



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.08.2019
DELIVERED ON	30.08.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) Nos.1696 to 1701, 1703 & 1704 of 2018

and

C.M.P. (MD) Nos.12373 to 12378, 12380 & 12381 of 2018

- 1) T.Sathish Kumar ... Appellant in W.A.(MD) No. 1696 of 2018 / Petitioner in W.P.(MD) No.23032/2018
- 2) T.Sankar Ganesh ... Appellant in W.A.(MD) No. 1697 of 2018 / Petitioner in W.P.(MD) No.23033/2018
- 3) K.Veerapandian ... Appellant in W.A.(MD) No. 1698 of 2018 / Petitioner in W.P.(MD) No.23034/2018
- 4) E. Saravanan ... Appellant in W.A.(MD) No. 1699 of 2018 / Petitioner in W.P.(MD) No.23035/2018
- 5) S.Jothi ... Appellant in W.A.(MD) No. 1700 of 2018 / Petitioner in W.P.(MD) No.23036/2018
- 6) R.Manjunath ... Appellant in W.A.(MD) No. 1701 of 2018 / Petitioner in W.P.(MD) No.23037/2018
- 7) K.Thilak ... Appellant in W.A.(MD) No. 1703 of 2018 / Petitioner in W.P.(MD) No.23039/2018
- 8) K.Vijayaraj ... Appellant in W.A.(MD) No. 1704 of 2018 / Petitioner in W.P.(MD) No.23040/2018



Vs.

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| 1) Bharat Heavy Electricals Limited,
Rep. by its Deputy Manager,
Boiler Production, BHEL,
Trichy 620 014 | ... Respondent in W.A. (MD)
No.1696 of 2018/
Respondent in W.P. (MD)
No.23032/2018 |
| 2) Bharat Heavy Electricals Limited,
Rep. by its Senior
Production Engineer,
Boiler Production, BHEL,
Trichy, 620 014 | ... Respondent in W.A. (MD)
No.1697 of 2018/
Respondent in W.P. (MD)
No.23033/2018 |
| 3) Bharat Heavy Electricals Limited,
Rep. by its Senior
Production Engineer,
Boiler Production, Unit -II BHEL,
Trichy, 620 014 | ... Respondent in W.A. (MD)
Nos.1698-1701, 1703 & 1704
of 2018/Respondent in
W.P. (MD) Nos.23034- 23037
23039-23040/2018 |

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act against the order made in W.P. (MD) Nos.23032 to 23037, 23039 & 23040 of 2018 dated 20.11.2018.

COMMON PRAYER W.P. (MD) Nos.23032 to 23037, 23039 & 23040 of 2018:

Writ Petition is filed under Article 226 of the Constitution of India, this Court to issue a Writ of Certiorari calling for the records relating to the impugned order vide proceedings in Nos.BP:P2:2213427, BP:P2:2213117, BP:P2:6065384, BP:P2:, BP:P2:6036260, BP:P2:6133460, BP:P2:6065023, BP:P2:6022898, BP:P2:6166164, BP:P2:6065074, dated 05.10.2018 respectively passed by the respondent and quash the same as illegal.

For Appellants : Mr.M.Ajmal Khan,
Senior Counsel for
Mr.T.Antony Arul Raj

For Respondent : Mr. A.V.Arun

C O M M O N J U D G M E N T

(Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

1. Common issues relating to the suspension of each of the Appellants herein and the validity thereof arise for consideration in these Writ Appeals and, therefore, they are disposed of by a



common judgment. The Appellant in each Writ Appeal is the Petitioner before the Writ Court. The Writ Petitions were filed to challenge the separate orders of suspension dated 5.10.2018, which were issued by the Respondents in each Writ Appeal to each of the Appellants herein. All these Writ Petitions were dismissed by a common order dated 20.11.2018, which is impugned herein.

