

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.01.2017

DELIVERED ON: 23.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.38988 of 2002 and 6240 of 2003
and

W.P.M.P.No. 8005 of 2003

W.P.No. 38988 of 2002

The Workmen of Madurai Coats Ltd,
Ambasamudram,
rep. by Secretary, Papanasam Labour Union,
(Reg. No. 225),
679/6 Main Road,
Vickramasingapuram - 627 425. Petitioner

Vs.

1.Presiding Officer,
Labour Court, Tirunelveli.
2. Management of Madurai Apparel
Fabrics Limited,
Ambasamudram. Respondents

W.P. NO. 6240 of 2003

The Management of Madura Coats Limited,
Papanasam Mills Post 627 422. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.Workmen of Madura Coats Ltd,
rep. by the Secretary,
National Textile Workers Union (INTUC),
Main Road, Vickramasingapuram - 627 425

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3. Workmen of Madura Coats Ltd,
Rep. by the Secretary,
Papanasam Labour Union (PLU)
Main Road, Vickramasingapuram 627 425

4. Workment of Madura Coats Ltd,
Rep. by the General Secretary,
Dravida Panchalai THozhilalar
Munnetra Sangam (DMK),
860 Main Road, Vickramasingapuram 627 425.

5. Workmen of Madura Coats Ltd,
rep. by the Secretary,
Nellai Mavatta Anna Panchalai
Thozhilalar Sangam (AIADMK)
Main Road, Vickramasingapuram 627 425.

6. Workmen of Madura Coats Ltd,
rep. by the Secretary,
District Textiles Workers Union (AITUC),
685A/4 Main Road, Vickramasingapuram 627 425.

7. Workmen of Madura Coats Ltd,
rep. by the Secretary,
Agasthiar Labour Union,
479/4 Main Road,
Vickramasingapuram 627 425

8. Workmen of Madura Coats Ltd,
rep. by the Secretary,
Textile Works Union (CITU)
Main Road, Vickramasingapuram 627 425.

9. Workmen of Madura Coats Ltd,
rep. by the Secretary,
Madurai District Mill Workers Union,
Main Road, Vickramasingapuram 627 425.

10. Workmen of Madura Coats Ltd,
rep. by the General Secretary,
Madurai Mills Electrical Staff Trade Union,
Main Road, Vickramasingapuram 627 425.

11. Workmen of Madura Coats Ltd,
rep. by the Secretary,
National Engineering Workers Union,
Main Road, Vickramasingapuram 627 425.

12. Workmen of Madura Coats Ltd,
rep. by the Secretary,
Thesiya Mill Thozhilalar Sangam,
Main Road, Vickramasingapuram 627 425.

13. Workmen of Madura Coats Ltd,
rep. by the Secretary,
Madura Coats Thozilalar Sangam,
Main Road, Vickramasingapuram 627 425.

14. Workmen of Madura Coats Ltd,
rep. by the Joint Secretary,
Harvey Employees Union (HEU)
Main Road, Vickramasingapuram 627 425.

15. Workmen of Madura Coats Ltd,
rep. by the General Secretary,
Madura Coats Staff Union,
Main Road, Vickramasingapuram 627 425.

16. Workmen of Madura Coats Ltd,
rep. by the Secretary,
National Labour Organisation (NLO),
Main Road,
Vickramasingapuram 627 425. ... Respondents

Prayer in W.P. No.38988 of 2002:

Petition filed under Article 226 of the Constitution seeking to issue a writ of Certiorari, Order or direction of like nature calling for the records relating to the standing orders Appeal 3/92 on the file of the 1st Respondent in the impugned common order passed by the 1st Respondent Appellate Authority made in Standing Order Appeal 2/92, 3/92, 4/92 and 6/92 dated 31.7.2002 preferred against the proceeding of the Certifying Authority in Pro.No.d2336/90, dated 20.4.1992 and quash the same order in SOA 3/92 and render justice.

Prayer in W.P. No.6240 2003:

Petition filed under Article 226 of the Constitution seeking to issue a writ of Certiorari calling for the records of the first respondent in SOA No.4/92 and quash its order dated 31.7.02 except to the extent of clause 11(d) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner in
W.P.No.38988 of 2002 and
Respondents 3, 8,9,10 & 14 in

M/s.K.S.Narayanan &
N.Baskaran

W.P.No. 6240 of 2003

For Petitioner in
W.P. 6240 of 2003
and respondent no.2 in
W.P.No. 38988 of 2002

M/s. T.S.Gopalan & Co.

COMMON ORDER

Heard.

