

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO.2526 OF 2018

AND

W.M.P. NO. 3081 OF 2018

PMI Engineering Export Pvt. Ltd.  
B-29, Phase II  
Madras Export Processing Zone  
(MEPZ - SEZ), Tambaram  
Chennai 600 045. ... Petitioner

- Vs -

1. The Asst. Commissioner of labour  
Conciliation Officer - I  
Irunkattukottai, Sriperumbudur  
Kancheepuram District.
2. S.Krishnamoorthy ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records connected with A.P. No.1077 of 2016 on the file of the 1<sup>st</sup> respondent, Assistant Commissioner of Labour and Conciliation Officer - 1, Sriperumbudur and quash the docket order 15.12.16 made therein and direct to take up the preliminary issue whether the domestic enquiry conducted by the Management is fair and proper.

For Petitioner : Mr. M.R.Dharani Chander

For Respondents: Mr. J.Ramesh, AGP for R-1  
Mr. N.G.R.Prasad, for  
M/s. Row & Reddy for R-2

ORDER

The present petition has been filed by the petitioner/Management against the docket order dated 15.12.2016, passed by the 1<sup>st</sup> respondent rejecting the stand of the

petitioner/Management to decide the preliminary issue before deciding the main issue.

2. The petitioner is a company engaged in the manufacture of precision machined components for Aerospace application and it is a 100% export oriented company located in the Madras Export Processing Zone, Tambaram Sanatorium. The 2<sup>nd</sup> respondent was employed under the petitioner. On 5.7.16, the 2<sup>nd</sup> respondent caused damage of 20 numbers of "Dry Film Thickness Variation" due to carelessness and negligence in painting work. Even on a subsequent occasion, on 14.7.16, the same act was repeated by the 2<sup>nd</sup> respondent employee. In these circumstances, the petitioner/Management issued charge sheet on 18.7.16 and sought explanation from the 2<sup>nd</sup> respondent/workman. The 2<sup>nd</sup> respondent/workman did not submit any explanation after receiving the charge memorandum. However, he sent a representation on 21.7.16 requesting the Management to give translation of Tamil version of the Model Standing Order. Based on the request, the petitioner/Management made available the translated copy of certain clauses of the Model Standing Order, which were relevant for the purpose of the case.

3. Thereafter, the 2<sup>nd</sup> respondent did not choose to submit his explanation and enquiry was initiated against the 2<sup>nd</sup> respondent/workman. The enquiry was posted on a number of occasions, i.e., on 22.7.16, 24.8.16, 27.8.16, 6.9.16, 13.9.16, 16.9.16, 20.9.16, 27.9.16 and 30.10.16. Despite affording several opportunities to the 2<sup>nd</sup> respondent/workman, he did not choose to participate in the enquiry and, therefore, he was set exparte. On conclusion of the enquiry, the enquiry officer submitted his findings on 6.11.16 holding the 2<sup>nd</sup> respondent/workman guilty of the charges framed against him. Thereafter, second show cause notice was issued on 8.11.16 to which explanation was submitted by the 2<sup>nd</sup> respondent/workman on 23.11.16 denying the charges levelled against him. Since the explanation submitted by the 2<sup>nd</sup> respondent/workman was found to be not satisfactory and in view of the serious nature of misconduct committed by him, the 2<sup>nd</sup> respondent/workman was dismissed from service vide letter dated 19.12.16.

4. At the time when the dismissal order was passed against the 2<sup>nd</sup> respondent/workman, an industrial dispute was pending before the 1<sup>st</sup> respondent. Therefore, an approval petition was filed by the petitioner/Management seeking approval of the order of dismissal dated 19.12.16, which was numbered as A.P. No.1077/2016. In the approval petition, the 2<sup>nd</sup> respondent/workman entered appearance through the Union representative and filed counter statement on 26.5.17. In the proceedings before the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent/workman challenged the validity of the domestic enquiry conducted

against him stating that the same was not conducted in a fair and proper manner. The petitioner/Management, in its turn, filed a reply on 2.8.17 contending that the issue as to whether the domestic enquiry was conducted in a fair and proper manner should be decided as preliminary issue and requested the 1<sup>st</sup> respondent to render a finding on the validity of the domestic enquiry proceedings before proceeding further on the main issue.

5. On 28.11.17, the 1<sup>st</sup> respondent took up the matter for hearing and it was insisted upon by the Management that the 1<sup>st</sup> respondent should frame a preliminary issue before dealing with the main dispute. However, the 1<sup>st</sup> respondent, vide docket order dated 15.12.17, has held that the issue of whether the domestic enquiry was conducted in a fair and proper manner or not would be decided in the main petition. The said docket order is put to challenge in the present writ petition.

6. Mr.Dharani Chander, learned counsel appearing for the petitioner/Management submits that unless a preliminary issue is framed and findings rendered by the authority, the question of proceeding with the main dispute does not arise at all. Only when a preliminary issue is framed and findings are rendered, the petitioner/Management would be in a position to know whether the domestic enquiry conducted against the 2<sup>nd</sup> respondent was valid or not. In case the authority holds that the enquiry was not fair and proper, the petitioner/Management can always seek permission to lead evidence in order to sustain the charges framed against the 2<sup>nd</sup> respondent/workman. Therefore, it is legally imperative and mandatory on the part of the 1<sup>st</sup> respondent to frame a preliminary issue and decide on the validity of the domestic enquiry conducted against the workman. Unfortunately, the 1<sup>st</sup> respondent has misdirected itself on the basis of misreading of the legal principle on the subject matter and passed the docket order that the objection could be decided in the main petition itself. Therefore, the impugned docket order is liable to be set aside.

