

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

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

W.P. No. 11592 of 2020
and
W.M.P. No. 14204 of 2020

The Management,
M/s. Magic Clothing Private Limited,
B-12, 1st Floor, Industrial Estate,
Ambattur, Chennai - 600 058
Rep. by its Senior Manager Mr. M.Rajendran ... Petitioner

-vs-

1. Government of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Labour and Employment (A1) Department,
Fort St. George,
Chennai - 600 009.
2. The Workers Representatives,
M/s. Magic Clothing Private Limited,
B-12, Industrial Estate,
Ambattur, Chennai - 600 058. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in G.O. (Ms.) No. 135, Labour and Employment (A1) Department and quash its order dated 18.08.2020 and direct the First Respondent to reconsider the Petitioner's Application for permission dated 29.05.2020.

For Petitioner : Mr. S.Ravindran, Senior Counsel
for Mr. S.Bazeer Ahamed

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

No appearance (for R2)

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O R D E R
(through video conference)

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

2. According to the Petitioner, it has been reducing its manufacturing activities due to substantial fall in orders from buyers caused by the prevailing lockdown on account of COVID pandemic from the month of April 2020 onwards and the workmen of the Petitioner were also not able to report for duty. In such circumstances, an application for permission for lay-off was made on 29.05.2020 by the Petitioner before the First Respondent under Section 25-M of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Though the Petitioner claims to have 154 workers, there is no Trade Union or committee of representatives of workmen in terms of Rule 25 of the Tamil Nadu Industrial Disputes Rules, 1958, functioning in the establishment of the Petitioner. In that backdrop, during the enquiry conducted by the First Respondent on the aforesaid application made by the Petitioner, some representatives of the workmen had appeared and informed that they have obtained consent from 20 workers for the proposed lay-off. The First Respondent was of the view that those representatives of the workers did not have consent obtained from the majority of workers and the existence of COVID pandemic is not an acceptable reason for granting permission for lay-off inasmuch as the First Respondent would be flooded with similar requests from all corners of the State, which will become unmanageable and detrimental to the interests of workers and accordingly, rejected the request for lay-off sought by the Petitioner in the order in G.O. (Ms.) No. 135, Labour and Employment (A1) Department dated 18.08.2020. Aggrieved thereby, this Writ Petition has been filed challenging the same.

3. When the matter came up for hearing on 27.08.2020, this Court was of the considered view that there was substantial force in the reason stated by the First Respondent that the workmen who had consented for lay-off did not represent the majority of the workmen and the following self-explanatory order was passed:-

"5. Having due regard to the aforesaid fact situation, it is imperative that an enquiry has to be conducted to ascertain the willingness in writing for the lay-off, that has been proposed, from the individual employees

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(with their respective photo identity proof) working in the establishment of the Petitioner after ensuring that they have properly understood the financial ramifications that would entail to them, and for that purpose, the Commissioner of Labour, Government of Tamil Nadu shall depute the Labour Officers in the jurisdictional area to carry out that exercise which shall be videographed and shall take place after due notice to the employees of the Petitioner from 01.09.2020 to 10.09.2020 conforming to all pre-cautions and conditions imposed by the Government during COVID lockdown for social distancing in gatherings of people. The charges payable for the same to the Labour Department shall be fixed by the Commissioner of Labour, Government of Tamil Nadu by written orders. If necessary, bundobust security may also be availed from the local police station on request. Ms. S.Surekha, Advocate (Enrollment No.1887/2014) No.8, Cheyur Parthasarathy Street, Perambur, Chennai - 600 011 (Cell No. 97907 21185 and e-mail: surekhakarthis@gmail.com) is appointed as Advocate Commissioner to supervise that the aforesaid directions are scrupulously carried out for which he shall be entitled to an initial remuneration of Rs. 30,000/- (Rupees Thirty Thousand only). All the expenses incurred for conducting the aforesaid enquiry shall be fully borne by the Petitioner, who shall maintain proper accounts with supporting bills and vouchers for the same.

6. The report of the outcome shall be filed before this Court by 14.09.2020."

This Court passed another order dated 15.09.2020, which reads as follows:-

"2. In respect of the employees who were absent, it would have to be ascertained whether due intimation has been sent, which has reached them. Further, in the report filed by the Advocate Commissioner, it has been mentioned that out of 154 employees, 21 of them had resigned and got full and final settlement as per the letter dated 09.09.2020 submitted by the Petitioner. The correctness and genuineness of the aforesaid statement made by the Petitioner requires to be verified by the concerned Labour Officers, who shall complete the aforesaid exercise also and submit their report by 28.09.2020."

In furtherance to the aforesaid orders passed by this Court, the officials of the Labour Department and the Advocate Commissioner appointed by this Court have submitted their reports with

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enclosures regarding the consent of the workmen in the establishment of the Petitioner for the proposal for lay-off, which have been placed on record.

