

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 9543 of 2020

The Management of
M/s.SE FORGE Ltd
Rep. by Head - HR
Plot No.1, SEZ Unit in
Synefra Engineering and Construction
Kittampalayam, Annur Road,
Coimbatore - 641 659.

... Petitioner

-vs-

1. The Secretary,
Department of Labour,
Government of Tamil Nadu,
Fort St, George,
Chennai - 600 009.
2. Workmen of SE FORGE Limited
through United Labour Federation,
Represented by its President,
Registration Number 2657/CNI,
4th Floor, CJ Complex,
149, Thambu Chetty Street,
Chennai - 600 001.

... Respondents

(R2 impleaded vide order dated 01.10.2020
in W.M.P. No. 14790 of 2020)

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
directing the Respondent to pass orders in the application filed
by the Petitioner under Section 33B of Industrial Disputes Act
on 25.02.2020.

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

For Respondent : Mr. D. Sathyaraj,
Special Government Pleader (for R1)

Mr. V.Prakash, Senior Counsel
for Mr. S.R.Boopalachandran (for R2)

O R D E R
(through video conference)

Heard Mr. Anand Gopalan, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First Respondent and Mr. V.Prakash, Learned Senior Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is hereinafter referred to as the 'Management' for the sake of clarity and convenience and the Second Respondent is hereinafter referred to as the 'workmen' for the sake of clarity and convenience.

3. The chronological sequence of events leading to the filing of this Writ Petition are as follows:-

(i) The industrial dispute, which arose between the Management and the workmen, had been referred for adjudication by the Government of Tamil Nadu by G.O. (D) No. 544 dated 03.12.2012 to the Labour Court, Coimbatore (hereinafter referred to as the 'Labour Court' for short), which has been taken on file as I.D. No. 386 of 2012, in respect of the following issues:-

(a) Whether the demand of the union that the 27 workers named in the annexure to the reference be reinstated in service with backwages and continuity of service is justified? If so to pass appropriate orders.

(b) Whether the demand of the union that the strike commenced by the workers on 19.03.2012, pursuant to the lockout effected by the management on 18.08.2012 is justified? If so to pass appropriate orders as to what relief the workers are entitled to. Further, if the monetary relief can be computed, calculate the same and pass appropriate orders.

(c) Whether the demand of the union that the dismissal of three workmen namely Mr. R.Karthick T.No. 19341, Mr. T.Kowshikan T.N. 17605 and Mr. Premam T.No. 18455 is illegal is justified? If so to what relief the workers are entitled to. Pass appropriate orders.

(ii) It is borne out from the record that before the matter had been referred to the Labour Court, the Management and workmen had entered into agreement dated 13.08.2012 in which the Management had agreed to permit the workmen to work with effect from 04.10.2012 and pay wages for the strike period,

but as it had not been acted upon, another industrial dispute arose between the Management and the workmen, which was referred by the Government of Tamil Nadu for adjudication by G.O. (D) No. 249 dated 30.06.2014 before the Industrial Tribunal at Chennai (hereinafter referred to as the 'Industrial Tribunal' for short), which has been taken on file as I.D. No. 15 of 2014 in respect of the following issues:-