2. The above writ petitions arise out of a common order dated 31.7.2002 passed by the 1st Respondent/Labour Court, Tirunelveli, Appellate Authority constituted under the Industrial Employment (Standing Orders) Act, 1946 (for short "the IESO Act") made in IESO No. 2/92, 3/92 and 4/92. The Appeals under the IESO Act arose out of a certification done by the Certifying Officer (Joint Commissioner of Labour, Madurai) in Proceeding No.D/2336 /90 dated 20.4.92.

3. The writ petitioner in W.P.No.6240 of 2003 (also second respondent in W.P.No.38988 of 2002) will be hereinafter referred to as "the Management". It is claimed that they were functioning from the year 1882. Their units had a certified standing orders as on 6.12.1976. However, due to passage of time which required certain modifications, they submitted amendment to the Draft Standing Orders as early as 28.2.1990 before the Joint Commissioner of Labour, Madurai who is the Certifying Officer notified under Section 2(c) of the IESO Act. On receipt of the Draft Standing Orders, the Certifying Officer issued notice to all the registered trade unions functioning in the management establishment (respondents 2 to 16) in W.P.No.6240 of 2003. The trade unions filed their objections to the draft submitted by the management before the Certifying Officer. Thereafter, the Certifying Officer heard all the unions and finally, after making certain additions and deletions, he certified the standing orders vide his proceedings in Pro.No.D/2336/90 dated 20.4.1992.

4. As against the certification of standing orders, only two trade unions were aggrieved i.e. Papanasam Labour Union (Regd. No.225) the Writ Petitioner in W.P.No. 38988 of 2002 and 3rd respondent in W.P.No. 6240 of 2003 (for short "Papanasam Union"). That union filed an Appeal under Section 6 of the IESO Act before the 1st Respondent/Labour Court. That Appeal was taken on file as SOA 3/92. Similarly, the District Textile

Workers Union affiliated to AITUC, filed an Appeal against the certified standing orders being SOA No.2/1992 (Respondent no.6 in W.P.No.6240 of 2003). The Nellai Chidambaranar Mavatta Thesiya Panchalai Thozhilalar Sangam also filed an Appeal in SOA No. 6/1992 (originally shown as 17th Respondent at the time of filing the writ petition by the management, but subsequently, deleted from the array of parties for reasons best known). Those two trade unions did not file any writ petition challenging the order of the Appellate Authority (1st Respondent). In any event, in the first writ petition filed by Papanasam Union, all the trade unions which are parties before the Certifying Officer as well as the Appellate Authority have not been made parties. Similarly, in the writ petition filed by the management, the trade union (Nellai Chidambaranar Mavatta Thesiya Panchalai Thozhilalar Sangam) which had filed SOA 6/1992 had not been made a party to the writ petition, though the Appellate Authority had passed a common order. On the ground of non-joinder of proper and necessary parties, both the writ petitions are liable to be dismissed. This only shows the callousness with which writ petitions are filed before this court and the Registry also did not raise proper objection at the time of numbering the same.

5. The management of Madura Apparel Fabrics Ltd. also filed an Appeal in SOA 4/1992. All the three appeals were grouped together by the 1st Respondent/Labour Court (Appellate Authority) and disposed of by a common order dated 31.7.2002. The Papanasam Trade Union filed W.P.No. 38988 of 2002 against the Appellate Authority's order. That writ petition was admitted on 22.10.2002 and an order of interim stay was granted in W.P.M.P.58151 of 2002. Subsequently, that Miscellaneous Petition was closed on 18.9.2003. On notice, the 2nd Respondent management had filed a counter affidavit dated 30.11.2005.

6. The Madura Coats Ltd. which operates the unit i.e. the Madura Apparel Fabrics Ltd. at Ambasamudram (the management) filed W.P.No.6240 of 2003 aggrieved by the same appellate authority's order dated 31.7.2002. They also filed W.P.M.P.8005 of 2003 seeking an order of interim stay of the Appellate Authority's order except to that of clause 11 (d) of the Certified Standing Orders. The said writ petition was admitted on 26.2.2003 and in the W.P. M.P.8005 of 2003, only notice was ordered. On notice in that writ petition, the Papanasam Labour Union (R3) filed a counter affidavit dated NIL, August 2003. Only four trade unions which are shown as Respondents 8, 9, 10 and 14 in writ petition filed a brief counter affidavit dated 23.9.2006.

7. It must be noted that the IESO Act was enacted with a view to require the employers in industrial establishments to formally define conditions of employment in their establishment.

