

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.24581 of 2017

The Management of Sungwoo Stampings Pvt.Ltd.,
(Formerly Gestamp Sungwoo Hi Tech (Chennai) Pvt.Ltd.)
488/2, Mannur Village, Valarapuram
Sriperumbudur
Kancheepuram District 602 105
rep.by its Assistant General Manager-HR ... Petitioner

-vs-

1. The Industrial Tribunal
rep.by its Presiding Officer
City Civil Court Buildings
Chennai 600 104
2. Puthiya Jananayaga Thozhilalar Munnani
Regn.No.43/TVR rep.by its Secretary
110/63, N.S.K.Salai, Kodambakkam
Chennai 600 024 ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the Order dated 21.08.2017 passed by the first respondent in IA 219 of 2017 in IA 178 & 179 of 2017 in ID No.10 of 2017 and quash the same as being illegal, contrary to law and perverse and consequently issue a direction to the first respondent to jointly adjudicate and decide the IA 178 & 179 of 2017 in ID No.10 of 2017 along with AP No.63 of 2017 etc., preferred by the petitioner.

For Petitioner :: Mr.C.K.Chandrasekhar
For Respondents:: Mr.Balan Haridas for R2
R1-Tribunal

ORDER

The petitioner, the Management of Sungwoo Stampings Private Limited, Sriperumbudur, Kancheepuram District, is a general engineering and fabrication industry doing the work of manufacturing of car door and car shell with 180 permanent

employees working in the Press Shop and about 96 permanent employees working in the Door Frame section. This apart, there are about 1200 contract employees. While so, the employees union decided to raise a dispute regarding the charter of demands before the Assistant Commissioner of Labour (Conciliation-I), Irungattukottai, Sriperumbudur on 23.5.2013. When the Conciliation Officer took up the dispute on file, the employees raised additional charter of demands on 3.7.2013, which ultimately ended in failure. Thereafter, the Government of Tamil Nadu issued G.O.(D) No.369, Labour and Employment Department dated 20.8.2014 referring 9 demands for adjudication before the Industrial Tribunal in I.D.No.30 of 2014 and the same is pending. However, the Government declined to refer the rest of the 21 demands vide G.O.(D) No.370 dated 20.8.2014. Aggrieved thereby, the second respondent employees union challenging the G.O.(D) No.370 dated 20.8.2014 filed W.P.No.26553 of 2014 before this Court, which was allowed by this Court by the common order dated 12.1.2016 passed in W.P.Nos.19138 of 2013 & 26553 of 2014. The learned single Judge, by order dated 12.1.2016, while setting aside the G.O.(D) No.370, Labour and Employment (A2) Department dated 20.8.2014, directed the Government to refer the demands raised by the second respondent union for adjudication before the competent Industrial Tribunal with a further direction to the management, the petitioner herein to maintain status quo as ordered by the Court in its order dated 12.7.2013. Being aggrieved thereby, the petitioner management filed W.A.Nos.370 & 371 of 2016 against the order dated 12.1.2016 passed by the learned single Judge. The said writ appeals were also disposed of by order dated 24.11.2016 with certain modification holding that till the reference is made, the employer management should not take any coercive step and the respondent union can move the Industrial Tribunal for interim order. When 87 employees are parties before the Tribunal, out of 87 employees, the petitioner management had dismissed 43 employees, who have also raised an industrial dispute questioning the non-employment and the same is also pending on the file of the II Additional Labour Court, Chennai. Again the petitioner management terminated 9 employees and also moved Approval Petition Nos.25 to 33 of 2016 before the Industrial Tribunal, Chennai.