- (a) Whether the demand of the Union that Mr. S.Silamrasan and 314 workers name din the annexure of the petition dated 16.10.2013 filed by the Petitioner, be allowed to work with effect from 01.11.2012 is justified?
 - (b) Whether the demand of the union that the workers be paid wages for the period from when they are denied work i.e., from 01.11.2012 to till they are given employment is justified? If so to what relief the workers are entitled to?
- (iii) The Management had raised certain preliminary objections in I.A. No. 118 of 2015 in I.D. No. 386 of 2012 before the Labour Court, which was disposed by order dated 18.01.2018 and a Writ Petition in W.P. No. 6337 of 2018 had been preferred before this Court challenging the same.
- (iv) This Court in the order dated 14.06.2019 in W.P. No. 6337 of 2018 noticed that only one of the preliminary objections had been considered by the Labour Court in respect of which the Management did not wish to agitate any further, but the other preliminary objections as to whether there was no dispute between the Management and the workmen in view of the agreement dated 13.08.2012 entered into between the parties, which was very crucial, was not at all addressed by the Labour Court while dismissing I.A. No. 118 of 2015 in I.D. No. 386 of 2012. However, this Court while remanding the matter also took note the submissions on behalf of the Second Respondent and held as follows:-
- "15. As regards the objections raised on behalf of the second respondent Union by the learned Senior counsel, this Court does not wish to get embroiled in any factual controversies, since in any event, the writ petition is being disposed of by remanding the matter back to the Labour Court. At the same time, as rightly contended by the learned Senior counsel for the second respondent Union, the management has successfully dragged the matter for several years and prevented the Labour Court from resolving the main dispute pending before it. On many occasions, by prolonging the dispute under one pretext or the other, the Management can always frustrate the attempt by the workmen to have

their grievances redressed promptly. By and large when the resolution of the dispute gets unduly delayed, the suffering due to such delay will only befall the workmen and not the Management, who has all the wherewithal to sustain the labour fight.

16. Therefore, this Court, while remanding the matter back to the Labour Court, is conscious that the Labour Court, while hearing the preliminary objection of the workmen as to whether the disputes referred to were covered by the agreement dated 13.08.2012 or not, ought to take up the said preliminary issue along with the main dispute and ought to render a composite finding/award, in order to avoid any handle to be handed over to the Management to cause further delay in the adjudication of the main dispute. In fact, such a course is what is insisted upon by various decisions of this Court and the decisions of the Hon'ble Supreme Court.

17. Further as regards the dispute whether the agreement dated 13.08.2012 is a 'settlement' within the meaning of Section 2P of the Industrial Disputes Act or not and whether all the three issues referred for adjudication are covered by the said agreement, is entirely left to the first respondent/Labour Court to take a call and these controversies are left open to the parties for adjudication before the Labour Court. In any event, in view of the long pendency of the main dispute, this Court has necessarily fix some time line for adjudication of both the preliminary dispute as well as the main dispute by the first respondent/Labour Court.

18. For the above said reasons, the matter is remanded back to the first respondent Labour Court for adjudication of the objection raised by the Management as to whether the issues referred for adjudication are covered under the agreement dated 13.08.2012 between the petitioner Management and the second respondent Union and if so, whether such adjudication is entertainable in Law. The Labour Court is directed to take up the preliminary issue along with the main dispute and render its finding in regard to both preliminary as well as the main issues by passing a composite order/award.

19. The Labour Court is also directed to expeditiously conclude the dispute and pass award within a period of six months, if necessary, by hearing the dispute on day-to-day basis, since the dispute has been unduly prolonged and delayed for seven years.

20. Both the petitioner Management as well as the second respondent Union are directed to extend their

earnest cooperation for the expeditious conclusion of both the preliminary issue as well as the main issue by the Labour Court."