Under section 3 of the IESO Act, within six months from the date on which the establishment came into existence, the employer is bound to submit their Draft Standing Orders for certification. Though no time limit is fixed for the certifying officer, in the present case, the Certifying Officer had completed the certification proceedings within two years from the date of submission of the Draft Standing Orders. An Appeal against the said certification lies to the appellate authority (the 1st respondent herein) and that appeal has to be filed within 30 days. In this case, the Labour Court, for reasons best known, had taken more than 10 years to dispose of the appeals. This delay is highly unwarranted especially in the context in which the IESCO Act has been enacted. Unfortunately, as against the order of the Labour Court dated 31.7.2002, writ petitions were filed in the year 2002 and 2003 and it had taken more than 13 years for this Court to decide the fate of the Labour Court's order. Altogether, in the matter of certification of Standing Orders of the workmen, more than 26 years have gone, by which one wonders whether these certification proceedings have any meaning at all. The inordinate delay in the certification proceedings are inexcusable and will make the labour legislations irrelevant in the future.

8. Since both the managements and one trade union had come before the very same order of the Appellate Authority i.e. the 1st Respondent, both the writ petitions were grouped together and a common order is passed. Before the Appellate Authority, there were four standing order Appeals, three filed by the trade unions and one filed by the management. The Appellate Authority also passed a common order by consolidating all the four appeals. In respect of SOA 6/1992 filed by a trade union (which is not before this court), the labour court did not give any separate reason and adopted the reasoning given in SOA 2 and SOA 3/92 filed by other two trade unions (of which one is before this court).

9. The Appellate Authority had interfered with 8 clauses in the Standing Orders certified by the Certifying Officer and in para 140, it has set down the clauses as certified by the authority and as amended / modified / added by the Appellate Authority and it is necessary to extract those changes brought out by the Appellate Authority in extenso before dealing with the rival submissions:-

Existing Clause	Amended Clause
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1.Clause 2(c) : Learner / Apprentice :-is one who is engaged essentially in learning any skilled work provided that the period of such learning shall not exceed one year, 6 months for those with prescribed technical qualification and 3 years for others.	1.Clause 2(c) Learner/ Apprentice: is one who is engaged essentially in learning any skilled work provided that the period of such learning shall not exceed one year for those with prescribed technical qualification and 3 years for others.
2. Clause 4(b) A workman working in shifts in a process which is continuous nature will remain at his post until the scheduled relief arrives to take over or until his supervisor is able to make other arrangements for his relief subject to the provisions of the Factories Act, 1948.	2. Clause 4(b) A workman, working in shifts in a process which is continuous nature will remain at his post until the scheduled relief arrives to take over or until his supervisor is able to make other arrangements for his relief subject to the provisions of the Factories Act, 1948.
	Provided that subject to the previous approval of the Chief Inspector, the daily maximum specified in Sec.54, of the factories Act, 1948 may be exceeded in order to facilitate the change of shift and the period exceeded shall be treated as overtime worker. Immediately after the completion of the overtime work rendered shall be entered in the appropriate registers as per rule 78(b) of the Tamil Nadu Factories Rule and Payment in lieu of overtime work rendered or compensatory holiday as contemplated in the Tamil Nadu Factories Rules 77 shall be given.

3. Clause 8 : Shift working shall be regulated in accordance with the Factories Act, 1948. More than one shift may be worked in a Department or Departments or any section of a Department at the discretion of the company. If more than one shift is worked in the Mill, workmen shall be liable to be transferred from one shift to another. Shift working may be discontinued after putting up a notice at the mill premises. Notice of one month of discontinuance of any shift shall be given provided, however, that it shall not be necessary to give one month's notice, if as a result of the discontinuance of the shift working, any permanent employee are likely to be discharged, they shall be discharged, having regard to the length of their services in the Mill, those with the shortest term of service being discharged first. If the shift is restarted a week's notice thereof shall be given by posting a notice at the Mill premises and the employees discharged as a result of discontinuance of the shift shall, if they present themselves of the time of restarting of the shift, have preference in being reemployed having regard to the length of their previous service in the Mill, those with the longest term of service being re-employed first.

