

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM

THE HON'BLE DR. JUSTICE S.VIMALA

W.P.Nos.12518 to 12527 of 2017, 12481 to 12492 of 2017
and 12535 to 12544 of 2017

and

W.M.P.Nos.13310 to 13319, 13324 to 13333, 13272 to 13283 of 2017

The Management,

M/s.Baer Shoes (India) Pvt. Ltd.,

SF No.90-93 Somalapuram Village Road,

Somalapuram Village,

Ambur 635 802.

..... Petitioner in all the W.Ps

versus

B.MALINI

... 1st RESPONDENT in
WP No.12518 of 2017

S.SENTHIL KUMAR

... WP No.12519 of 2017

I.B.KAMALAVENI

... WP No.12520 of 2017

N.ARUNPANDIYAN

... WP No.12521 of 2017

V.KALAIMATHI

... WP No.12522 of 2017

M.SHANKARI

... WP No.12523 of 2017

S.CHITRA

... WP No.12524 of 2017

R.MAGESHWARI

... WP No.12525 of 2017

D. JAGAN RAO

... WP No.12526 of 2017

A.RAMANI

... WP No.12527 of 2017

D.VADIVELU

... WP No.12481 of 2017

R.SARAVANAN

... WP No.12482 of 2017

R.AMUDHA

... WP No.12483 of 2017

M.JAYALAKSHMI

... WP No.12484 of 2017

R.USHA

... WP No.12485 of 2017

V.THIRUMATHI	... WP No.12486 of 2017
L.ALAMELU	... WP No.12487 of 2017
K.ASHA	... WP No.12488 of 2017
G.PARIMALA	... WP No.12489 of 2017
A.KALAIVANI	... WP No.12490 of 2017
B.MEGALA	... WP No.12491 of 2017
M.SUMATHI	... WP No.12492 of 2017
M.NIRMALA	... WP No.12535 of 2017
M.LATHA	... WP No.12536 of 2017
P.MENAGA	... WP No.12537 of 2017
S.GOVINDARAJ	... WP No.12538 of 2017
S.GNANAVEL	... WP No.12539 of 2017
R.MAYAN	... WP No.12540 of 2017
M.NITHYA	... WP No.12541 of 2017
M.PRASHANTH	... WP No.12542 of 2017
V.MANJULA	... WP No.12543 of 2017
N.KALAVATHI	... WP No.12544 of 2017

THE PRESIDING OFFICER,
PRINCIPAL LABOUR COURT,
VELLORE, VELLORE DISTRICT

सत्यमेव जयते

.....2nd Respondent in all the W.Ps

These Writ Petitions are filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the case made in

i) I.A.No. 149/2016 in I.D.No. 32/2016 dated 23.01.2017 (WP No.12518 of 2017)

ii) in I.A.No. 150/2016 in I.D.No. 33/2016 dated 23.01.2017 (WP No.12519 of 2017)

iii) in I.A.No. 151/2016 in I.D.No. 35/2016 dated 23.01.2017 (WP No.12520 of 2017)

iv) I.A.No. 152/2016 in I.D.No. 38/2016 dated 23.01.2017 (WP No.12521 of 2017)

v) I.A.No. 153/2016 in I.D.No. 39/2016 dated 23.01.2017 (WP No.12522 of 2017)

vi) I.A.No. 154/2016 in I.D.No. 40/2016 dated 23.01.2017 (WP No.12523 of 2017)

VII) I.A.No. 155/2016 in I.D.No. 41/2016 dated 23.01.2017 (WP No.12524 of 2017)

VIII) I.A.No. 156/2016 in I.D.No. 42/2016 dated 23.01.2017 (WP No.12525 of 2017)

IX) I.A.No. 157/2016 in I.D.No. 43/2016 dated 23.01.2017 (WP No.12526 of 2017)

X) I.A.No. 158/2016 in I.D.No. 44/2016 dated 23.01.2017 (WP No.12527 of 2017)

XI) I.A.No. 137/2016 in I.D.No. 19/2016 dated 23.01.2017 (WP No.12481 of 2017)

XII) I.A.No. 138/2016 in I.D.No. 21/2016 dated 23.01.2017 (WP No.12482 of 2017)

XIII) I.A.No. 139/2016 in I.D.No. 22/2016 dated 23.01.2017 (WP No.12483 of 2017)

XIV) I.A.No. 140/2016 in I.D.No. 23/2016 dated 23.01.2017 (WP No.12484 of 2017)

XV) I.A.No. 141/2016 in I.D.No. 24/2016 dated 23.01.2017 (WP No.12485 of 2017)

XVI) I.A.No. 142/2016 in I.D.No. 25/2016 dated 23.01.2017 (WP No.12486 of 2017)

XVII) I.A.No. 143/2016 in I.D.No. 26/2016 dated 23.01.2017 (WP No.12487 of 2017)

XVIII) I.A.No. 144/2016 in I.D.No. 27/2016 dated 23.01.2017 WP No.12488 of 2017

XIX) I.A.No. 146/2016 in I.D.No. 29/2016 dated 23.01.2017 WP No.12489 of 2017

XX) I.A.No. 147/2016 in I.D.No. 30/2016 dated 23.01.2017 (WP No.12490 of 2017)

