

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29857 to 29866 of 2013

and

MP.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, and 1 of 2013

The Management
Scotts Garments Limited,
S.F.No.536/5, Veerapandi Village & Post,
Trippur - 641 605,
Represented by its General Manager (Personnel)
...Petitioner in all W.Ps

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore. (R1 in all W.Ps)

K. Marimuthu ... R2 in W.P.Nos.29857/2013

S. Senguttuvan ... R2 in W.P.Nos.29858/2013

T. Kumar ... R2 in W.P.Nos.29859/2013

D.Ramesh ... R2 in W.P.Nos.29860/2013

G. Boominathan ... R2 in W.P.Nos.29861/2013

R. Nandagopal ... R2 in W.P.Nos.29862/2013

K. Raja ... R2 in W.P.Nos.29863/2013

S. Shanmugam ... R2 in W.P.Nos.29864/2013

P.S. Senthil Kumar ... R2 in W.P.Nos.29865/2013

J. Paramesh ... R2 in W.P.Nos.29866/2013

PRAYER in W.P.Nos.29857 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ, order or directions, calling for the award of the first respondent made

in ID.No.117, 116, 115, 114, 113, 112, 109, 111, 110 & 108 of 2012 dated 30.01.2013 and quash the same.

For Petitioner : Mr.Silambanan,
Senior Counsel for
M/s. Profex Associates all Wps.

For Respondent : R1- Labour Court for all WPs.
R2- No appearance for all WPs.

C O M M O N O R D E R

The awards dated 30.01.2013 passed in I.D.Nos.117, 116, 115, 114, 113, 112, 109, 111, 110 and 108 of 2012 are under challenge in the present Writ Petitions.
W.P.Nos.29857 of 2013

2. The Writ Petitioner is the management of Scotts Garments Limited. The petitioner company is manufacturing banians and exporting the said garments. The petitioner states that the management announced bonus for the year 2011 at the rate of 10 % for the workers who have worked for more than one year and at the rate of 8.33% for the workers who have worked less than one year. All the 4000 workers except 123 workers who are affiliated to the LPF union accepted the proposal of the management and received the bonus. However 123 workers alone of the LPF Union refused to accept the proposal and not received the bonus. Thereafter the workers committed major misconduct and in view of the same they were discharged from service from 1.11.2011 to 24.12.2011 (in particular 1.11.2011, 11.11.2011, 23.11.2011, 24.12.2011) as per the Standing Orders of management by paying them one month salary in lieu of notice. The workers including the second respondent worker received the said one month salary without any objection. Since abnormal situation was prevailing the workers including the second respondent worker were discharged without conducting enquiry as per Standing Orders.

3. The learned counsel for the writ petitioner management reiterated as on the date of discharge of these workers from service no dispute was pending. Therefore obtaining approval under Section 32(2) (b) of the Industrial Disputes Act does not arise at all. The writ petitioner complied with the provision of the Industrial Disputes Act by paying one month salary in lieu of notice. Thus the management had not committed any irregularity and approval under Section 32(2) (b) is not required. As on date of discharge of these workers no dispute was pending.

4. The said ground is established by stating that even in paragraph 13 of the award the Labour Court itself made a finding that "At the time of issuing the order of discharge, an Industrial Dispute in Na.Ka.No.256/2012 was pending before the Labour Officer, Trippur. But the Respondent/Management has not filed any application under Section 33(2) (b) of the Industrial Disputes Act for approval of the action taken by them. Therefore the order of discharge issued by the respondent is invalid and inoperative under law"

5. The Labour Court in paragraph 9 of the Award made a finding that the discharge order has been marked as Ex.W.2. "In Ex.W.2 it is stated that considering the gravity of misconduct committed the petitioner is discharged with effect from 23.12.2011."

6. When the Labour Court in its Award categorically recorded the fact that the worker was discharged from service from effect from 23.12.2011 itself and in respect of other workers also during the year 2011. However, the dispute regarding the bonus was raised in Na.Ka.No.256 of 2012 only on 24.02.2012, after the discharge of these employees and respondent worker. Therefore, the learned Senior Counsel is able to establish that the dispute regarding the bonus was raised in the year 2012 and the respondent along with other workers were discharged from service in the year 2011 itself as stated above on various dates.