7. Mr.N.G.R.Prasad, learned counsel appearing for the 2<sup>nd</sup> respondent submits that it is not open to the petitioner/Management to challenge the preliminary order, since the Hon'ble Supreme Court as well as the various High Courts have held that the Management could always challenge both the preliminary order as well as the main order cumulatively and it cannot be allowed to challenge the preliminary order as that would delay the process of adjudication and will result in great hardship to the workman.

8. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 2<sup>nd</sup> respondent/workman and perused the materials available on record as also the impugned docket order passed by the 1<sup>st</sup> respondent.

9. This Court, upon careful consideration of the submissions and also considering the impugned order passed by the authority and the other materials placed on record is of the view that the order passed by the 1<sup>st</sup> respondent cannot be countenanced in law and on facts for the reason that the 1<sup>st</sup> respondent ought to have framed a preliminary issue before proceeding further to deal with the main dispute raised by the 2<sup>nd</sup> respondent. As rightly contended by the learned counsel for the petitioner/Management, unless the 1<sup>st</sup> respondent frames a preliminary issue and gives a finding on the validity of the domestic enquiry conducted against the 2<sup>nd</sup> respondent/workman, the petitioner/Management would not be in a position to know whether the enquiry conducted by them was fair and proper or not. In case the finding of the 1<sup>st</sup> respondent goes against the Management, it is always open to the petitioner/Management to lead evidence in support of the charges framed against the petitioner. Such opportunity cannot be denied to the petitioner/Management. The Courts have only held that the preliminary order cannot be challenged by the Management, but the Courts have never held that the preliminary issue need not be framed by the authority or by the Labour Court concerned. Unfortunately, the 1<sup>st</sup> respondent has not understood the legal principle in the right perspective and proceeded to deal with the main dispute without framing a preliminary issue, as requested by the petitioner/Management.

10. However, at the end of the submissions, learned counsel appearing on either side requested the Court to stipulate a reasonable time for the 1<sup>st</sup> respondent to give finding in respect of both the preliminary issue as well as the main dispute.

11. For the abovesaid reason, the impugned docket order dated 15.12.2016, passed by the 1<sup>st</sup> respondent, is hereby set aside as being not sustainable. The 1<sup>st</sup> respondent is hereby directed to frame a preliminary issue and render a finding as to the validity of the domestic enquiry conducted against the 2<sup>nd</sup> respondent/workman in pursuance of the charge memo dated 18.7.16. Such finding shall be given within a period of eight weeks from the date of receipt of a copy of this order. After rendering such finding, the 1<sup>st</sup> respondent shall proceed to decide the main dispute and such dispute shall be initiated and completed within a period of twelve weeks thereafter.

12. This writ petition is allowed with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

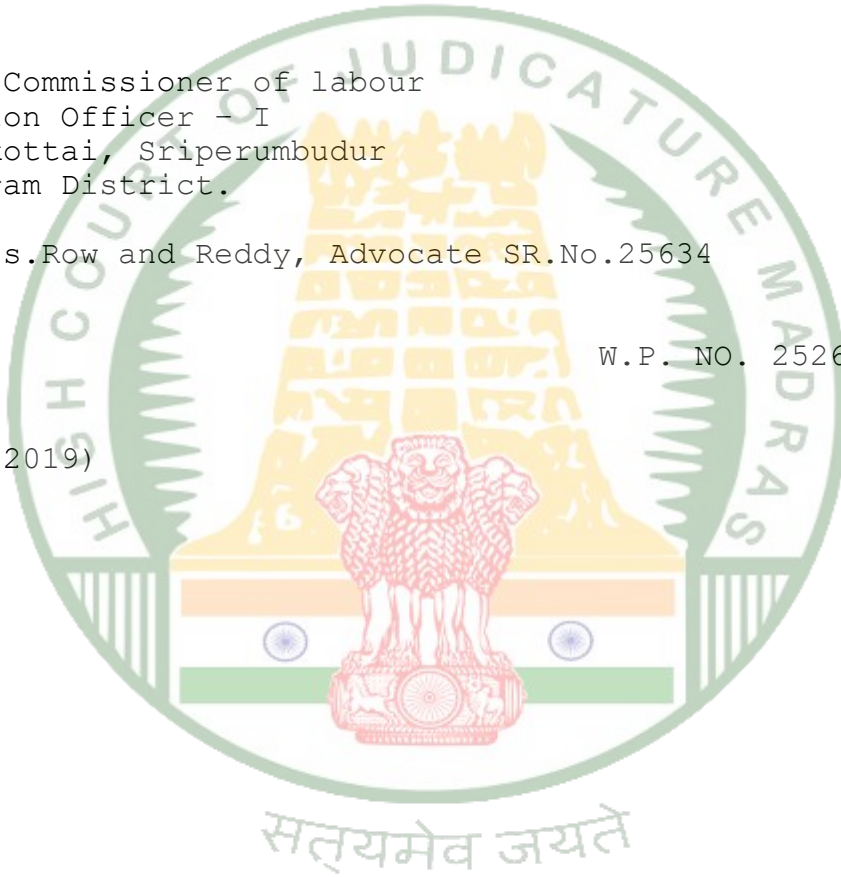
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To  
The Asst. Commissioner of labour  
Conciliation Officer - I  
Irunkattukottai, Sriperumbudur  
Kancheepuram District.

+1cc to M/s.Row and Reddy, Advocate SR.No.25634

W.P. NO. 2526 OF 2018

VSN II (CO)  
GMY (30/04/2019)



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