

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-10-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.3972 of 2018

And

W.M.P.Nos.4859 and 4860 of 2018, 5257 and 5265 of 2019

The Railway Employees Co-operative
Credit Society Limited,
Old Zoo Road,
Ashok Vihar Complex,
Chennai-600 003
Represented by its Chief Executive
N.Manivannan

..Petitioner

.Vs.

1.The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai-600 104.

2.R.C.Cyril Thilagaraj

3.S.Velmurugan

4.G.Ramanan

5.L.Gopinath

6.V.Murali

7.K.Vijayalakshmi

8.N.Mohanasundaram

9.E.Madanasekar

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in Complaint No.1 of 2017 and quash its order dated 20.12.2017.

For Petitioner : Mr.G.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondent-1 : Tribunal

For Respondents-2to9 : Ms.D.Nagasaila

O R D E R

The order dated 20.12.2017 passed by the first respondent in Complaint No.1 of 2017 is sought to be quashed in the present writ petition.

2. The facts in nutshell to be considered are that the writ petitioner is a Co-operative Society registered under the provisions of the Multi State Co-operative Societies Act, 2002.

3. The learned counsel for the writ petitioner states that the first respondent-Industrial Tribunal had not considered the issue which is relevant with reference to Section 33(2)(b) of the Industrial Disputes Act. The Industrial Tribunal arrived a conclusion that the charges framed against the workmen are concerned with the industrial disputes already pending and which is insufficient to arrive a conclusion that whether a petition is to be filed under Section 33(1)(b) or under Section 33(2)(b) of the Industrial Disputes Act, 1947. Section 33(1)(b) of the Industrial Disputes Act, 1947, contemplates that "for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute save with the express permission in writing of the authority before which the proceeding is pending".

4. Thus, it is clear that if the misconduct is connected with the dispute, discharge or punish, then the express permission in writing is to be obtained by filing an appropriate petition under Section 33(1)(b) of the Industrial Disputes Act, 1947.

5. The second limb is that Section 33(2)(b) of the Industrial Disputes Act, 1947 which stipulates that for any misconduct not connected with discharge or punishment "for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman; provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

6. As per Section 33(2)(b) of the Industrial Disputes Act, 1947, an approval petition is to be filed if the misconduct is not connected with the dispute.

7. Elaborating these two limbs of Section 33, the learned counsel for the writ petitioner reiterated that the case did not falls under Section 33(2)(b) of the Industrial Disputes Act, 1947. Thus, they had filed an appropriate petition seeking approval of the authority. To substantiate this, the learned counsel for the writ petitioner narrated the nature of the charges framed and enquired into and proved against the workmen as well as the relief in connection with the industrial disputes in I.D.Nos.27, 31 and 32 of 2016.

8. However, it is an admitted fact that the workmen are concerned with the dispute and the charges of misconduct is connected with or not to be decided specifically by the Tribunal. Then alone, the nature of application to be filed can be ascertained. In this regard, it is contended that there is no specific finding rendered by the Industrial Tribunal with reference to Section 33(1)(b) and Section 33(2)(b) of the Industrial Disputes Act, 1947.

9. The learned counsel appearing on behalf of the workmen disputed the contentions of the learned counsel appearing on behalf of the writ petitioner by stating that the over all reading of the Award reveals that the misconduct is very much connected with the dispute and therefore, there is no necessity to re-adjudicate the same. Accordingly, appropriate petition is to be filed under Section 33(1)(b) of the Industrial Disputes Act, 1947 and consequently, the petition filed by the employer under Section 33(2)(b) is not maintainable and there is no infirmity or perversity in respect of the Award passed.

10. On perusal of the entire Award, this Court is of the considered opinion that the issues were not framed specifically. Though certain facts and circumstances regarding connection with the dispute and misconduct, there is no specific finding rendered by the Industrial Tribunal in the Award.

11. Contrarily, the facts and circumstances were narrated in different forms and various other judgments were also considered in this regard. The issues framed in this regard must be decided with a clear finding in view of the fact that Section 33(1)(b) and Section 33(2)(b) of the Industrial Disputes Act, 1947 and contemplating two different circumstances and the issues relating to the maintainability of the petition is raised, then the Tribunal must frame a specific issue and decide the same with reference to the facts and circumstances.

12. Even in the concluding paragraph, the Industrial Tribunal made a finding that the workmen are concerned with the dispute. However, whether the misconduct is connected with the

dispute or not has been decided by the Industrial Tribunal with specific findings.

13. Under these circumstances, this Court is of the opinion that the present writ petition is a fit case for remand and consequently, the impugned Award passed by the first respondent in order dated 20.12.2017 in complaint No.1 of 2017 is quashed. The first respondent is directed to restore the complaint No.1 of 2017 on file and frame the issues with reference to Section 33(1)(b) and Section 33(2)(b) of the Industrial Disputes Act, 1947 and adjudicate the matter by affording opportunity to all the parties concerned and decide the same as expeditiously as possible.

14. With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Svn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai-600 104.

+1cc to M/S.T.S.Gopalan & Co., Advocate, SR.No.86937
+1cc to Mr.D.Nagasaila, Advocate, SR.No.87189

W.P.No.3972 of 2018

Kak(12/11/2019)