4. It is well settled legal position as highlighted by the Hon'ble Supreme Court of India in Coal India Ltd., -vs- Saroj Kumar Mishra [(2007) 9 SCC 625] that it would not be a relevant consideration to decline a claim merely because by granting it, there is a possibility to open the floodgate for similarly placed persons. As such, when the First Respondent is not justified in refusing to grant permission to the Petitioner for lay-off citing that there is possibility of claims from similarly placed persons if permission for lay-off in the establishment of the Petitioner is granted, it would not be possible to uphold the order impugned in this Writ Petition.

5. In view of the foregoing discussion, the impugned order in G.O. (Ms.) No. 134, Labour and Employment (A1) Department dated 18.08.2020 passed by the First Respondent is set aside and the matter is remitted to the First Respondent for fresh consideration by duly taking into account the subsequent reports from the officials of the Labour Department and the Advocate Commissioner regarding the consent of the workmen for lay-off in the establishment of the Petitioner.

6. Learned Senior Counsel appearing for the Petitioner also submits that the Petitioner is entitled to the benefit of deemed approval in Section 25-M(5) of the Act, which reads as follows:-

"25M. Prohibition of lay-off:-

....

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days."

It is certainly incumbent upon the First Respondent to examine this aspect as well and factually ascertain with reference to the relevant dates as to whether the said benefit is available to the Petitioner in the present case and if not, the specific reasons for the same shall have to be explained while taking final decision in the matter.

7. The First Respondent, after affording full opportunity of hearing to all parties concerned following the prescribed

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procedure in consonance with the principles of natural justice, shall deal with each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the parties concerned under written acknowledgment and file report of such compliance before the Registrar (Judicial) of this Court by 10.11.2020 without fail.

The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Having regard to the nature of work carried out by the Advocate commissioner, she shall be paid an additional remuneration of Rs.20,000/- by the Petitioner on or before 15.10.2020 under written acknowledgment.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Maya/dm/vjt

To

1. The Additional Chief Secretary to the Government of Tamil Nadu, Labour and Employment (A1) Department, Fort St. George, Chennai - 600 009.
2. The Workers Representatives, M/s. Magic Clothing Private Limited, B-12, 1st Floor, Industrial Estate, Ambattur, Chennai - 600 058.

Copy to

1. The Commissioner of Labour D.M.S. Complex, Teynampet Chennai - 600 018.
2. Ms. S.Surekha, Advocate No.8, Cheyur Parthasarathy Street, Perambur, Chennai - 600 011.

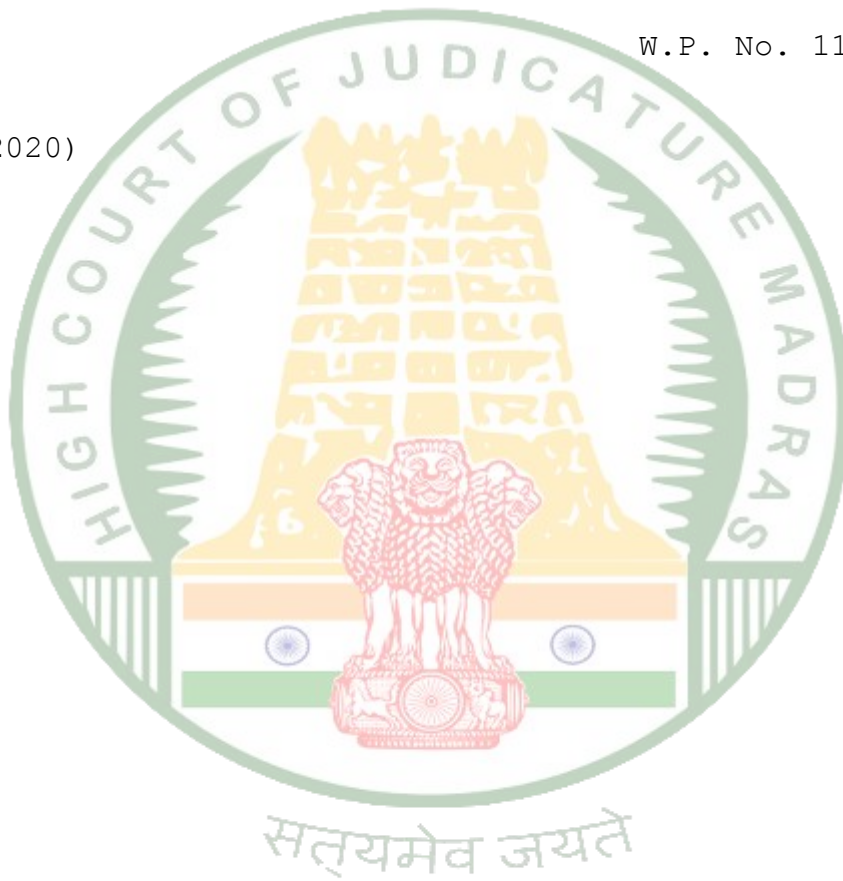
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3. The Management,
M/s. Magic Clothing Private Limited
B-12, 1st Floor, Industrial Estate
Ambattur, Chennai - 600 058
Rep. by its Senior Manager
Mr. M.Rajendran.

4. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

W.P. No. 11592 of 2020

GMR (CO)
CB (15/10/2020)



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