminary stage.

21.5. Furthermore, the apprehension of the employer based on the judgment of the Apex Court in Desh Raj Gupta V. Fourth Industrial Tribunal, Lucknow, is also no more available, as the said judgment was subsequently, held to be not a good law in the following judgments of the Apex Court :

- i. R.Thiruvirkolam V. Presiding Officer, and another, (1997) 1 SCC 9 ; and
- ii. Punjab Dairy Development Corporation Limited V. Kala Singh, (1997) 6 SCC 159.

22. The next judgment is the judgment of the First Bench of this Court in Shree Kumar Textiles (P) Ltd. V. Labour Court, reported in 1997 (3) L.L.N. 376, refusing to interfere with the preliminary order holding that the enquiry is not fair, when the same is questioned by the employer. Paragraph 3 and the following passage in paragraph 5 of the said judgment could be usefully extracted hereunder in this regard :

"3. The learned Single Judge has held that it is not the stage at which interference is called for, as it is open to the management to challenge the correctness of the order, in the event, the award goes against the management.

5. The order passed by the Labour Court satisfies the requirement that it is a speaking order and it has been passed after hearing both the sides on the basis of the evidence by the parties. That the conclusions arrived at by the Labour Court are correct or not, is not a matter for examination at this stage. Therefore, we do not see that there is any case for reconsidering the view taken by this Court in Agro Cargo Transport Limited V. E.Murugan, 1995-I-L.L.J. 544. We may also point out that the appellant-management is not in any way prejudiced, because it has an opportunity to adduce evidence. In the event, the award goes against the management, it will be open to the management not only to challenge the ultimate award, but also the order passed by the Labour Court, directing the management to adduce evidence on the ground that the domestic inquiry was not fair and proper."

23. After considering all the aforesaid judgments, a learned Single Judge of this Court in NEPC Textiles Limited, rep. by its Manager (Personnel and Administration)

V. The Presiding Officer, Labour Court, and another, MANU/TN/8980/2006 refused to interfere with at the preliminary stage.

24. In all the aforesaid Judgments, the Division Benches as well as the learned Single Judge did not go into the merits of the preliminary order and the same was left to be agitated by the employer after the final award is passed.

25.1. But the learned counsel for the petitioner management placed heavy reliance on the judgment of a Division Bench of this Court in State Bank of India V. Presiding Officer, Industrial Tribunal, Madras and another, reported in 2007-II-LLJ 968 and the order of a learned single Judge of this Court in The Management, HH 256, Nedumpirai Primary Agricultural Co-op. Bank Limited rep. by its Special Officer, V. The Presiding Officer, Labour Court, reported in MANU/TN/0328/2008.

25.2. Firstly, the Division Bench in State Bank of India V. Presiding Officer, Industrial Tribunal, Madras and another, reported in 2007-II-LLJ 968, held in paragraph 18 that in the peculiar factual circumstances of that case, the Division Bench was inclined to interfere with the interim order. It is useful to extract the following passage in paragraph 18 of the judgment of the Division Bench :

18. Absolutely, there is no dispute with regard to the above said proposition. In order to facilitate both parties to get relief, normally no court would entertain writ petition against the order passed in a preliminary issue. But however, in view of the peculiar factual circumstances and as pointed out above that there is no specific provision either in the bye-laws, circular, guidelines, enabling the workman to have the legal assistance,"

25.3. When the assistance of a lawyer was declined to the workman, he refused to participate in the enquiry, though ample opportunities were given. The Industrial Tribunal also held in its findings, that were recorded in paragraph 4 of the judgment of the Division Bench, that the failure to give permission for appearance of a lawyer has not vitiated the enquiry. The Tribunal also held that the workmen failed to utilize the opportunities which were afforded to him. The following passage in paragraph 4 of the judgment of the Division Bench relating to the said findings of the Industrial Tribunal is extracted hereunder :

"4. The first respondent/Tribunal further held that failure to give permission for appearance of lawyer on his behalf has not vitiated the enquiry. The first respondent also held that the second respondent did not utilise the opportunities which were afforded to him."

Further, the issue revolved around as to whether the workman was entitled to have assistance of a lawyer in the domestic enquiry. In those peculiar circumstances, the Division Bench thought to interfere in the said case.

25.4. Further, it is relevant to note that the Division Bench did not take note of the law declared by the Apex Court in Cooper Engineering's case and also the other Division Bench judgments, referred to above, except the Engine Valves's case.

25.5. Therefore, I am of the view that the Division Bench judgment of this Court in State Bank of India V. Presiding Officer, Industrial Tribunal, Madras and another, reported in 2007-II-LLJ 968 was passed in peculiar facts and circumstances of the case, as held by the Division Bench itself without laying down any law or carving out exception for entertaining the writ petitions in addition to the reasons given in the judgment in N.Gurumurthy V. II Additional Labour Court, Madras, reported in 1995-I-L.L.N. 1022 and hence, the same cannot be taken as a precedent. Further, the law laid down by the Apex Court and this Court in the above mentioned judgments still hold the field. Hence, the said judgment in State Bank of India v. Presiding Officer, Industrial Tribunal, Madras and another, reported in 2007-II-LLJ 968, relied on by the writ petitioner, does not go counter to the law laid down by the Apex Court and various Division Benches of this Court, as noted above.

