

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23205 of 2003
and
W.M.P.No.28671 of 2003

Tamilnadu Magnesite Ltd.,
5/53, Omalur Main Road,
Jaggiramma Palayam,
Salem 636 302.

... Petitioner

Vs.

1. Union of India,
rep. by its Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan, Rafi Marg,
New Delhi - 110 001.
2. The President/General Secretary,
Magnesite Thozhilalar Munnetra Sangam (LPF/DMK)
Salem.
3. The President/General Secretary,
Salem District Magnestic Labour Union (CITU).
4. The President/General Secretary,
Salem Mavatta Magnesite Anna
Thozhilalar Sangam (AIADMK).
5. The President/Dy.General Secretary,
Magnesite National Labour Union (INTUC).
6. The President/General Secretary,
Salem Mavatta Magnesite Pattali Sangam (PMK).
7. The President/General Secretary
Salem Mavatta Magnesite Thozhilalar Sangam (AITUC).
8. The General Secretary,
Magnesite Worker's Union (FITU),
Mamangam, Salem 636 302.
9. The President/Secretary,
Tamilnadu Magnesite Employees Association
Thathiengarpatti (Post)

10.The President/Secretary,
Tamilnadu Magnesite Employees Union,
Salem 636 003.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records connected with the order of the first respondent made in order No.L-29024/21/97-IR(M) dated 18.07.2003 and quash the same.

For Petitioner : Mr.Sanjay Mohan.
for Mr.S.Ramasubramaniam & Assoc.

For Respondents : Mr.J.Madanagopal Rao for R1,
Mr.A.Nagarathinam for R6.
No Appearance for R2,4,5,7,9 & 10

O R D E R

The petitioner has filed this writ petition challenging the Order dated 18.07.2003, wherein the first respondent rejected his application for declaring the lay-off period from 19.02.1997 to 27.03.1997.

2. The case of the petitioner is that the petitioner initially made an application on 24.02.1997 under Section 25(M) of the Industrial Disputes Act, seeking permission of lay-off for the above said period. On 15.04.1997 the said request was rejected and the petitioner was advised to submit a fresh application, seeking permission of the Government for the period of lay-off already declared. Again on 09.05.1997, the petitioner submitted the fresh application explaining the situation and stating that since the Hon'ble Supreme Court on 12.12.1996 stopped all the ongoing activities in the forest area, was totally unanticipated and in view of the Supreme Court Order, it is squarely fell within the ambit of Section 25(M) of the Industrial Disputes Act, and requested the first respondent to grant permission for the period lay-off already declared. The said request was rejected on 11.07.1997, against which the petitioner filed Writ petition Nos.12998 and 12999 of 1997, before this Court. This Court, on 31.01.2003, after elaborate discussions has set aside the order passed by the first respondent and directed the first respondent to pass fresh orders and remitted the matter back to the first respondent for fresh consideration.

3. Accordingly, the impugned Order came to be passed on 18.07.2003. The point for consideration in this case is that seeking permission for lay-off for the above said period was considered by the first respondent and the same was rejected and

as per the direction of this court, the first respondent reconsidered the issues involved in the application and thereafter rejected the application for permission for lay-off on the following reasons:-

"[a]The provisions of the Forest Conservation Act, as amended from time to time were well-known to the management of TANMAG.

[b]The management knew the requirement and undertook mining operations without proper permission.

[c] The requests for lay off made by the management were not due to factors/circumstances as mentioned in sub-sections (3) & (9) of Section 25(M) of the Industrial Disputes Act 1947.

[d] Even though the direction of the Hon'ble Supreme Court was in the context of a public interest litigation pertaining to operation of saw mills within the reserve forest, the significant aspect of the direction is that the Court also directed that in respect of units which would close their operations, the workers in such units should not be retrenched or removed from service." and it is also relevant to quote the 25(M) of the Act as follows:

4. It is relevant to quote Section 25(M) of the Industrial Disputes Act, 1947:

"25-M. Prohibition of lay-off:

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion].

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the

reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workman (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

1. Subs. by Act 49 of 1984, s. 4 (w. e. f. 18. 8. 1984).

(10) The provisions of section 25-C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation.-- For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town

or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also."

