

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.29961 of 2013

and

W.P.No.24248 of 2014

W.P.No.29961 of 2013:

The Management of
M/s.Sri Ramnarayanan Mills Ltd.,
Periyanaickenpalayam,
Coimbatore - 641 020.
rep. By V.Jayaraman,
Managing Director.

.... Petitioner

vs.

1. The Presiding Officer,
Industrial Tribunal,
Chennai.

2. P.Damotharaswami

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records and quash the Preliminary Order dated 03.10.2013 passed in A.P.No.2 of 2012 by the 1st Respondent, Presiding Officer, Industrial Tribunal, Chennai.

For Petitioner : Mr.R.Parthiban

For 2nd Respondent : M/s.S.S.Saravana
D.Udhayasuriyan and
L.Radha

W.P.No.24248 of 2014:

P.Damodarasamy

... Petitioner

vs.

1. The Presiding Officer,
Industrial Tribunal, Chennai.

2. The Management of
M/s.Sri Ramnarayanan Mills Ltd.,
Periyanaickenpalayam,
Coimbatore - 641 020.
rep. By V.Jayaraman,
Managing Director.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, calling for the entire records pursuant to the order dated 03.10.2013 in A.P.No.2 of 2012 on the file of the 1st Respondent Industrial Tribunal, Chennai and, quash only that portion of the order directing the 2nd Respondent to adduce proper evidence in support of its action of dismissal.

For Petitioner : M/s.S.S.Saravana
D.Udhayasuriyan and L.Radha

For 2nd Respondent : M/s R.Parthiban & Sakthi
Balakrishnan

C O M M O N O R D E R

Challenging paragraph 8 of the Preliminary Order dated 03.10.2013 passed by the 1st Respondent in A.P.No.2 of 2012, the Management has filed W.P.No.29961 of 2013 and the Workman has come up with W.P.No.24248 of 2014, aggrieved by the entire order.

2. As the issue involved in both Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

3. The case of the workman is that when the domestic enquiry is held to be not fair and proper, there is no need for the Industrial Tribunal to advise the employer to let in evidence. It ought to have rejected the Approval Petition, instead of giving an opportunity to the Management to prove the charges.

4. It is the case of the Management that the domestic enquiry has been properly conducted and merely because, the names of the witnesses and the documents relied on by them to prove the charges have not been disclosed, it will not be a futile one to establish the charges before the Industrial Tribunal and that the Enquiry officer had taken into account all the documents relied on by them and held that the charges against the workman are proved.

5. This Court heard the learned counsel for the parties and perused the material documents available on record.

6. Be it an Industrial Dispute or an Approval Petition, if the domestic enquiry is held to be not fair and proper, it is open to the appropriate Labour forum to either reject the Approval Petition or in case of an Industrial Dispute, direct reinstatement of the workman with all consequential benefits and it is not mandatory on the part of the Industrial Tribunal or the Labour Forum to advise the Management to let in evidence. There is an exception to it. If there is a plea by the employer that in case, the Labour forum comes to the conclusion that the domestic enquiry held is not fair and proper, they should be given an opportunity to establish the charges before the appropriate forum and in such case, the employer is entitled to lead evidence. Here, the Management, in paragraph 13 of Approval Petition No.2 of 2012, has taken a specific plea to let in evidence, to prove the charges afresh.

7. The Apex Court, in the case of D.P.Maheswari vs. Delhi Administration reported in 1983 (II) LLJ 425 and in the case of Cooper Engineering Ltd. Vs. P.P.Mundhe reported in 1975 (2) SCC 661, has held that a Writ Petition cannot be filed challenging the Preliminary Order, as it would end up in endless litigation and the workman will not be able to see the finality of it during his lifetime.

8. In the case on hand, once the domestic enquiry is held to be bad in terms of the plea made by the Management, the Tribunal was perfectly justified in calling the employer to let in evidence to establish the charges. The contention of the Management that the names of the witnesses and the documents need not be produced to establish the charges, cannot be accepted. Once the domestic enquiry is held to be bad, the matter has to be decided by the Labour forum and the burden is on the Management to establish the charges and rebuttal is on the workman.

9. As there is no error, more particularly, prima facie error in the Preliminary Order dated 03.10.2013 passed by the Industrial Tribunal in A.P.No.2 of 2012, this Court has no hesitation to reject both the above Writ Petitions. Accordingly, Writ Petitions in W.P.No.29961 of 2013 and W.P.No.24248 of 2014 are dismissed. No costs. Consequently, connected M.P.No.1 of 2013 and M.P.No.1 of 2014 are closed.

10. The Industrial Tribunal, Chennai is expected to speed up the adjudication and come to a conclusion without adjourning the matter beyond seven working days at any point of time, in terms of Rule 39 of the Tamil Nadu Industrial Disputes Rules, 1958.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Industrial Tribunal,
Chennai.

+1cc to M/s.Saravanan, Advocate Sr.69956

+1cc to M/s.R.Parthiban, Advocate Sr.69622

+1cc to M/s.S.Saravanan, Advocate Sr.69958 [06/12/2019]

W.P.No.29961 of 2013
and
W.P.No.24248 of 2014

ad[co]
srg 26/09/2019

सत्यमेव जयते
WEB COPY