7. This being the factum as on date of discharge there was no dispute pending and thus the approval under Section 33(2)(b) of the Act is not mandatory. This being the factum, the Labour Court ought to have proceeded with the industrial dispute by taking evidences and conducting trial with reference to the grounds and issues raised. In the event of non approval, the Labour Court itself can proceed with the enquiry by examining the evidences and this being the procedure to be followed, this Court is of the opinion that the present Writ Petitions are to be allowed, for remanding the matters back for conducting the enquiry with reference to the orders of discharge issued by the management against the workers. Accordingly the impugned awards dated 30.01.2013 passed in I.D.Nos.117, 116, 115, 114, 113, 112, 109, 111, 110 and 108 of 2012 are quashed and the first respondent Labour Court is directed to restore the industrial disputes to file and adjudicate the matters by proceeding with the enquiries based on the evidences and documents by affording an opportunity to all the parties concerned and dispose of the industrial disputes as expeditiously as possible.

8. With these directions, the Writ Petitions stand allowed.
No costs. Consequently connected Miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

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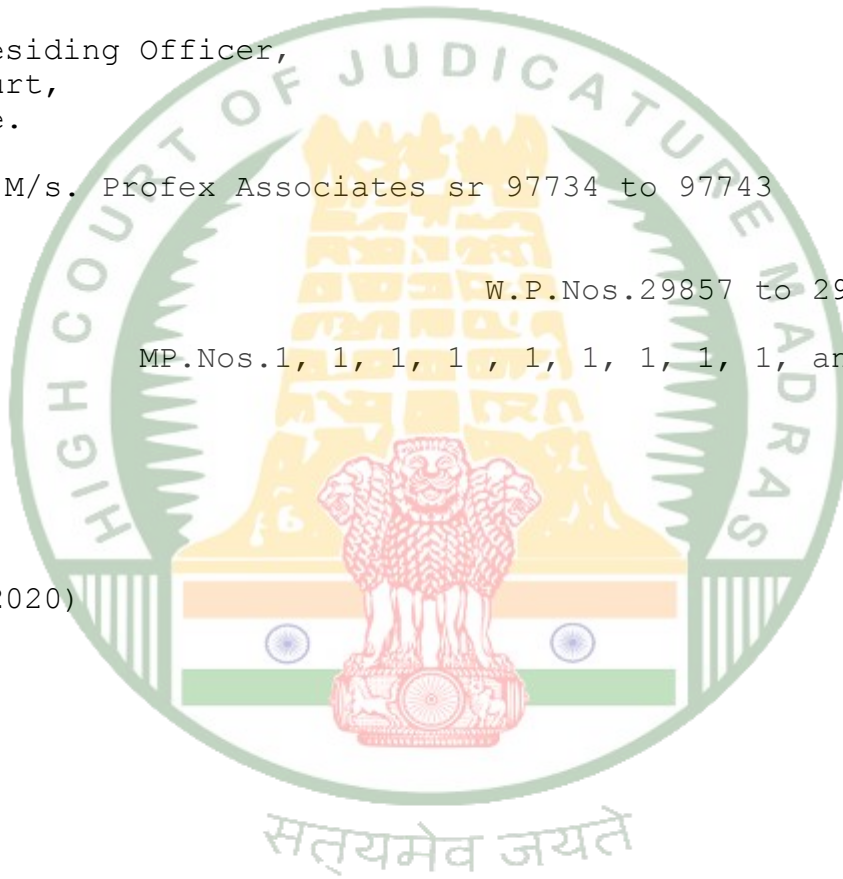
Sub-Assistant Registrar

To
1. The Presiding Officer,
Labour Court,
Coimbatore.

+10 CC to M/s. Profex Associates sr 97734 to 97743

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and
MP.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, and 1 of 2013

RV(CO)
SP(31/01/2020)



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