Clause 8 : Shift working shall be regulated in accordance with the Factories Act, 1948. More than one shift may be worked in a Department or Departments or any section of a Department at the discretion of the company. If more than one shift is worked in the Mill, workmen shall be liable to be transferred from one shift to another. Shift working may be discontinued after putting up a notice at the mill premises "and also giving notices to all the Unions Concerned". Notice of one month of discontinuance of any shift shall be given provided, however, that it shall not be necessary to give one month's notice, if as a result of the discontinuance of the shift working, any permanent employees are likely to be discharged, they shall be discharged, having regard to the length of their services in the Mill, those with the shortest term of service being discharged first. If the shift is restarted a week's notice thereof shall be given by posting a notice of the Mill premises and the employees discharged as a result of discontinuance of the shift shall, if they present themselves at the time of restarting of the shift have preference in being reemployed having regard to the length of their previous service in the Mill, those with the longest terms of service

4.clause 11(a) : Any workman who desires to obtain leave of absence, except for a temporary purpose within the Mill premises, must apply previously to the head of his department or any officer appointed by the company for the purpose who, if he thinks fit may grant him leave. In the event of a workman remaining absent in excess of the period granted, he shall lose the lien on his appointment, unless he has previously secured permission to extend the leave originally granted and returns to work on the first working day following the period covered by any such extension. If however, on his return to work he gives a satisfactory explanation to the Head of the Department, or such other person as may have been appointed for the purpose, for his omission to apply for such an extension his case for reinstatement when suitable vacancy occurs shall be considered.

Clause 11(a): Any workman who desires to obtain leave or absence, except for a temporary purpose within the Mill premises, must apply previously to the Head of his department or any officer appointed by the company for the purpose who if he thinks fit may grant him leave. In the event of a workman remaining absent in excess of the period granted, he shall lose his lien on his appointment subject to domestic enquiry unless he has previously secured permission to extend the leave originally granted and returns to work on the first working day following the period covered by any such extension. If however, on his return to work he gives a satisfactory explanation to the Head of the Department, or such other person as may have been appointed for the purpose, for his omission to apply for such an extension, his case for reinstatement when a suitable vacancy occurs shall be considered.

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5.clause 11(b) (ii) (3) : Non-urgent leave can be granted at the administrative convenience and discretion of the management. The sanctioning authority has the discretion to revise, revoke or refuse, leave at any time according to the exigencies of his Department.	5. Clause 11(b)(ii)(3) : Non urgent leave can be granted at the administrative convenience and discretion of the management. The sanctioning authority has the discretion to revise, revoke or refuse non-urgent leave before 24 hours prior to the date of which the non-urgent leave applied for according to the exigencies of his department.
Clause 11(b) (ii) (4) The management shall have the right to recall a workman before the expiry of his leave period.	Clause 11(b)(ii)(4) : The management has no right to recall a workman before the expiry of his non-urgent leave period sanctioned.
6. Clause 11(c) : If any workman remains absent without leave or permission for more than eight consecutive days, he shall be deemed to have left the employment voluntarily unless he gives satisfactory explanation for such absence in which case the period of absence shall be treated as leave without wages..	6. Clause 11(c) : If any workman remains absent without leave or permission for more than ten consecutive days, he shall be deemed to have left the employment voluntarily unless he gives satisfactory explanation for such absence in which case the period of absence shall be treated as leave without wages.

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7. Clause 11(d) : Deleted	7. Clause 11(d) : added Break in Service Subject to the provision as contained in the explanation to section 2(A) of the Payment of Gratuity Act, if any workman absents without any leave or authorisation, it will be taken as amounting to a break in service only to the extent of the number of days of such unauthorised absence. Such break in service will not be considered as a punishment but only as absence which cannot be taken into account for the purpose of calculation of the minimum qualifying service of 240 days or attendance in any year for claiming gratuity for that year. This break shall not affect one's past service which shall certainly be taken as continuous if such service are otherwise continuous. But before any such order is passed by the management in this regard, the workman shall be given an opportunity by the Management to explain his stand on the Management's proposal to treat any such period of absence as amounting to 'Break in Service' for the only purpose of the Payment of Gratuity and not for any other purpose. (Consequent of the addition of Clause 11(d) the existing clause 11(d) certified is to be renumbered as 11(e).
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8. Clause 20(19) : Threatening, abusing, intimidating or assaulting any workman or any employee of the company inside or outside the premises of the company if such threats, abuse, intimidation or assault is in connection with the employment in the company.	8. Clause 20(19) : Threatening, abusing, intimidating or assaulting any workman or employee of the company inside the premises of the company, if such threat, abuse, intimidation or assault is in connection with the employment in the company.
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10. In their Appeal filed before the 1st Respondent Appellate Authority, the Papanasam Labour Union had grievances over the certification done by the Certifying Officer in respect of the following Standing Orders :

