

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.02.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.NO.366 OF 2019

AND

WMP NO.371 OF 2019

1.M/s.Carborundum Universal Ltd.,
(Refractories and Prodorite)
Super Refractories Division,
rep.by its Executive Vice-President

2.M/s.Carborundum Universal Ltd.,
Super Refractories Division,
rep.by its Managing Director ...Petitioners

Vs.

1.The Special Joint Commissioner of Labour,
Commissionarate of Labour,
Tamil Nadu Labour Welfare Board Building,
DMS Compound, Teynampet,
Chennai-600 006

2.Mr.R.K.Murugan ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records and quash the order dated 05.03.2018 in TNSE-1/I.A.6/2016 on the file of the 1st respondent, the Special Joint Commissioner of Labour, Commissionarate of Labour, Chennai-600 006.

For Petitioners : Mr.S.Ravi

For Respondents : Mr.J.Ramesh,A.G.P.

For R1

M/s.Krishnasamy for R2

ORDER

This writ petition is filed against the order passed by the first respondent dismissing the I.A. filed by the petitioner Management resisting the appeal filed by the second respondent/employee on the ground that the second respondent was employed in a Factory and therefore, the provisions of the Tamil Nadu Shops and Establishments Act, 1947 will not apply. The first respondent, who is a constituted authority under the Shops and Establishments Act, 1947, has dismissed the application filed by the Management by a non-speaking order without consideration of the legal objection raised by the Management. The non-speaking order dated 05.03.2018 is impugned in the present writ petition.

2.Mr.S.Ravi, the learned counsel appearing for the petitioner Management would submit that although it is a fact that the legal objection has been raised at the beginning of the proceeding before the first respondent, the first respondent, for some reason, has observed that the issue was raised at the far end of the case and therefore, has proceeded to dispose of the application without dealing with the objection raised by the petitioner Management. Therefore, the learned counsel would submit that the first respondent may be directed to frame this issue as a preliminary issue, as according to the learned counsel this Court has passed many orders holding that the person employed in the Factory will not come under the provisions of the Shops and Establishments Act, 1947 and the same shall not be applicable to the Factory employees.

3.The learned counsel appearing for the second respondent/employee would submit that the application filed by the petitioner Management was found to be without merit and therefore, the same was dismissed by the authority and therefore, the order passed by the first respondent is not liable to be interfered with by this Court. According to the learned counsel for the second respondent/employee the Management is only attempting to drag the proceedings by raising such objections.

4.This Court has considered the submissions of the learned counsel appearing for the parties.

5.When the jurisdiction of the authority himself is questioned by the Management stating that the second respondent was employed in the Factory belonging to the Management and as such, the provisions of the Tamil Nadu Shops and Establishments Act would not be applicable to such employees, it is imperative on the part of the first respondent to frame a preliminary issue

in regard to the maintainability of the appeal filed by the second respondent/employee. Unfortunately, instead of framing preliminary issue and dealing with the same, the first respondent has simply dismissed the I.A. filed by the Management by a non-speaking order.

6. When a serious objection has been raised on behalf of the petitioner Management about the maintainability of the appeal before the first respondent authority, it is incumbent upon the authority to deal with such issue, since such issue goes to the root of the matter. Unfortunately, the authority has chosen to brush aside the same in a casual manner and dismissed the I.A. filed by the petitioner Management. The order impugned plainly suffers from bereft of any reasons for consideration.

7. In view of the above, this Court is clearly of the view that the impugned order cannot be sustained in law and therefore, the same is set aside. The matter is remitted back to the first respondent, who is directed to frame preliminary issue in regard to the maintainability of the appeal filed by the second respondent/employee and deal with the same by affording opportunities to both the Management as well as the second respondent/employee and pass a reasoned order. The first respondent is directed to pass orders within a period of three months from the date of receipt of copy of this order.

In the result, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

msk

Sd/-

Assistant Registrar(J)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

WEB COPY

1. The Special Joint Commissioner of Labour,
Commissionerate of Labour,
Tamil Nadu Labour Welfare Board Building,
DMS Compound, Teynampet,
Chennai-600 006

+1cc to Mr.S.Krishnasamy, Advocate, S.R.No.16376

+1cc to M/s.Gupta & Ravi, Advocate, S.R.No.16386

W.P.No.366 of 2019

Kak (26/03/2019)



WEB COPY