

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1292 of 2013
and
M.P.No.1 of 2013

Sri Dorairaj Spintex,
rep.by its Managing Director,
S.F.No.141/2A, Karadi Kottam Village,
Palani, Dindigul District. Appellant

-vs-

1.The Assistant Commissioner of Labour,
Dindigul.

- 2.R.Chittibabu
- 3.S.Chandrasekar
- 4.P.Muruganantham
- 5.P.P.Muruganantham
- 6.M.Kumar
- 7.M.Ravikumar
- 8.S.Manokaran
- 9.P.Krishnamurthy
- 10.P.Krishnan
- 11.S.Ramalingam
- 12.R.Boopathy
- 13.A.Mariappan
- 14.D.Sakthivel
- 15.D.Muruganantham
- 16.V.Thangavel
- 17.T.Rameshkumar
- 18.A.Saravanan
- 19.C.Magendran
- 20.G.Renganathan
- 21.M.Selvaraj
- 22.R.Marimuthu
- 23.R.Ramesh Kumar
- 24.R.Krishnamurthy
- 25.M.Mariammal
- 26.K.Sathiavani
- 27.K.Senthilkumar
- 28.N.Balakrishnan
- 29.P.Krishnasamy
- 30.T.Karthigeyan

31.P.Vijayakumar
32.S.Karthik

Respondents 2 to 32, represented
by the Secretary,
Dindigul Panchalai Marumalarchi
Tholilalar Munnai,
No.27-C, Spencer Compound,
Dindigul-624 003.

.. Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.12971 of 2003 dated 05.03.2013.

WP.No.12971/2003:Writ petition is filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the records relating to the order made by the 1st respondent in No.A1/7547/02 dated 31.3.2003 received by the petitioner on 15.4.2003, quash the same and direct the 1st respondent to grant approval as sought for by the petitioner under section 33(2) (b) of the industrial disputes Act, 1947.

For Appellant :: Mr.S.Jayaraman

For Respondents:: Mr.N.G.R.Prasad for
M/s.Row & Reddy for R2 to R32

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The appellant is a Spinning Mill having their unit at Karadikottam Village, Papanpatti Post, Palani. The appellant has a certified standing orders to govern the service conditions of its workmen. While so, 47 workmen of the appellant-Unit went on strike illegally and caused extensive damage to the properties of the appellant and thereby committed an act of misconduct punishable under the Certified Standing Orders. Therefore, the appellant Management placed all the 47 workmen under suspension followed by a Charge Memo dated 20.8.2002. The workmen were afforded an opportunity to submit their explanation. Being not satisfied with the explanation submitted by the workmen, a domestic enquiry was conducted in which all the workmen, including the respondents 2 to 32 herein, participated. After due enquiry, the Enquiry Officer held that the charges in respect of the workmen stood proved and thereafter, the management dismissed the respondents 2 to 32 from the services of the appellant-Unit by order dated 16.11.2002. Aggrieved over the same, the respondents 2 to 32 represented by their Trade Union, namely, the Dindigul Panchalai Marumalarchi Thozilalar Munanani rep. by its Secretary raised a dispute before the 1st respondent under Section 2(k) of the Industrial Disputes Act and the same was forwarded to the appellant by the 1st respondent by proceedings dated 15.7.2002 in which 4 demands were raised

regarding promotion, payment of salary on the 7th of every month, providing good drinking water and providing protective clothing to women workmen. The 1st respondent further called upon the appellant to appear before him on 22.7.2002. Thereafter, on 28.9.2002, the appellant Management submitted a reply to the demands made by the Trade Union, stating that seniority was being followed in terms of the conciliation which took place before him. According to the appellant, the appellant has followed the procedure contemplated under Section 33(2)(b) of the Industrial Disputes Act while initiating disciplinary proceedings against the respondents 2 to 32 and paid wages for one month by means of Demand Drafts and the respondents 2 to 32 are no longer in the employment of the appellant since 16.11.2002. The nature of misconduct for which the workmen were removed has absolutely no connection with the dispute raised by the workmen under Section 2(k) of the Industrial Disputes Act, according to the appellant. The appellant filed an application under Section 33(2)(b) of the Industrial Disputes Act before the 1st respondent on 16.11.2002 for approval of the said order of dismissal. But the 1st respondent by order dated 31.3.2003 rejected the same. Hence a writ petition in W.P.No.12971 of 2003 was filed by the appellant Management before this Court and this Court dismissed the said writ petition by order dated 05.03.2013. Hence this appeal by the Management.

2.The learned counsel for the appellant Management has submitted that as per Section 33(2)(b) of the Industrial Disputes Act, a detailed order has been passed by the appellant Management only after due enquiry. He also submitted that, as stated by the 1st respondent in his order, before passing the dismissal order, prior permission under Section 33(1)(b) of the Industrial Disputes Act is not necessary and hence the learned single Judge has erred in observing that when once Conciliation Proceedings is pending before the competent authority viz., the Conciliation Officer, even though the dismissal order is for some other reason, still it requires approval of the Government.