26.1. The next judgment relied on by the learned counsel for the petitioner management is The Management, HH 256, Nedumpirai Primary Agricultural Co-op. Bank Limited rep. by its Special Officer, V. The Presiding Officer, Labour Court, reported in MANU/TN/0328/2008.

26.2. In that case, the employer admitted before the Labour Court that the enquiry was not fair. While giving up the enquiry on its own volition, the employer sought an opportunity to lead evidence. But the same was unjustly rejected by the Labour Court. It was reversed by the learned Single Judge.

26.3. Therefore, I am of the view that this judgment could not render any help to the petitioner management, as it is well-settled by the Apex Court in Workmen Firestone's case that even in case of no enquiry or

enquiry is admitted to be defective by the employer or the Labour Court coming to the conclusion that the enquiry is defective, the employer could be given an opportunity to lead evidence, if a request is made at the appropriate stage in the adjudication proceedings.

27. The petitioner management pleaded in paragraph 13 of their counter-statements seeking opportunity to let in evidence afresh, if the Labour Court records a finding on the preliminary issue as to validity of the domestic enquiry in favour of the workmen. It is useful to extract the following passage in paragraph 13 of the counter-statements filed by the writ petitioner before the Labour Court :

"13. The respondent craves leave of this Honourable Court to let in evidence afresh to substantiate the charges contained in the show cause notice dated 6.6.03 issued to the petitioner and 2 others in the event this Court for reason, if any, comes to the conclusion that the domestic enquiry is invalid."

In these circumstances, I am of the view that dismissal of this writ petition would not cause any prejudice to the writ petitioner and the issues raised herein could be agitated by the writ petitioner, if the final award is passed against them.

28. For the aforesaid reasons, I am not inclined to interfere with the preliminary order of the Labour Court. The Labour Court is directed to conclude the proceedings in I.D.Nos.283/2005, 10/2006 and 14/2006 within a period of six months from the date of receipt of a copy of this order. The petitioner could let in evidence to sustain the dismissal order and the workmen could let in rebuttal evidence.

29. This writ petition is disposed of in the above terms. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

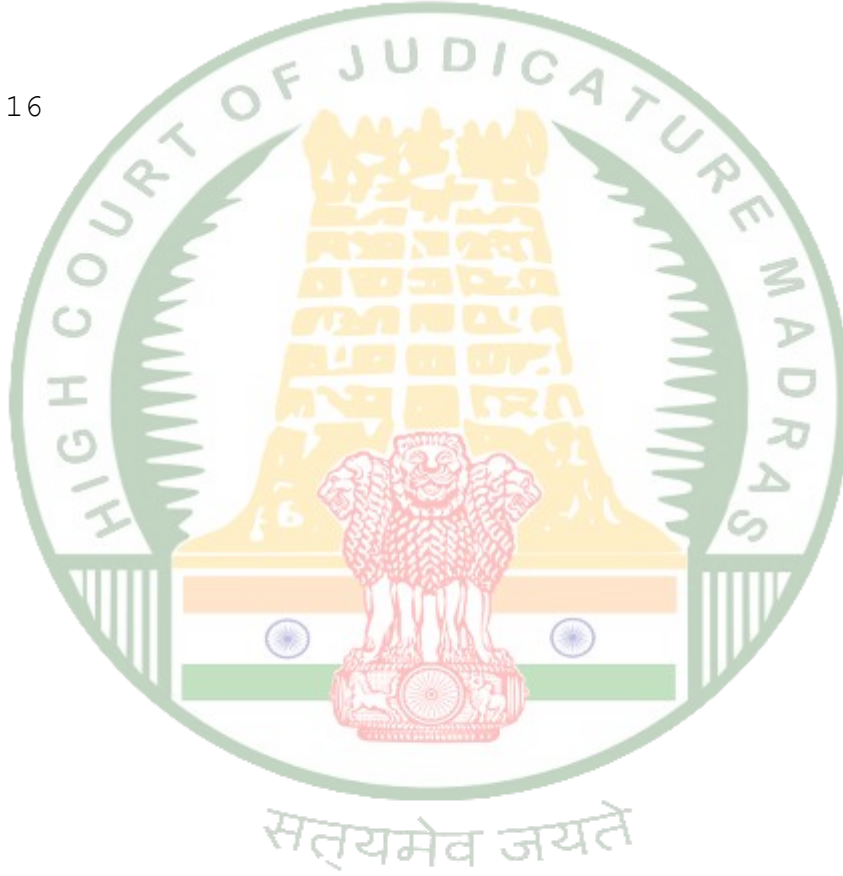
1. The Presiding Officer, Labour Court,
Coimbatore.

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr.K.V. Shanmuganathan, Advocate SR.13663

W.P.No.35054 of 2013

VGI(CO)
EU 20.04.16



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