

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No. 21202 of 2016

and

WMP.18124 of 2016

W.M.P.No. 7914 of 2017

Sri Seetha Venkatesh Mill Ltd.

Kathirvedu, Puzhal Post,

Chennai - 600 066

Rep. by its Managing Director

O.A.A.Anandapadmanaban

...Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.The Five Member Committee of the Workers
Of Sri Seetha Venkatesh Mill Ltd.,
No.11, Anbu Estate Extension,
Birla Avenue, Kathirvedu,
Chennai - 600 066.

...Respondents

Prayer: This writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records relating to the Order dated 20.01.2016 in I.D. No. 242 of 2012 on the file of the Principal Labour Court, Chennai and quash the same.

For Petitioner : Ms.AL.Ganthimathi

For Respondents : R1 - Court

Mr.K.Elango for R2

O R D E R

The Petitioner has come forward to challenge the impugned order passed in I.D. No. 242 of 2012 dated 20.01.2016 on the file of the Principal Labour Court, Chennai and quash the same, this present writ petition filed.

2.Heard Ms.AL.Ganthimathi, learned Counsel appearing for the

petitioner and Mr.K.Elango, learned Counsel appearing for the second respondent.

3.Pursuant to the reference made by the Government in G.O. (D) No.283 dated 27.06.2012 of Labour and Employment (A2) Department, the first respondent has taken up the dispute referred. The reference was made with respect to the illegal lock out alleged to have been indulged by the petitioner. The reference incidentally states that if the lock out is not justified, the second respondent is entitled to the consequential relief.

4.Accordingly, the claim petition has been numbered as ID No.242 of 2012 before the first respondent Court. At that stage, a memo was filed by the petitioner raising a preliminary objection to the Jurisdiction of the first respondent on the premise that the other reliefs sought for would come within the purview of the Third Schedule and therefore, only an Industrial Tribunal has got Jurisdiction. By the impugned order, the said contention raised was rejected, against which, the present Writ Petition has been filed.

5. The learned counsel appearing for the petitioner would submit that as per Section 10 of the Industrial Disputes Act, 1947, the dispute ought to have been raised and adjudicated only before the Industrial Tribunal. The claim made by the learned counsel for the second respondent involves many other things including retrenchment. Therefore, the Order passed will have to be set aside.

6.The learned counsel appearing for the second respondent would submit that under Section 10 (1)(c) of the Industrial Disputes Act, 1947, matters specified in the Second Schedule can be referred to a Labour Court for adjudication. The reference is very specific qua lock out. Even under Section 10(1)(d) of the Industrial Disputes Act, 1947, the matters specified in the Second or Third Schedules can be referred to an Industrial Tribunal for adjudication. The proviso has to be seen in the context of the main provision. It is the discretion that is given to the Government, in a case, where the dispute relates to a matter specified in the Third Schedule and is not likely to affect more than one hundred workmen. Thus, no interference is required.

7.As rightly submitted by the learned counsel appearing for the second respondent, the reference made by the State Government is very clear i.e. with respect to the lock out. Admittedly, under Second Schedule in item No.5, an issue pertaining to illegality or otherwise of a lock out finds place.

Therefore, the question as to whether a lock out is illegal or otherwise is certainly a matter for adjudication before the Labour Court.

8.As rightly held by the first respondent, a proviso cannot be used to understand the main provision. Section 10 of the Industrial Disputes Act, 1947, is very clear that matters mentioned in the Second Schedule would come within the purview of the Labour Court. It is no body's case that the issue pertaining to lock out is not an Industrial Dispute. Therefore, there is no necessity even to have a look at the proviso which seeks to exempt certain categories on a factual basis that too, at the discretion of the State Government.

9.Therefore, looking from any perspective, this Court does not find any error in the order passed by the first respondent. This Court is also of the considered view that it is not fair on the part of the petitioner to raise this preliminary objection which one goes by the wisdom of the Courts, could have been raised at the time of final hearing of the dispute.

10.Accordingly, this Writ Petition stands dismissed. Taking into consideration the fact that the dispute is pending from the year 2012 onwards, a direction is issued to the first respondent to conclude it within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

kak/maya

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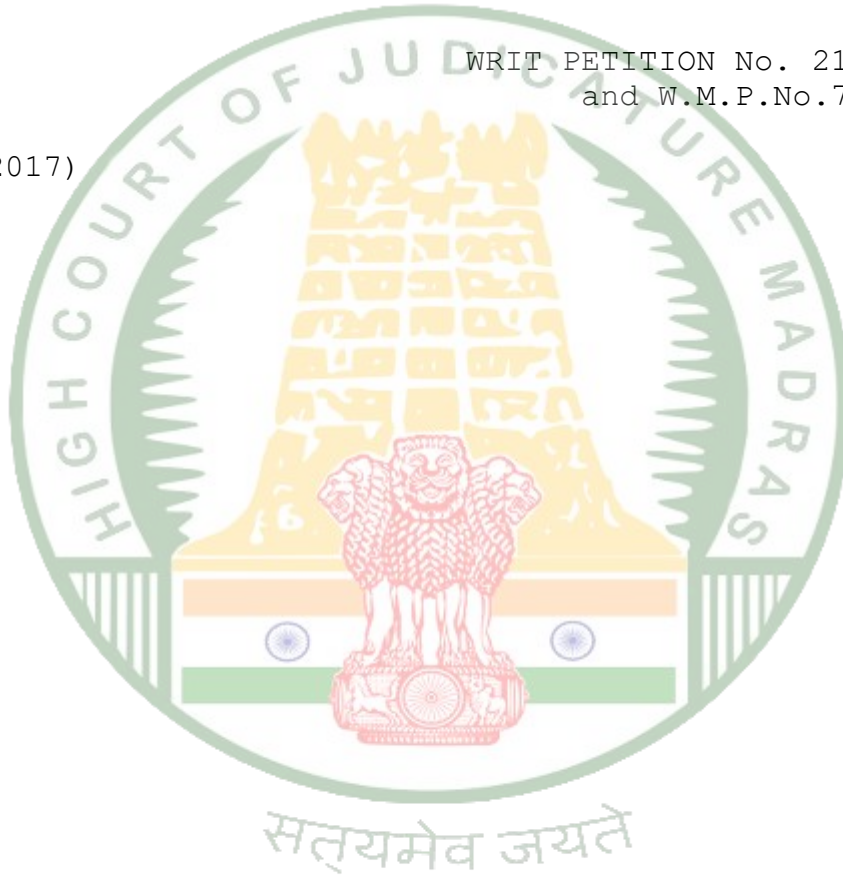
To

1.The Presiding Officer,
Principal Labour Court,
Chennai.

+1cc to M/s.Ganthimathi, Advocate, S.R.No.23865
+1cc to Mr.Elango, Advocate, S.R.No.23639

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NRJK(CO)
RS(04/05/2017)



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