3.The learned counsel for the respondents 2 to 32 has submitted that before dismissing the workmen, the appellant management has to get prior permission from the 1st respondent under Section (33)(1)(b) of the Industrial Disputes Act. He also submitted that during the strike period, when the matter has been seized of by the 1st respondent and the settlement proceedings were going on, the appellant Management has dismissed totally 47 workmen including the respondents 2 to 32, which is illegal. He would further submit that out of the 47 workmen, the dismissal against 16 persons have already been revoked and they have been reinstated in service and the remaining 31 who are the respondents 2 to 32 herein, have been left in lurch. Stating so, he prayed for dismissing this writ petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. The argument advanced by the learned counsel for the appellant Management is that they applied for permission before the first respondent for approval of the order of dismissal and the same was rejected. The stand of the Management is that the dismissal of the workmen from service has nothing to do with the conciliation proceedings pending before the Conciliation Officer, since the dismissal order is for some other reason. In this connection, the learned single Judge has taken a stand that when once Conciliation Proceedings is pending before the competent authority viz., the Conciliation Officer, even though the dismissal order is for some other reason, still it requires approval of the Government. We are in full agreement with the stand taken by the learned single Judge in this respect.

6. However, it appears that way back in the year 2009 itself, the appellant-Unit was closed. The fact remains that these 31 workmen have been dismissed from service in the year 2004 without obtaining prior permission from the competent authority. Further, it appears that no wages have been paid under Section 17-B of the Industrial Disputes Act. It is also seen that gratuity has been paid to the workmen. In these circumstances, this Court deems it fit to pass the following order:

(a) The appellant-Management shall pay 50% of back wages to the respondents 2 to 32 herein, for the period from the date of their dismissal till the date of closure of the appellant-Unit.

(b) The appellant-Management shall calculate and pay closure compensation to the respondents 2 to 32 herein, in accordance with law.

(c) The amounts ordered to be paid as above, shall be paid within a period of three months from the date of receipt of a copy of this judgment, and the same shall carry interest at the rate of 6% per annum which shall be calculated from the date of closure of the appellant-Unit till the date of payment.

7. With the above directions, the writ appeal stands disposed of. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

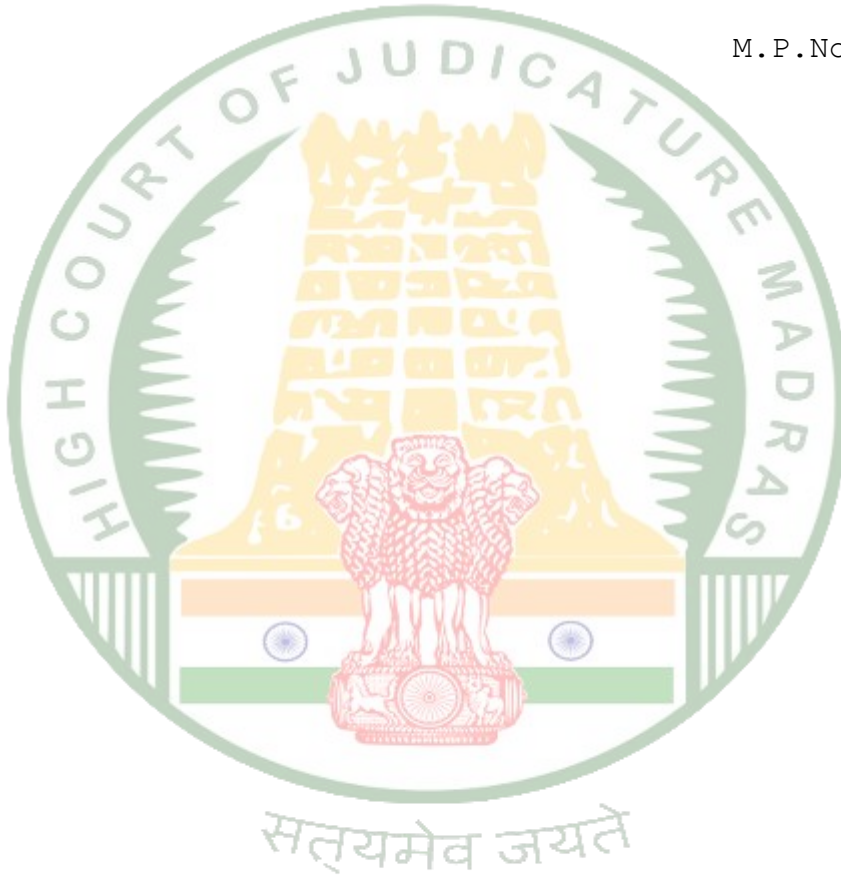
To

The Assistant Commissioner of Labour,
Dindigul.

+1cc to M/s.Row & Reddy, Advocate Sr.No.19525
+1cc to Mr.S.Jayaraman, Advocate Sr.No.19131

AD(CO)
sm:9.4.2018

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and
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