- (v) It is brought to notice that after examining three witnesses produced and marking their documents, recording of evidence of the workmen (who is the Petitioner in I.D. No. 386 of 2012) before the Labour Court has been completed and the matter has been posted for evidence of Management side. As the Labour Court by letter dated 21.02.2020 addressed to the Registry of this Court has explained the reasons for inability to dispose the industrial dispute in I.D. No. 386 of 2012 within the time limit granted in the order dated 14.06.2019 in W.P. No. 6337 of 2018 passed by this Court, the matter was posted on 25.08.2020 and the following order was passed:-
- "2. It is represented by Mr. S.Harron AL Rasheed, Learned Counsel for the Petitioner and Mr. V.Prakash, Learned Senior Counsel appearing for the Second Respondent that hearing of cases either by physical appearance or through video conference in the Labour Courts in the State is not taking place due to the prevailing lockdown on account of COVID pandemic. Having due regard to the same, time is extended by a period of six months from the date on which hearing of cases before the concerned Labour Court resumes. The report of compliance shall be sent to the Registrar (Judicial) of this Court without fail."
- (vi) In the meanwhile, the Management had filed another Writ Petition in W.P. No. 27101 of 2019 before this Court seeking a direction to the Labour Court to transfer the I.D. No. 386 of 2012 to the Industrial Tribunal to be heard jointly along with I.D. No. 15 of 2014 pending on its file. It is evident from the order dated 09.01.2020 passed by this Court in that Writ Petition that the same has been dismissed as withdrawn. While the Learned Counsel for the Management contends that such withdrawal had been made reserving its right to apply for such transfer under Section 33-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), before the First Respondent, Learned Senior Counsel appearing for the workmen contends that no such liberty as sought by the Petitioner has been granted by this Court in the aforesaid order.
- (vii) The Management then submitted an application dated 25.02.2020 under Section 33-B of the Act before the First Respondent for transferring I.D. No. 386 of 2012 pending before the Labour Court to the file of the Industrial Tribunal to be heard together along with I.D. No. 15 of 2014, and has filed this Writ Petition for directing the First Respondent to pass orders thereon.

4. Though the contentions of the Learned Counsel for the Management that both the industrial disputes in I.D. No. 386 of 2012 pending before the Labour Court and I.D. No. 15 of 2014 pending before Industrial Tribunal could be heard together appears to be attractive at the first instance, there is substantial force in the objections raised by the Learned Senior Counsel appearing for the workmen that it is not bonafide, particularly, having due regard to the observations made by this Court in the order dated 14.06.2019 in W.P. No. 6337 of 2018 on the delay tactics adopted by the Management in protracting the proceedings indefinitely.

5. It is also informed that there has not been much progress in the proceedings in I.D. No. 15 of 2014 before the Industrial Tribunal and due to the pendency of larger number of cases there, it would not be possible to have expeditious disposal of both cases, if they are tried together in the Industrial Tribunal. At the same time, since more than 100 workmen are involved in I.D. No. 15 of 2014 before the Industrial Tribunal, it would not be possible to transfer the same to the Labour Court to be tried together along with I.D. No. 386 of 2012, which is pending on its file.

6. In this scenario, this Court is of the considered view that any direction issued by the First Respondent at this stage for transfer of I.D. No. 386 of 2012 from the Labour Court to the Industrial Tribunal at Chennai to be heard together along with I.D. No. 15 of 2014 would not advance the cause of justice, and would frustrate the directions issued in the order dated 14.06.2019 in W.P. No. 6337 of 2018 made by this Court. However, this Court would suggest a course of action, if implemented, would enable expeditious adjudication of both cases in I.D. No. 386 of 2012 before the Labour Court as well as I.D. No. 15 of 2014 before the Industrial Tribunal, and the said proposal is as follows:-

- (i) The Management may make an application under Section 11(4) (iii) of the Act in I.D. No. 15 of 2014 before the Industrial Tribunal to appoint the Presiding Officer, Labour Court, Coimbatore as the Commissioner to record examination of witnesses in that case.
- (ii) The certified copy of the deposition of witnesses of the workmen already examined and documents marked in I.D. No. 386 of 2012 before the Labour Court shall be produced before the Industrial Tribunal by either of the parties and adopted as evidence of the workmen in I.D. No. 15 of 2014 also.
- (iii) The workmen may produce their further evidence for I.D. No. 15 of 2014 before the Labour Court by filing proof affidavits of other witnesses, which shall be treated as examination-in-chief and those witnesses may be subjected

to cross-examination by the Management and additional documents may also be marked. If found necessary either by the Management or the workmen, the witnesses already examined by the workmen in I.D. No. 386 of 2012 may be recalled on such application made in that regard for their examination-in-chief and/or cross-examination in respect of the industrial dispute in I.D. No. 15 of 2014. The evidence of the Management through their witnesses and documents shall be recorded in common for I.D. No. 386 of 2012 and I.D. No. 15 of 2014 in the Labour Court.