2. Mr.C.K.Chandrasekhar, learned counsel for the petitioner management emphatically pleaded that when the order passed by the learned single Judge in W.P.Nos.19138 of 2013 & 26553 of 2014 dated 12.1.2016 directing the Government to refer the dispute for adjudication before the Industrial forum with a further direction to maintain status quo, was put to challenge in W.A.Nos.370 & 371 of 2016, the Hon'ble Division Bench, while disposing of the said writ appeals by order dated 24.11.2016, was of the view that the extension of protection not to take any

coercive action is beyond jurisdiction of the High Court under Article 226, however, till such reference is made as ordered by the learned single Judge, the management shall not take any coercive step. As per the direction given by the Division Bench, it is pleaded, the Government made a reference on 30.5.2017 in G.O.(D) No.306, Labour and Employment (A2) Department. Only thereafter, the petitioner management terminated the services of 34 employees on 1.6.2017 and also filed Approval Petition Nos.63 to 98 of 2017 and that the second respondent union filed I.A.Nos.178 & 179 of 2017 in I.D.No.10 of 2017 on 5.6.2017 as a precautionary measure to avoid any legal violations under Section 33 of the Industrial Disputes Act for an interim award. Now the orders of termination had taken effect. At this juncture, the petitioner management has rightly filed I.A.No.219 of 2017 specifically pleading for a joint hearing of both the I.A.Nos.178 & 179 of 2017 filed by the union along with the Approval Petition Nos.63 to 98 of 2017 filed by the management, on the ground that both the approval petitions and the interlocutory applications are related to termination and the cause of action has arisen from the outcome of the order passed by the Division Bench in W.A.Nos.370 & 371 of 2016; that all the applications are interlinked with Section 33 of the Industrial Disputes Act; that the documents to be relied by both the parties; that the witnesses in both the cases are one and the same; that the joint trial would avoid separate overlapping evidence being taken in the two cases and the said joint exercise would also save the time of the Tribunal, the Industrial Tribunal has wrongly dismissed the said application making the approval petitions infructuous without any hearing. Therefore, the impugned order is liable to be set aside and a direction should be issued to the Industrial Tribunal to take up all the applications together for a common trial, he pleaded.

3. Mr.Balan Haridas, learned counsel for the second respondent union submitted that the prayer made for a joint trial by the petitioner management is an innovative drama adopted to protract the matter. When the matter was posted for enquiry, on the side of the respondent employees, oral arguments were advanced and thereafter the management also examined M.W.1 and also marked their documents. Subsequently, M.W.1 was also cross examined. Only on the request of the petitioner management, the matter was posted for further evidence. The said approach and conduct of the petitioner management would show that they have given up the plea for joint trial. After the cross examination of M.W.1, the filing of the I.A.No.219 of 2017 for joint trial is only calculated to stall the proceedings. When the law is well settled that during the pendency of the dispute, the petitioner management ought to have sought prior permission to terminate the employees, which has not been done, as a result the orders of termination would

become void ab initio, realising this legal position, the petitioner is now attempting to stall the decision in the application filed by the respondent union seeking an interim award. The learned counsel further submitted that no purpose would be served in a joint trial, as the very approval petitions are unsustainable in law, inasmuch as the cause of action for filing the interlocutory application seeking an interim award under Section 10(4) is with regard to the permanency of workmen, whereas the cause of action for filing the approval petitions under Section 33(2)(b) is with regard to the dismissal or discharge. Moreover, the consideration of the approval petitions is no way connected with the main industrial dispute. Therefore, the Tribunal has rightly held that there cannot be a joint trial of the interlocutory applications with the approval petitions. Concluding his arguments, he also submitted that the allegation that the evidence and documents in the application for interim award and the approval petitions are one and the same, is far from acceptance, because the issues pending between the parties are different that require independent and separate adjudication. Contrary thereto, if the prayer of the petitioner management for clubbing of the issues in a joint trial, is accepted, that would only result in delay in deciding the dispute.

4. Heard the learned counsel for the parties.

5. At the outset, it may be mentioned that the Hon'ble Division Bench, by order dated 24.11.2016, while disposing of W.A.Nos.370 & 371 of 2016, has made it clear that the employer management shall not take any coercive step till the reference is made as ordered by the learned single Judge in his order dated 12.1.2016 passed in W.P.Nos.19138 of 2013 & 26553 of 2014. In the light of the order passed by the Division Bench, the reference was made by the Government in G.O.(D) No.306, Labour and Employment (A2) Department dated 30.5.2017 with regard to the permanent status of the employees. When the issue relating to permanent status of the employees has been referred to by the Government to the Industrial Tribunal, on the ground that the probation of the employees were allowed to continue only due to the order of the High Court in W.P.Nos.19138 of 2013 & 26553 of 2014 dated 12.1.2016, however, after the reference is made, as per the Division Bench order, the petitioner management is entitled to discontinue the services of the probationers as per the terms and conditions of the appointment order vide clause 03.0(a), is a matter for adjudication by the Industrial Tribunal in the pending dispute. Now the Puthiya Jananayaga Thozhilalar Munnani, the second respondent herein has filed I.A.Nos.178 & 179 of 2017 in I.D.No.10 of 2017 seeking an interim award by restoring the services of 32 employees directing the management to maintain status quo as on 30.5.2017 and thereupon further