- (i) Standing Order 2(c) "Learner" (though the certifying officer clubbed the term Learner along with the Apprentice the union wanted one year in the case of persons with technical qualification and two years in case of others. The appellate authority while fixed one year in case of persons with technical qualification, but made it three years in case of others .
- (ii) Standing Order 4(b) The certifying officer taking note of the process involved in the Mill was one of continuous nature required a workman to remain in the work spot till a reliever takes over. The unions objected saying that the worker will be asked to continue the next shift and the contingency expected is taken care of by the Factories Act. The Appellate Authority found a via media i.e. that the worker will have to wait for the reliever and the issue will be subject to the provisions of the Factories Act.
- (iii) Standing Order 8 : "Shift Working" - to make changes in the shift working, notice for the unions were contemplated. This was sought to be removed by the management since there are number of unions and it will be difficult to identify all the unions. The Papanasam Union wanted the notice requirement to remain since the union can explain to its workers to avoid misunderstanding. The Appellate Authority retained a requirement of giving notice to union before making changes in the shift, but removed the one month notice period.
- (iv) Standing Order 11(a) : "losing lien over employment due to absence" : The automatic losing of lien if no satisfactory explanation not furnished was changed by the

- Appellate Authority and it has made that it will be subject to domestic enquiry.
- (v) Standing Order 11(b) (ii) (3) : "Revocation of non-urgent leave" : While the certifying officer allowed the management the power to revoke non-urgent leave at any time, the Appellate Authority has fixed 24 hours notice
 - (vi) Standing Order 11(b) (ii) (4) : "right to recall workmen from leave" : While there was absolute power for the management to recall a workman availing non-urgent leave at any time, the Appellate Authority has denied this right.
 - (vii) Standing Order 11(c) : "losing lien" : While losing of lien was originally fixed as Eight days by the Certifying Authority, the Appellate Authority has increased it to Ten days.
 - (viii) Standing Order 11(d) : "break in service" : The said clause providing for break in service subject to explanation contained under section 2A of the Payment of Gratuity Act was deleted by the Certifying Officer whereas the Appellate Authority virtually retained the very same clause and renumbered as standing order 11(e).
 - (ix) Standing Order 20(19) : The standing order 20 defined the various acts and omissions which will constitute misconducts for the purpose of taking disciplinary action. S.O.20(19) dealt with threatening, abusing, intimidating or assaulting any workman or employee of the company inside or outside the premises of the company it is in connection with the employment of the company. This order of the Certifying Officer was modified and the Appellate Authority held that such an action must take place inside the premises of the company.

11. Before the Appellate Authority, the management which had filed SOA 4/92 was aggrieved only in respect of S.O.11(d) and 18 (b). With reference to the Standing Order 11(d), the changes proposed and the order of the Appellate Authority had already been dealt with above. But, with reference to Standing Order 18 (b), the original Standing Order permitted the management to terminate the service of the probationary workmen at any time without notice. But, the certifying officer modified it as follows:-

"probationary workmen other than those transferred from permanent post in the Mill, substitutes, temporary workmen and learners with less than one year of continuous service may leave or be discharges from service without notice. This also applies to all workmen on daily rate."

12. The Papanasam Labour Union was aggrieved by the certification of Standing Orders with reference to S.O.21

(Promotion), S.O.23 (Transfer), S.O.30 (Termination due to loss of Confidence), S.O.31(Essential services), S.O.11(c) (Termination on account of losing lien). According to them, these clauses ought not to have been certified as they were neither set down in the schedule to the IESO Act nor provided under the Model Standing Orders framed by the Tamil Nadu Government. Similarly, they also wanted items 7, 50 and 58 of Standing Order 20 listing various items of misconduct to be deleted since they were covered by work load scheme in force in the mill. Items 18 and 27 are vague and not well defined. Likewise, Items 29 and 30 and 44 are set down in the ESI Act (section 91(b)). Item 38, according to them, is taken care of by the Standing Order 11(b) as well as the Factories Act. Items 52 and 57 are misconducts even covering acts outside the premises of the company. Standing order 20(3) (a) is vague.

13. Both sides addressed elaborate arguments and also submitted points about their submissions. Before dealing with them, it is necessary to see the scheme of the Act. The conditions under which Standing Orders shall be certified is set down under section 4 of the IESO Act, by which, the employer must provide for every matter set down in the schedule applicable to that establishment and that the Standing Orders are otherwise in conformity with the provisions of the IESO Act. Section 4 also makes that the functions of the Certifying Officer and the appellate authority shall be to adjudicate upon the fairness or reasonableness of the provisions of any Standing Order. Under section 10(3) of the IESO Act, all the powers available during a fresh certification proceeding will also be available for an amendment to the Standing Order.