XXI) I.A.No. 148/2016 in I.D.No. 31/2016 dated 23.01.2017 (WP No.12491 of 2017)

XXII) I.A.No. 145/2016 in I.D.No. 28/2016 dated 23.01.2017 (WP No.12492 of 2017)

XXIII) I.A. No.159/2016 in I.D. No.46/2016 dated 23.1.2017 (WP No.12535 of 2017)

XXIV) I.A. No.160/2016 in I.D. No.47/2016 dated 23.1.2017 (WP No.12536 of 2017)

XXV) I.A. No.161/2016 in I.D. No.48/2016 dated 23.1.2017 (WP No.12537 of 2017)

XXVI) I.A. No.162/2016 in I.D. No.49/2016 dated 23.1.2017 (WP No.12538 of 2017)

XXVII) I.A. No.163/2016 in I.D. No.52/2016 dated 23.1.2017 (WP No.12539 of 2017)

XXVIII) I.A. No.165/2016 in I.D. No.54/2016 dated 23.1.2017 (WP No.12540 of 2017)

XXIX) I.A. No.166/2016 in I.D. No.55/2016 dated 23.1.2017 (WP No.12541 of 2017)

XXX) I.A. No.167/2016 in I.D. No.56/2016 dated 23.1.2017 (WP No.12542 of 2017)

XXXI) I.A. No.168/2016 in I.D. No.57/2016 dated 23.1.2017 on the file of the (WP No.12543 of 2017)

XXXII) I.A. No.169/2016 in I.D. No.59/2016 dated 23.1.2017 on the file of the (WP No.12544 of 2017)

respectively on the file of the 2nd respondent /The Presiding Officer, Principal Labour Court, Vellore, Vellore District and quash the same.

For petitioner : Mrs.S.Thamizharasi

For Respondent : Mr.E.Srinivasan for R1

COMMON ORDER

Without the Conciliation Officer sending a failure report under Section 2A of the Act, Industrial Dispute raised is not maintainable, is the issue raised by the Management.

As the issues involved in these writ petitions are common, all the writ petitions are taken up together and a common order is passed.

2. The contention of the learned counsel for the Management is that as contemplated under Rule 25B of the Industrial Disputes Rules 1958, copy of the failure report received from the Conciliation Officer is mandatory and that report has to be filed along with the petition raising industrial dispute and as the fundamental requirement is not complied with in the dispute raised, the Industrial Dispute is not maintainable.

3. The contention of the learned counsel for the workmen is that when the Central Government has amended the Labour Act inserting Section 2A in the Industrial Disputes Act, it would have an overriding effect over Rule 25B of the Industrial Disputes Rules and therefore, the Industrial Dispute is maintainable.

4. This issue has been directly answered by the Judgment of the Delhi High Court reported in 2015 2 LLJ page 491 (Delhi) Mohd Arif vs. Cardio Products Corporation and other and it has been held that the industrial disputes raised without resorting to conciliation by invoking the amended provisions of Section 2A as amended by Act 24 of 2010 is maintainable.

The relevant observation reads as under:

"14. Further if a repugnancy arises on the basis of the aforementioned conditions being satisfied it is settled that the provisions of the Central Act shall prevail over the State Act. The Apex Court in "Govt. of A.P. And Another v. J.B. Educational Society And Another", (2005) 3 SCC 212 in this context held:

"10. There is no doubt that both Parliament and the State legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by the Parliament and the State legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non-obstante clause in Clause (1) of Article 246, the Parliamentary legislation would prevail notwithstanding the exclusive power of the

State legislature to make a law with respect to a matter enumerated in the State List.

11. With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

12. Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstante clause in Article 246(1), in the second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's assent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation."

15. In the present case, the repugnancy between Section 2A and 10(4A) ID Act satisfies the three conditions laid down in 'Karunanidhi v. Union of India' (Supra) and therefore applying the principles enumerated under Article 254 of the Constitution in the light of Govt. of A.P. v. J.B. Educational Society" (Supra), it is beyond any reasonable uncertainty that Section 2A ID Act (introduced by Central Amendment Act 24 of 2010) shall prevail over Section 10(4A) ID Act (introduced by State Amendment Act).

16. Further Section 2A ID Act begins as, "(2) Notwithstanding anything contained in Section 10....." which implies that this Section has an overriding effect not only over the provisions of Section 10 ID Act but also its State amendments. I am of the view that the Central Amendment Act, 2010 was passed while keeping in perspective the amendments made to Section 10 and with the use of the aforementioned words it seeks to achieve an overriding effect over the amendments made to Section 10 of the ID Act.

5. In the light of the decision considered above, the order passed by the Labour Court, holding, the industrial dispute raised pursuant to the amended provision of Section 2A introduced by Act 24 of 2010 is maintainable, is upheld. Consequently, all the writ petitions challenging the orders of Labour Court are liable to be dismissed and dismissed accordingly.

6. In the result, all the writ petitions are dismissed. The Labour Court orders are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Presiding officer
The Principal Labour Court
Vellore, Vellore District.

+1 CC to M/s.S. Thamizharasi, Advocate sr 71619.

+1 CC to Mr.E.Srinivasan, Advocate sr 71052

W.P.Nos.12518 to 12527 of 2017,
12481 to 12492 of 2017
and 12535 to 12544 of 2017

BR/RSI (CO)
SP(07/01/2019)

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