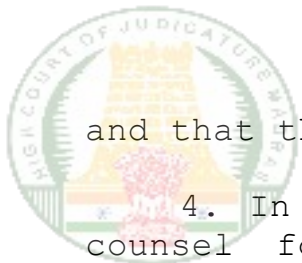
2. The facts that are relevant for the disposal of these Writ Appeals are stated briefly herein. A strike notice was issued by the Welders' Association of the Respondent on 7.5.2018. Pursuant thereto, an order of transfer was issued to one employee, namely, the General Secretary of the Association, Mr. T.Satish Kumar, who is the Appellant in W.A. No.1696 of 2019. Thereafter, the Assistant Commissioner of Labour, Pondicherry, by communication dated 14.5.2018, called upon the members of the Association of Welders to participate in conciliation proceedings under section 12 of the Industrial Disputes Act, 1947 (the ID Act) on 23.5.2018 at his office. Similar communications were also issued on 5.6.2018 in respect of a conciliation meeting on 13.6.2018 and by a communication dated 8.8.2018 in respect of a conciliation meeting on 24.8.2018. Each of the Appellants sent representations dated 30.07.2018 to the respective Respondents. By communication dated 7.9.2018, the Assistant Labour Commissioner, Pondicherry, informed the Secretary of the Ministry of Labour and Employment that the conciliation proceedings had failed. Shortly thereafter, there was mass absenteeism by welders and the Executive Director issued an appeal dated 03.10.2018 to the employees concerned to resume work but this did not yield results. Therefore, the Respondent concerned sent individual notices to the employees concerned on 4.10.2018 wherein it was stated that the said employees absented themselves from work without obtaining written permission or sanction from the competent authority on 1.10.2018, 3.10.2018 and 4.10.2018. It was further stated therein that such unauthorized absence caused disruption of work and seriously hampered the achievement of the targets and goals of the organisation. It was further stated that such willful insubordination and absence from duty amounts to a serious misconduct as per Standing Orders 40, 60 (1), 60 (5), 60 (6), 60 (21) and 60 (33) warranting stringent disciplinary action. The impugned suspension orders were issued shortly thereafter on 5.10.2018 in this factual context. Each of the impugned suspension orders-cum-charge sheets, which are in pari materia, advert to the congregation of 200 welders at the alleged instance of the suspended welder, the unauthorised absence from duty of more than 10 persons in a concerted action from 1.10.2018 to 05.10.2018 without sanction of leave or prior permission. The said orders also referred to the holding of meetings without prior permission, striking work or inciting others to strike work, etc. On that basis, the welder concerned was suspended and called upon to provide an explanation within 7 days



from the date of receipt of the suspension order. The said suspension orders are challenged primarily on the ground that the said orders cannot be issued, as per the Standing Orders, except on the basis of a charge memo in respect of charges, which could result in major punishment.

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3. The Appellants were represented by Mr. Ajmal Khan, learned senior counsel, who appeared for Mr. T. Antony Arul Raj, Advocate. The learned senior counsel referred to the procedure for dealing with misconduct under the Standing Orders. In particular, he submitted that suspension is not envisaged or stipulated under Standing Order 62(1) in respect of misconduct for which fine or censure is proposed as punishment. Moreover, he submitted that these are the only penalties that may be imposed without a charge sheet albeit after providing an opportunity to show cause. Furthermore, he submitted that, in respect of all other proposed penalties, Standing Order 62 (2) mandates that a charge sheet should be issued to the employee concerned specifying the allegations and charges and the employee concerned should be provided an opportunity to provide an explanation thereto within the time limit specified in the charge sheet. With regard to suspension, he contended that Standing Order 62(3) provides for suspension only when there is a prima facie case for imposing the punishment of removal or dismissal from service for the alleged misconduct. After adverting to the said Standing Order, the learned senior counsel contended that, in this case, no charge sheet was issued and, therefore, the order of suspension is illegal. In order to substantiate this submission, he referred to the suspension orders dated 05.10.2018. He pointed out that the suspension orders are labelled or titled as suspension-cum-charge sheet. However, he submitted that such label or title or heading is not determinative and that the substance of the document should be examined in order to decide if it qualifies as a charge sheet or whether it is merely a show cause notice. In specific, he pointed out that the charges are general and not specific and that the document does not specify the names of witnesses or documents on which the management proposes to rely on in the enquiry. Therefore, he submitted that the document is no more than a show cause notice and, therefore, the suspension is in contravention of the Standing Order. In this regard, he relied upon the judgment of the Supreme Court in **Ajay Kumar Choudhary vs. Union of India (2015) 7 SCC 291**. In particular, he relied on paragraph 21 of the said judgment wherein it was held that the currency of suspension should not extend beyond three months if the memorandum of charges/charge sheet is not served on the delinquent unless a reasoned order of extension of suspension is issued. In this case, he submitted that more than ten months have elapsed from the date of suspension and that, therefore, the suspension order is illegal



and that the Writ Court erred in dismissing the Writ Petition.