14. The purpose for which the IESO Act was brought in and the nature of powers exercised by the Govt./authorities are well set down in the judgment of the Supreme Court in Western India Match Company Ltd Vs. Workmen [AIR 1973 SC 2650], wherein, it was held as follows:-

"In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith. Later generations discovered that the workman did not possess adequate bargaining strength to secure fair terms and conditions of service. When the workmen

also made this discovery, they organised themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade union and collective bargaining created new problems of maintaining industrial peace and production for the society. It was therefore considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table the employer and the workman thought that there should also be present a third-party the State as representing, the interest of the society. The Act gives effect to this new thinking. By s.4 the Officer certifying the Standing Order is directed to adjudicate upon "the fairness or reasonableness" of the provisions of the Standing Order. The Certifying Officer is the statutory representative of the society. It seems to us that while adjudging the fairness or reasonableness of any Standing Order, the Certifying Officer should consider and weigh the social interest in the claims of the employer and the social interest in the demands of the workmen."

(emphasis added)

15. The Supreme Court, after noticing the amendment made to the IESO Act in the year 1956, dealt with the power of the Certifying Officer in its decision in *Uptron India Limited vs Shammi Bhan & another* [(1998) 6 SCC 538] and it was held as follows:-

"Originally, the jurisdiction of the Certifying Officer was limited to examine the draft Standing Orders and compare them with the model Standing Orders. But in 1956, the Act was radically amended and Section 4 gave jurisdiction to the Certifying Officer, as also the Appellate Authority, to adjudicate and decide the questions, if raised, relating to the fairness or reasonableness of any provision of the Standing Orders."

16. A Constitution Bench of the Supreme Court, 50 years ago, in its decision in *Rohtak Hissar District Electricity Supply Co. Ltd Vs. State of Uttar Pradesh* [AIR 1966 SC 1471] held that at the instance of an employer, no item, which is not found in the schedule, can be added by the Certifying Officer. It was observed as follows in the said judgment:-

"but the employer cannot insist upon adding a condition to the Standing Order which relates to a matter which is not included in the Schedule."

17. Regarding the object of the IESCO Act and the need to advance the legislative intention, the Supreme Court, in B.D. Shetty And Others vs M/S. Ceat Ltd. and Another [(2002) 1 SCC 193], held as follows:-

"One must not lose sight of the fact that the Act is a beneficial piece of legislation and the provision of subsistence allowance made is intended to serve a definite purpose of sustaining the workman and his family members during the bad time when he is under suspension pending inquiry. This provision is enacted with a view to ensure social welfare and security. Hence, such a beneficial piece of legislation has to be understood and construed in its proper and correct perspective so as to advance the legislative intention underlying its enactment rather than abolish it. Assuming two views are possible, the one, which is in tune with the legislative intention and furthers the same, should be preferred to the one which would frustrate it."

18. In the line of above decisions, the order passed by the Appellate Authority must be scrutinized. Let us first examine the objections raised by the management in respect of Standing Order 2(c) providing for maximum period for engagement of an apprentice who was technically qualified one year and three years for others cannot be found faulted. Hence S.O.2(c) as per the Appellate Authority's order should be retained.

19. In respect of Standing Order 4(b), the addition made by the Appellate Authority regarding the proviso included should be deleted. Even without the proviso the main clause refers to the Factories Act, 1948. The unnecessary explanation found in the proviso added to S.O.4(b) must be deleted.

20. In respect of Standing Order 8, the authority has included the words and also given notices to all the Unions concerned. The difficulty of the management in identifying trade unions is imaginary. Even under section 9A of the Industrial Disputes Act, 1947, in case of notice of change, apart from notifying individual workers, the prescribed form also provides for notice to unions. Hence, no fault can be found with the requirement of notice to unions. The Appellate Authority's order stands as it is.

21. The courts have always found fault with automatic removal of a person's name from the rolls in case of unnotified absence. Principles of natural justice will have to be in-built in such a provision. In this case, the Appellate Authority (1st Respondent), in order to safeguard the interest of the worker, did not provide for losing of lien in the case of worker absenting himself for more than ten days (previously eight days) and held it is subject to holding of domestic enquiry. The necessity to observe principles of natural justice in such cases came to be considered in several decisions of the Supreme Court.

22. In U.P. State Bridge Corporation Ltd Vs. U.P. Rajya Setu Nigam S Karmachari Sangh [(2004) 4 SCC 268], the Supreme Court referred to the earlier decisions with reference to the similar circumstances and held as follows:-

"D.K. Yadav (1993 (3) SCC 259) is an authority for the proposition that the principle of natural justice would have to be read in the Standing Orders. That was a case where there was a standing order similar to CSO L-2.12 except that 8 days' margin was granted within which the workman was required to return and satisfactorily explain the reasons for his absence or inability to return after the expiry of leave. This view was reiterated in the later decision of this Court in Lakshmi Precision Screws Ltd. V. Ram Bhagat 2002 (6) SCC 552 where it was held that the element of natural justice was an in-built requirement of the Standing Orders."