- (iv) After completing the recording of evidence of both sides, the Management may make request in writing to the First Respondent to pass orders on its application dated 25.02.2020 for transfer of I.D. No. 386 of 2012 pending before the Labour Court to be heard along with I.D. No. 15 of 2014 before the Industrial Tribunal. If such request is then made, the First Respondent, after affording full opportunity of hearing to the Management and workmen, shall pass reasoned orders thereon, and till that stage of recording of evidence is completed, the First Respondent shall defer the consideration of that application for transfer of cases.

It is made clear that the suggestions made by this Court shall not be construed as creating any fetter for the Labour Court to proceed with disposal of industrial dispute in I.D. No. 386 of 2012 in accordance with law, within the time frame fixed by this Court in the order dated 14.06.2019 in W.P. No. 6337 of 2018 as subsequently extended by order dated 25.08.2020.

7. In the upshot, the Writ Petition is disposed on the aforesaid terms. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dm/vjt

To

The Secretary,
Department of Labour,
Government of Tamil Nadu,
Fort St, George,
Chennai - 600 009.

Copy to

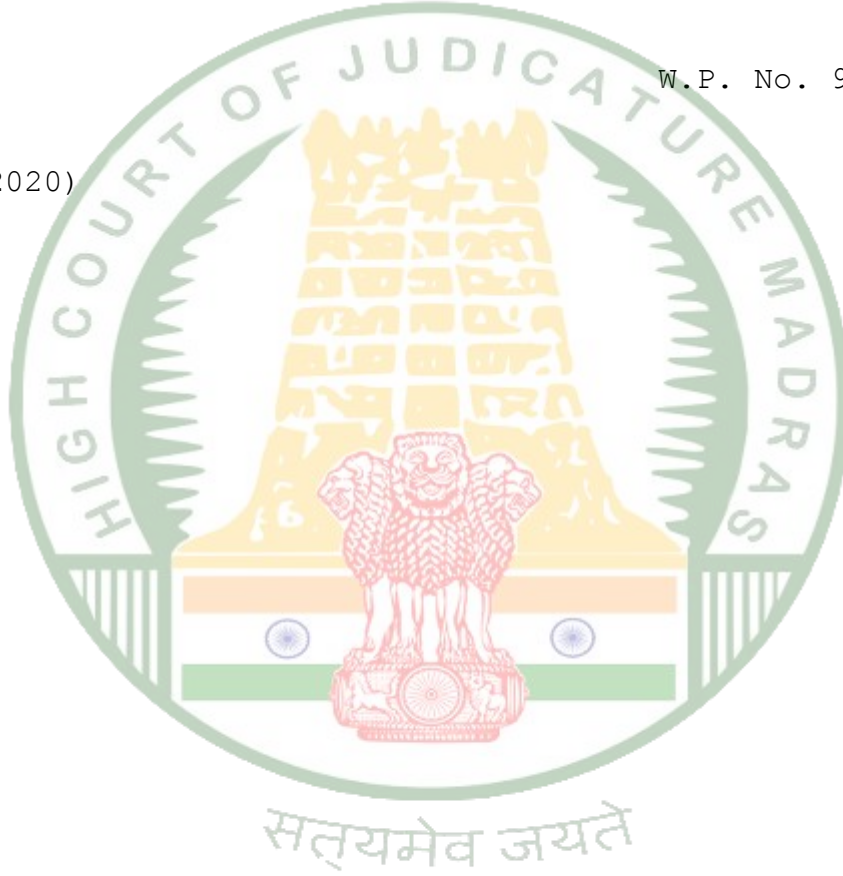
1. The Presiding Officer,
Labour Court,
Coimbatore.
2. The Presiding Officer,
Industrial Tribunal,
Chennai.

+1 CC to Mr.T.S. Gopalan & Co, sr 32404.

+1 CC to Mr.S.R. Boopalachandran, Advocate sr 32622.

W.P. No. 9543 of 2020

BP(CO)
SP(02/11/2020)



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