

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.6.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.2609 of 2010
and
M.P.Nos.1 and 2 of 2010

P.Selvam

Appellant

Versus

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai 600 104.
2. The Management of Irizar-Tvs Ltd.,
(Formerly known as
Sundaram Industries Ltd.)
Pudukottai, Pudukottai District.
rep. by its President

Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this court dated 20.9.2010 in W.P.No.43844 of 2006.

Prayer in W.P.No.43844 of 2006: To call for the records of the 1st respondent in Approval Application No.10/2003 and quash his order dated 12.10.2006

For appellant : Mr.V.Prakash, Senior Counsel for
Mr.K.Sudalaikannu

For R2 : Mr.Anand Gopalan for
M/s.T.S.Gopalan & Co.

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The present writ appeal has been filed against the order dated 20.9.2010 passed by the learned Single Judge remanding the case back to the learned Labour Tribunal to decide the question as to whether the misconduct in question was related to the dispute or not.

2. The relevant portion of the order passed by the learned Single Judge is quoted below for ready reference:-

"13. As rightly pointed out by the learned counsel for the petitioner herein, given the admitted fact that the second respondent is a workman connected with the dispute in I.D.No.14/97, the further qualification to be tested herein would be as to whether the misconduct spoken to by the petitioner for taking action against the second respondent related to the dispute pending before the Tribunal. As already pointed out, the question as to whether the case falls under Section 33(1) or Section 33(2) of the Act depends on a finding to be arrived at by the Tribunal as to whether the action taken by the Management, in fact, related to the subject matter or misconduct connected with the dispute in the pending proceeding relating to the particular workman. A perusal of the award leaves no manner of doubt that the Tribunal had not dealt with this aspect of the matter to come to the conclusion that the petition filed by the petitioner seeking approval under Section 33(2)(b) has to fail. Thus, in the absence of any such finding, it is difficult to come to a definite conclusion as to whether the petition filed by the Management should be taken as falling under Section 33(1)(a) or Section 33(1)(b) of the Act.

14. The decision relied on by the learned senior counsel appearing for the workman reported in 1978 1 LLJ 322 - K.C.P.E. Association Madras Vs. Management of KCP Limited as regards the benefit of doubt to be given to workmen has no relevance, particularly when deciding the question as to the applicability of Section 33(1) and (2) of the Act is concerned. In the absence of any finding given as to whether the punishment related to a pending matter or that the altered service condition related to the dispute pending in I.D.No.14/97 to attract Section 33 (1) or (2) of the Act, I have no hesitation in setting aside the order of the Tribunal. Consequently, the Tribunal is hereby directed to grant opportunity to the parties to substantiate their respective stand as to whether the dismissal related to the misconduct

on the subject matter pending in I.D.No.14/97 or not and consider the issue within a period of six weeks from the date of receipt of a copy of this order and pass orders in accordance with law.

15. The writ petition is allowed. No costs."

3. Having heard the learned counsel for the appellant, we are of the considered opinion that against the simple remand order passed by the learned Single Judge directing the Labour Tribunal to decide the issue on hand, this intra-court Appeal has been filed and unnecessarily 9 years have been wasted in pursuing the present appeal. By now, the Labour Court could have decided the case in accordance with the direction of the learned Single Judge. We do not find any merit in the present writ appeal and is liable to be dismissed. Accordingly it is dismissed. No costs. The connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu, Chennai 600 104.
2. The President,
The Management of Irizar-Tvs Ltd.,
(Formerly known as
Sundaram Industries Ltd.)
Pudukottai, Pudukottai District.

+1 cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.47835

+1 cc to Mr.K.Sudalaikannu, Advocate, S.R.No.48863

W.A.No.2609 of 2010

VG-I (CO)
SSM(22/07/2019)