23. In respect of Standing Order 11(a), it was provided that in case of losing lien, the workmen will lose wages and such an action will be subject to domestic enquiry. Conducting of full fledged domestic enquiry need not be done elaborately. In fact, if it is made as subject to appropriate action that will be enough. Therefore, substituting the words "shall lose his wages" and also the words "subject to domestic enquiry" the following words can be added:

"Subject to appropriate action"

24. In respect of Standing Order 11(b)(ii)(4) and 11(b) (ii) (3), the Standing Order provides for the management's right to recall a workman in the event of exigencies in cases of non-urgent leave. Similarly, the Appellate Authority also provided for 24 hours notice. In this way, both the claim of the Union and the Management had been taken care of. While the management's right to recall a workman on non-urgent leave is

guaranteed, it only ensures a prior notice for the workman to adjust to a new situation.

25. In respect of Standing Order 11(c) providing for ten days minimum requirement for losing lien from the earlier eight days, it is fully justified. Ultimately, only when the explanation is offered by the workman any action can be possible and therefore, the increase of two days for action to be initiated cannot be found fault with.

26. In respect of the deletion of the word "outside" from the misconduct in Standing Order 20(19), the argument of the union was that the workmen will be liable for action even for actions outside the premises. This was accepted by the Appellate Authority. The Supreme Court, in *Central India Coalfields Ltd. v. Ram Bilas Shobnath* [AIR 1961 SC 1189] dealt with similar circumstances and applied the Standing Order even in case of incident which occurred outside the factory provided it has some nexus with the factory. In the said judgment, it was observed as follows:-

"Standing order No.29(5) provides that drunkenness, fighting, riotous or disorderly or indecent behaviour constitutes misconduct which entails dismissal. Normally this Standing Order would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. It may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order No.29 (5); but in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal bearing area and the conduct of the respondent which is proved clearly amounts both to drunkenness as well as riotous, disorderly and indecent behaviour. In fact, as the enquiry officer in substance has found, unless the appellant took some action against the respondent, breach of peace was threatened and that is not a matter which complacency."

27. In this context, the Supreme Court, in two decisions, has held that unless the Standing Order provides for an action to be taken against the workmen for misconduct committed outside the factory premises, no action can be initiated. In *Glaxo Laboratories (I) Ltd Vs. The Presiding Officer, Labour Court, Meerut* [AIR 1984 SC 505], it was held that unless a Standing Order provides for a particular item as misconduct, all other

acts which are not misconducts cannot be used for the purpose of taking action against workmen and it was held as under:

"In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty.

28. After following the ratio in Glaxo Laboratories case, the Supreme Court once again reiterated the same principle in its judgment in Rasiklal Vaghajibhai Patel vs Ahmedabad Municipal Corporation [AIR 1985 SC 504] and it was held as under:-

"Either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence-removal or dismissal from service on account of the misconduct constitutes penalty in law-that the workmen sought to be charged for misconduct must have adequate advance notice of what section or what conduct would constitute misconduct."

Therefore, it can be held that the Standing Order originally framed by the Certifying Officer can be retained provided the misconduct of the workmen should have some nexus with the employment in the factory.

29. In respect of Standing Order 23, the Papanasam Labour Union sought deletion. As already held, neither the Certifying Officer nor the Appellate Authority can make provisions which are not provided either under the schedule to the Act or under the model Standing Orders framed by the Government. The subject of transfer does not find a place either in the schedule to the IESO Act or in the model Standing Orders. Therefore, the clause relating to transfer cannot be introduced in the certified Standing Order by both authorities and Standing Order no.23 should be deleted.

30. Likewise, Standing Order no.30 provides for termination of service on the ground of loss of confidence. This is a vague term which is not well defined and likely to be misused by the employer. Dealing with the concept of loss of confidence, the Supreme Court, in L. Michael & another vs M/S. Johnson Pumps India Ltd. [1975(1) SCC 574], held as follows:-

"To hit below the belt by trading legal phrases is not Industrial Law. We are constrained to express ourselves unmistakably lest industrial unrest induced by wrongful terminations based on convenient loss of confidence should be generated."