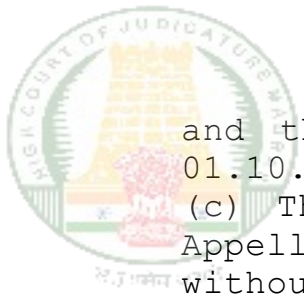
4. In response and to the contrary, Mr.A.V.Arun, the learned counsel for the respective Respondents in the Writ Appeals, submitted that suspension is permissible for the misconduct that the respective Appellant is charged with because such misconduct, if proved, could be visited with the punishment of dismissal or removal from service. In specific, he contended that the suspension-cum-charge sheet refers to the employee concerned as being charged with misconduct as per Standing Order 60(20) and (21) and that it is mentioned that the misconduct is serious. He also relied on the "Note" to Standing Order 62(3) and contended that when the circumstances warrant, suspension may be resorted to pending enquiry even if a prima facie case for imposing the penalty of removal or dismissal from service is not made out whereas, in this case, a prima facie case is made out. Consequently, he submitted that the suspension is in order. He further submitted that the employee concerned submitted an explanation on receipt of the suspension-cum-charge sheet and that on receipt thereof, the management was not satisfied with the explanation and, therefore, enquiry notices were issued to the employees concerned. Pursuant thereto, he submitted that the enquiry proceedings are underway and that such proceedings are at an advanced stage currently. Hence, he submitted, in conclusion, that the respective Appellant was duly notified about the charges and the enquiry and that the suspension-cum-charge sheet is valid.

5. By way of rejoinder, the learned senior counsel reiterated that the document titled suspension-cum-charge sheet is, in substance, a show cause notice and not a charge sheet. In response to a query, he said that no other charge sheet was issued and that, in response to the enquiry notice, a letter was submitted to the effect that an appeal is pending but that the respective Appellant did not participate in the enquiry.

6. The records were examined and the oral submissions were considered carefully. The principal question in this case pertains to the validity of the impugned document by which the respective Appellant was suspended. In order to answer this question, two documents should be examined closely, namely, the orders of suspension-cum-charge sheet and the relevant Standing Orders. The orders of suspension-cum-charge sheet disclose the following material facts:

(a) There is an allegation that the respective Appellant organised a meeting of 200 welders on 15.09.2018 at about 17:15 hours near the parking area adjacent to Building No.53;

(b) There is another allegation that the respective Appellant acted in concert with more than ten employees



and these persons were jointly absent from duty from 01.10.2018 to 05.10.2018;

(c) There is a further allegation that the respective Appellant held meetings within the factory premises without permission, participated in strikes and incited others to do so;

(d) The above acts are alleged to be serious misconducts in violation of Standing Order 59(2) and 60 (1), (20), (21), (27) and (33); and

(e) The respective Appellant is informed of his immediate suspension and called upon to explain within 7 days of receipt of the communication as to why disciplinary action should not be taken.

7. The relevant Standing Orders read as under:

"62(2) In case of misconduct for which any of the other penalties (i.e. other than fines and censure) are proposed to be imposed, a charge sheet stating the allegations and charges shall be given to the employee concerned within the period to be specified in the chargesheet, an enquiry, where considered necessary will be held by an officer or officers nominated by the management into the alleged act of misconduct. In the enquiry, the employee concerned will be afforded reasonable opportunity of explaining and defending his action and shall be permitted if he so desires, to be accompanied by another employee of his choice to assist him in his defence. Any such enquiry may relate to the alleged misconduct of several employees together, in which case the enquiry may be held for all the employees together.