(Emphasis supplied)

5. On a combined reading of the rejection Order with 25(M) of the Act, the request for lay-off for post-facto period were not due to the facts and circumstances mentioned in the section 25(M)(9) of the Industrial Disputes Act. Wherein the Section 25(M) of the Industrial Disputes Act clearly says that the authority while dealing the Welfare enactment cautiously granted permission, after satisfying the conditions imposed in the welfare enactment.

6. On a perusal of Section 25 M (9) of the Act, it clearly says that on exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary to grant permission for lay-off. In this case the petitioner continuously taking efforts to take the particular period as lay-off which is not permissible.

7. It is relevant to note that in the counter filed by the first respondent, it is stated that under Section 25(M) of the Act, the only provision is for prior permission. As there was no provision for ex-post-facto permission for lay-off in the Industrial Disputes Act, 1947, the lay-off declared by the Management between 19.02.1997 to 27.03.1997, without prior permission of the Government was bad in law.

8. In view of the same, I do not find any illegality in the Order passed by the first respondent. Accordingly, the writ petition is dismissed. No Costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msvm/arr

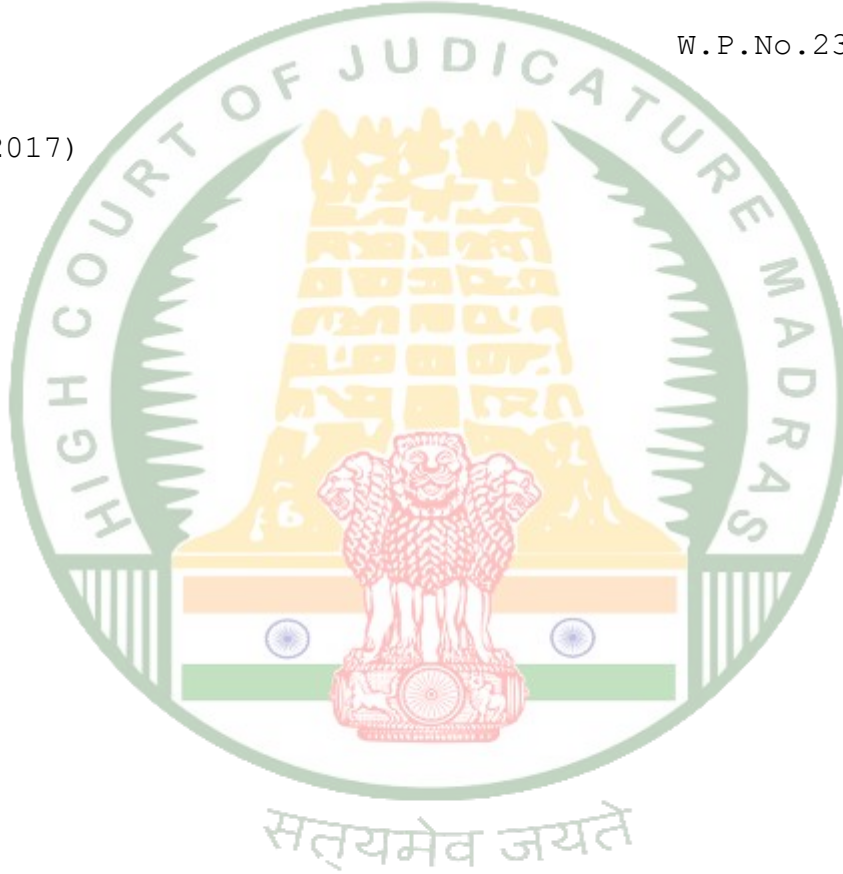
To

The Secretary to Government,
Ministry of Labour,
Shram Shakthi Bhavan, Rafi Marg,
New Delhi - 110 001.

+1cc to Mr.J.Madanagopal RaoS, Advocate, S.R.No.60846
+1cc to M/s.Ramasubramaniam & Assoc., Advocate, S.R.No.61243
+1cc to Mr.A.Nagarathinam, Advocate, S.R.No.60856

W.P.No.23205 of 2003

VG II(CO)
CA(03/10/2017)



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