31. Further, when a clause relating to compulsory retirement was sought to be introduced in the Standing Orders by the State-owned Transport Corporation and accepted by the authorities, a Division Bench of this Court in Pallavan Transport Corporation Ltd Vs. Appellate Authority Under the Industrial Employment Standing Orders Act, Madras and Others [1979 (2) LLJ 262 Mad.] rejected the plea of the employer and held as follows:-

"It cannot be denied that Corporation came forward to include compulsory retirement as one of the punishments for misconduct, If it considers that persons who are unfit and persons who cannot bring about efficiency in its organization require to be weeded out under the existing standing orders, provisions having been made for removal of unfit persons either by removal from service or discharge or even dismissal, as the case may be, it is not necessary for the Corporation to have the power of compulsory retirement. There is considerable force in the objection taken by the respondents that even for legitimate trade union activities, the Corporation may resort to compulsory retirement furnishing no reasons whatsoever for termination of service. After all, in respect of industrial undertakings, the paramount consideration is industrial peace and if power is to be given to the organizations, it is to result in Arbitrary orders. The Certifying Officer has the necessary jurisdiction to go into the fairness and reasonableness of the proposal and in this case, it cannot be said that respondents 1 and 2 have not taken into account relevant factors in refusing to incorporate a provision for compulsory retirement. In approaching this aspect of compulsory retirement, it is necessary to bear in mind its origin and purpose for which it is retained in respect of the Government servants. The passage above extracted clearly shows that, this power is exercised not as a punishment, but

for the purpose of infusing efficiency in services. So far as Corporation is concerned, if it finds, that any of its employee is unfit for discharging the duties, it has the necessary power of removal from service or discharge. Therefore, there is no need for incorporating an additional arrangement by way of compulsory retirement."

32. The trade union also objected to Standing Order 21 relating to promotion and 31 regarding essential service. Since these two Standing Orders only dealt with the service conditions of employees, no objections can be raised against those clauses. With reference to standing order 2(d) relating to probationer, the certified Standing Order provides for an ordinary period of six months for probation and it was liable to be extended. But, it does not provide for maximum period for extending the probation. This is a valid claim raised by the union and therefore, the said clause must be read so that an extended probation can only be subject to a maximum period another six months only.

33. Standing Order 19 provides that in case, a permanent worker leaves service without notice, he shall be liable to be sued for damages. This Standing Order is unheard of in industrial jurisprudence. If the management has the right under any law that can be done in a civil court but that cannot be included in the Standing Orders. Therefore, Standing Order 19 should be deleted.

34. Similarly, Standing Order 20 provides for various items of misconduct. The union raised objections regarding item nos.3, 18 , 23 27, 29,30, 38, 44, 50,52,57 and 58. These objections are not acceptable since they only relate to the description of misconduct and ultimately, only when an action is taken under those items, the validity of such action can be challenged before the labour court. The Labour Court has power under section 11A of the Industrial Disputes Act to interfere even with the quantum of punishment. Therefore, the apprehension of the union is unwarranted and hence, the objections are rejected.

35. Standing Order no.20(3) (a) is regarding procedure and no serious objection can be raised.

36. Standing Order no.20(4) deals with subsistence allowance. Such a clause is unnecessary in the light of section 10A of the IESO Act and also the special provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Therefore, there need not be any clause relating to payment of subsistence allowance and Standing Order 20(4) can be deleted.

37. The objection under Standing Order 2(2)(b) is regarding sending a person for medical examination by the company doctor or any doctor authorised by the company. The objection by the union was that since the workmen are covered by ESI, such a clause is unnecessary. As rightly contended by the management, there may be workers who may be outside the ESI. In such circumstances, such a clause is required and hence, Standing Order 2(2) (b) is retained.

In the result, both the writ petitions stand disposed of on the above terms. The Joint Commissioner of Labour, Madurai - 20, [Certifying authority under Tamil Nadu Industrial Establishment (Standing orders) Act, 1946], on receipt of this order, shall prepare a certified Standing Order, after taking note of the order passed by this court and issue a certified Standing Order and give it to the trade unions and the management. This exercise shall be undertaken

within three months from the date of receipt of a copy of this order. Connected W.P.M.P.is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Joint Commissioner of Labour
Madurai-20.

2. The Presiding Officer
Labour Court
Tirunelveli.

3 The Section officer
VR, Section, High Court, Madras

+1cc to Mr.K.S. Narayanan, Advocate, S.R.No.4211
+1cc to Mr.T.S. Gopalan & Co, Advocate, S.R.No.4154

gr(CO)
md(30/01/2017)

W.P. Nos.38988 of 2002 and 6240 of 2003