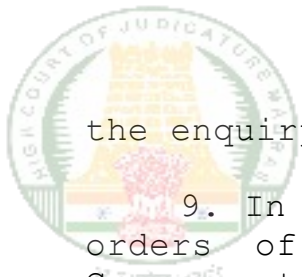
(3) Where employees are charged with misconduct for which there is a prima facie case for imposing the penalty of removal or dismissal from service he will be suspended forthwith from duty. The order of suspension shall be given in writing and shall set out in general terms as far as possible, the misconduct alleged against the employee and shall take effect immediately on communication thereof to him. The suspended employee shall not during the period of suspension enter the works/factory premises except with the special permission of the management or when he is specifically called by the management in connection with the enquiry. He shall also not leave the station without the written permission of the management.

Note: Ordinarily, an employee may not be suspended unless a prima facie case is established against him. Notwithstanding this, if the circumstances warrant, he may be placed under suspension pending an enquiry by an officer not below the rank of a Superintendent in the Rs.1300-1600 scale (or any other



officer of equal status and pay) or by the head of a department."

8. When the said Standing Order is analysed, it is clear that no punishment other than fine and censure can be imposed without issuing a charge sheet specifying the allegations and charges to the employee concerned. However, the Standing Order does not prescribe a format or even specify the content of the said charge sheet. For instance, it does not specify or stipulate that the list of witnesses should be mentioned therein or that the charges should be framed in a particular manner. On the contrary, Standing Order 62(3) stipulates that the suspension order shall set out in general terms, as far as possible, the misconduct alleged against the employee. When the orders of suspension-cum-charge sheet are examined in this background, it is evident that the various allegations against the employee concerned are specified therein in reasonable detail and the employee concerned has been called upon to provide an explanation in respect of such allegations. Therefore, we are of the considered view that it meets the requirements of Standing Order 62 (2) and (3). The next question to be considered is whether the respective Respondents are entitled to suspend the respective Appellant in respect of the alleged misconduct. Once again, it is evident from the order of suspension, that it is alleged that the respective Appellant contravened Standing Order 59 (2) and Standing Order 60 (1), (20), (21), (27) and (33). The contravention of these Standing Orders would certainly justify the imposition of the penalty of dismissal or removal from service if the allegations are proved in an enquiry conducted in accordance with the principles of natural justice and the disciplinary authority, on consideration thereof, imposes such punishment. In this connection, it is also relevant to note that as per Standing Order 62 (3), an employee may be suspended if there is a prima facie case for imposing the penalty of dismissal or removal from service. In this case, it cannot be said that the management does not have a prima facie case based on the allegations in the said orders of suspension-cum-charge sheet. In this regard, we are of the considered view that the contention that the said document is only a show cause notice and not a chargesheet is untenable because Standing Order 62 (2) and (3) do not, as stated above, stipulate a particular format or even content in respect of the charge sheet. In any event, if the charges against the respective Appellant are not set out in sufficient detail, it is always open to the employee concerned to challenge the enquiry proceedings in a manner known to law. In other words, such allegation would not vitiate the suspension order. In this connection, it is also relevant to bear in mind that enquiry notices were issued to the respective employee pursuant to the orders of suspension-cum-charge sheet and the employee concerned were provided an opportunity to participate in



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the enquiry, which is said to be at an advanced stage.

9. In the facts and circumstances, we are of the view that the orders of suspension are not liable to be interfered with. Consequently, the order of the Writ Court is liable to be affirmed and the Writ Appeals are, consequently, liable to be dismissed. However, we make it clear that we are not expressing an opinion about the validity of the enquiry proceedings that are said to be at an advanced stage because that is outside the scope of these Writ Appeals. Since the Appellants are under suspension from 05.10.2018 and as it is stated that the enquiry is also at an advanced stage, we direct that the final order of the enquiry proceedings shall be passed within a period of four weeks from the date of receipt of a copy of this order.

10. In the result, the Writ Appeals are dismissed subject to the direction in paragraph no.9 above, but there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

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+1 CC to M/s.A.V.ARUN, Advocate (SR-84465[F] dated 30/08/2019)

Common Judgment made in
W.A. (MD) Nos.1696 to 1701,
1703 & 1704 of 2018

Dated:
30.08.2019

KM/ (04.10.2019) 8P 2C