

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.02.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.Nos.5025 to 5028 of 2011

The Commandant,
The Madras Regimental Centre,
Wellington 643 231
The Nilgiris
Rep. by its Administrative
Battalion Commander

... Petitioner in all W.Ps

Vs.

1.The Central Government Industrial Tribunal-
cum-Labour Court, Chennai,
I Floor, 'B' Wing,
Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.

2.K.Chenthamarakshan ... Respondents in W.P.No.5025 of 2011

1.The Central Government Industrial Tribunal-
cum-Labour Court, Chennai,
I Floor, 'B' Wing,
Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.

2.R.Manikandan ... Respondents in W.P.No.5026 of 2011

1.The Central Government Industrial Tribunal-
cum-Labour Court, Chennai,
I Floor, 'B' Wing,
Shastri Bhavan,
26, Haddows Road, Chennai 600 006.

2.L.Maria Prakash ... Respondents in W.P.No.5027 of 2011

1.The Central Government Industrial Tribunal-
cum-Labour Court, Chennai,
I Floor, 'B' Wing,
Shastri Bhavan,
26, Haddows Road, Chennai 600 006.

2.V.Sudhakaran ... Respondents in W.P.No.5028 of 2011

Prayer in all W.Ps: Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent culminating in the impugned order dated 31.01.2011 passed in I.D.Nos.85, 86, 87 and 88 of 2009, quash the same.

For Petitioner in all W.Ps : Mr.C.A.Diwakar

For Respondents in

W.P.Nos.5025, 5026 & 5028 of 2011 : R1-Court

Mr.V.Parthiban for

M/s.Ayyar & Iyer for R2

For Respondents in

W.P.No.5027 of 2011 : R1-Tribunal

R2-No appearance

C O M M O N O R D E R

The present writ petitions have been filed against the order passed by the first respondent Industrial Tribunal in I.D.Nos.85, 86, 87 and 88 of 2009 dated 31.01.2011, rejecting the memo filed by the petitioner Management saying that the Industrial Dispute is not maintainable, since the petitioner is a Military establishment and does not fall within the meaning of the industry as contemplated under the provisions of Industrial Dispute Act. The learned Industrial Tribunal while dealing with the objections raised by the Management, has finally concluded as in paragraph No.9 of the order which reads as follows:-

"9. On a consideration of the materials on record it appears that there are disputed questions of fact and law to be decided after the parties have let in necessary evidence which they want to produce. Whether the petitioner is an employee under the respondent or M/s.Dependable Security Bureau is a matter to be decided only on the evidence to be let in. Therefore, it is only to be held that the ID is maintainable before this Tribunal and it is so found."

2. According to the Industrial Tribunal, whether the petitioner management is an industry or not and whether the respondent employees are the workmen or not under the provisions of the Industrial Disputes Act, has to be established by letting evidence and only on the basis of the evidence, the conclusion could be reached one way or the other in regard to the preliminary objections raised by the petitioner Management or in regard to the merits of the claim of the workmen concerned. As against the conclusion reached by the Industrial Tribunal as conveyed through its order dated 31.01.2011, the present writ petitions have been filed.

3. The learned counsel for the petitioner would submit that the petitioner Management is a defence establishment, by no stretch of the legal standard, it could be construed as industry inviting the industrial adjudication, in respect of the dispute raised by the employees employed by the establishment. Therefore, per se the petitioner management does not come within the ambit of the provisions of the Industrial Disputes Act. Therefore, the adjudication by the first respondent is without jurisdiction and the same has to be set aside.

4. According to the learned counsel for the petitioner Management, the very reference itself is bad and the Government has referred the dispute without taking note of the fact that the petitioner Management is a defence establishment and not an industry. In the said circumstances, the order passed by the first respondent/ Industrial Tribunal is unsustainable and therefore, the same is liable to be interfered even at this stage.

5. This Court is unable to appreciate as to how such contention is maintainable for the simple reason that the first respondent has only held that the objections raised by the petitioner Management has to be tested on the basis of the evidence and only on the basis of the evidence let in before the Tribunal, the conclusion could be arrived at whether the petitioner Management is an Industry or not or whether the termination of the employees is justified or not. Without facing the trial before the Industrial Tribunal, the petitioner Management has approached this Court and invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and successfully scuttled the process of industrial adjudication for almost eight years.

6. When the first respondent Industrial Tribunal has concluded that the issue could be considered on the basis of the evidence, instead of subjecting itself to the due process of law, the petitioner is before this Court, attempting to foreclose the further industrial adjudication on the issue that are triable before the Industrial Tribunal. In any event, this Court is of the view that no prejudice would be caused to the petitioner Management if the first respondent Industrial Tribunal is to proceed with the trial of the industrial adjudication and give its finding both on the preliminary objection raised by the petitioner Management as well as on the merits of the workmen's claim.

7. In view of the same, this Court is of the view that the writ petitions as they are, are premature and the same cannot be entertained any further. For the above said reasons, the writ petitions lack merits and the same have to be dismissed. The first respondent is directed to frame preliminary issue in

regard to the maintainability of the industrial dispute as against the petitioner Management and render a finding on the basis of the materials and evidence to be let in before it. In case, the first respondent is to give a finding that the dispute is maintainable as against the petitioner Management, it may proceed further to adjudicate the dispute on merits. Since the dispute is of the year 2009, the first respondent is directed to pass appropriate orders on the preliminary objections already raised on behalf of the petitioner, within a period of four months from the date of receipt of a copy of this order.

8. With the above direction, the writ petitions stand dismissed. No costs.

9. Registry is directed to send back the records to the first respondent Industrial Tribunal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsk

To

The Central Government Industrial Tribunal-
cum-Labour Judge, Chennai,
I Floor, 'B' Wing,
Shastri Bhavan,
26, Haddows Road,
Chennai 600 006.

+2ccs to Mr.C.A.Diwakar, Advocate, S.R.No.12632 and 12653

+2ccs to Mr.Ayyar & Iyer, Advocate, S.R.No.12653 and 12654

W.P.Nos.5025 to 5028 of 2011

rrs 26/03/2019

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