asking for an order to restrain the petitioner management herein from altering the service conditions of the employees. At the sametime, the writ petitioner management herein terminating the services of 34 employees on 1.6.2017 filed Approval Petition Nos.63 to 98 of 2017, hence, the petitioner management has also filed I.A.No.219 of 2017 praying for a joint hearing of both the I.A.Nos.178 & 179 of 2017 filed by the union along with the Approval Petition Nos.63 to 98 of 2017 filed by the management, on the ground that both the approval petitions and the interlocutory applications are related to termination and the cause of action has arisen from the outcome of the order passed by the Division Bench in W.A.Nos.370 & 371 of 2016. One another reason found in the I.A.No.219 of 2017 for joint hearing shows that all the applications are interlinked with Section 33 of the Industrial Disputes Act. In addition thereto, the documents to be relied upon by both the parties and the witnesses in both the cases are one and the same. Therefore, I do not find any substance either in the objection raised by the union not to have a joint hearing of all the applications or the reasons cited in the impugned order refusing the prayer of the petitioner management to have a joint hearing of both the I.A.Nos.178 & 179 of 2017 filed by the union along with the Approval Petition Nos.63 to 98 of 2017 filed by the management. When the joint trial would avoid separate overlapping evidence to be taken in the two cases and the joint exercise by both the parties would also save not only their time, but also the precious time of the Tribunal, it is not known why the Industrial Tribunal has wrongly dismissed the I.A.No.219 of 2017. Moreover, it is a well settled legal position that the Court has inherent power *ex debito justitiae* to consolidate the suits/petitions, where it is in the ends of justice to do so to avoid needless expenses and inconvenience to parties. In deciding whether two or more suits or claims should be consolidated or not, the whole question is whether or not, in the long run, it will be expeditious and advantageous to all concerned to have the two suits tried together as analogous cases. Where it appears that there is sufficient unity or similarity in the matter in issue in the suits or with the determination of the suits rests mainly on the common question, it is convenient to have them tried as analogous cases. (See *Multivahuji v. Kalindivahuji & others*, AIR 1994 Guj.42)

6. In the case on hand, (a) when the parties are same in both the I.A.Nos.178 & 179 of 2017 and the Approval Petition Nos.63 to 98 of 2017; (b) that the matter in issue in the later approval petitions is directly and substantially the same; and (c) that both the applications are pending in the same Tribunal, in a bid to avoid multiplicity of proceedings and delay, I do not find any reason to refuse the joint hearing of all the applications. As mentioned above, the joint hearing of the

applications would benefit not only the petitioner and the second respondent, but also the Tribunal and the higher Courts if they are appealed. Therefore, for all these reasons, the impugned order is set aside. Since both the parties are ready, the first respondent-Industrial Tribunal is hereby directed to take up the interlocutory applications filed by the union and the approval petitions filed by the management together and dispose of the same on their own merit and in accordance with law, within a period of three months from the date of receipt of a copy of this order. Needless to mention that both the parties shall co-operate for the expeditious disposal of the cases by the Tribunal. With this direction, the writ petition stands allowed. Consequently, W.M.P.No.25942 of 2017 is closed. No costs.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

ss

To

1. The Presiding Officer
Industrial Tribunal
City Civil Court Buildings
Chennai 600 104

+lcc to Mr.Balan Haridas, Advocate SR.No.34533

+lcc to Mr.C.K.Chandrasekhar, Advocate SR.No.34439

सत्यमेव जयते

W.P.No.24581 of 2017

KAN (CO)
GN (06/06/2018)

WEB COPY