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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P. No. 11626 of 2020
and
W.M.P. No. 14254 of 2020

Workmen of Best Cast IT Limited,
through United Labour Federation,
Reg. No. 2657/CNI,
Represented by its President,
4th Floor, CJ Complex,
149, Thambuchetty Street,
Chennai - 600 001. ... Petitioner

-vs-

1. Government of Tamil Nadu,
   Department of Revenue and Disaster Management,
   Rep. by its Chief Secretary,
   Fort St. George,
   Chennai - 600 009.

2. The District Collector,
   Collectorate of Chennai Singaravelar Maaligai,
   62, Rajaji Salai,
   Chennai - 600 001.

3. The Management of Best Cast IT Limited,
   Rep. by its Managing Director,
   Plot No. 58, (SP) SF No. 184, 185 (Part),
   Sector II, 3rd Cross Road,
   Ambattur Industrial Estate (South),
   Ambattur, Chennai - 600 058.

4. The Enquiry Officer,
   Best Cast IT Limited,
   Plot No. 58, (SP) SF No. 184, 185 (Part),
   Sector II, 3rd Cross Road,
   Ambattur Industrial Estate (South),
   Ambattur,
   Chennai - 600 058. ... Respondents

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Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Third Respondent Management and the Fourth Respondent Enquiry Officer from proceeding with the Enquiry not to proceed with any disciplinary proceedings against M.Ramesh Kumar (E.209), M.Santha Kumar (E.216), A.Ramesh (E.217), M.Shanmugam (E.228), Jeevanantham (E.264), A.Subramani (E.281), A.Tamizhvanan (E.297), G.Sanjay Pothai (E.358), A.Vinothkumar (E.509) and P.Suresh (E.579) enquiring into the charge memos dated 14.07.2020 for not attending 3rd shift of 18.06.2020, which ends at 6.00 a.m. of 19.06.2020 holding the said charge memos to be illegal and opposed to public policy.

For Petitioner : Mr. V.Prakash, Senior Counsel
for S.R.Bubala Chandran

For Respondents: Mr. Shayam Kumar (for R3)

O R D E R

The Prayer sought for in this Writ Petition is for issuance of a Writ of Mandamus, directing the Third Respondent Management and the Fourth Respondent Enquiry Officer from proceeding with the Enquiry not to proceed with any disciplinary proceedings against M.Ramesh Kumar (E.209), M.Santha Kumar (E.216), A.Ramesh (E.217), M.Shanmugam (E.228), Jeevanantham (E.264), A.Subramani (E.281), A.Tamizhvanan (E.297), G.Sanjay Pothai (E.358), A.Vinothkumar (E.509) and P.Suresh (E.579) enquiring into the charge memos dated 14.07.2020 for not attending 3rd shift of 18.06.2020, which ends at 6.00 a.m. of 19.06.2020 holding the said charge memos to be illegal and opposed to public policy.

2.Though the issue raised in this Writ Petition appears to be a major service issue, after hearing the learned Counsel appearing for both sides, this Court feels that, it is innocuous or trivial one which can be sorted out easily with the help of both the Management and the Employees' Union. Therefore, with the consent of the learned Senior Counsel appearing for the petitioner and the learned Counsel appearing for the third and fourth respondents / Management, this Writ Petition is disposed of with the following orders:

(i)That the ten employees of the Petitioner / Employees' Union and the employees of the third respondent / Management were working in the Management's Factory in shift basis. On 18.06.2020, these employees were supposed to report duty at 10 P.M. for third shift and the duration of the third shift will be from 10 P.M. to 6 A.M., till the next day morning i.e.,19.06.2020.

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(ii)When that being so, due to Covid - 19 Pandemic situation, very often, both the State and Central Governments had issued various standard operating procedures during lock down period and in phased manner, these lock down procedures have been subjected to modification.

(iii)In this regard, it is to be noted that, on 17.06.2020, the State Government, Revenue and Disaster Management (DM-II) Department had issued a Government Order in G.O.(Ms)No.305, where the earlier Government Order in G.O.(Ms)No.299 issued by the Revenue and Disaster Management (DM-II) Department dated 16.06.2020, has been taken note of and accordingly, this G.O. (Ms)No.305 had imposed complete lock down due to Covid - 19 Pandemic situation in three revenue districts viz., Thiruvallur, Chengalpattu, Kancheepuram and the Greater Chennai Police Commissionarate as well.

(iv)The third respondent factory is located at Ambattur, Chennai - 58, which comes under the area of Greater Chennai Police Commissionarate. This Greater Chennai Police Commissionarate Area also have been brought under complete lock down as per the aforesaid Government Order.

(v)Due to the said lock down procedure announced by the State Government, through the Government Order, there had been suspension of public transport facilities and also persons who move from one District to other District, had to necessarily take e-pass only at emergency situation identified by the State Government.

(vi)The said Government Order, since had been issued on 17.06.2020 and came into effect from the mid night of 18.06.2020 i.e. 0.00 hours of 19.06.2020 to 30.06.2020, these workers who should report for third shift work on 18.06.2020 at 10 P.M., could not move from their residence to report duty.

(vii)According to the workers, the reason, being, for not reporting duty on 18.06.2020 for third shift is that, suppose these workers move to the factory and reported duty on 18.06.2020 at 10 P.M., the duty would be over only in the next day morning at 6 A.M. i.e., on 19.06.2020 and once duty is over and they completed the shift, they had to move back to their residences / homes for which, there is no public transport facilities and the movement by private vehicle was also curtailed due to complete lock down procedures as stated above in the Government Order, therefore they cannot move from factory premises to the residences.

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(viii)Therefore, apprehending that they would be held back in the factory premises itself and it would become a difficult task to move from factory premises on 19.06.2020 at early morning 6 A.M. to reach their home, they seems to have contacted the supervisory level officers or employees of the third respondent Management on 18.06.2020 in the evening hours and sought for a clarification. However, according to the Petitioner / Employees' Union, there was no satisfactory answer from the supervisory level officer to ensure safety of the workers to return to their home on 19.06.2020, if they report duty at 10 P.M. for third shift on 18.06.2020.

(ix)Resultantly, these employees, numbering about ten, have not attended duty for third shift on 18.06.2020 only for the aforesaid reasons.

(x)In this context, it is the case of the Management that since all the permanent workers including the present workers represented by the Petitioner / Employees' Union have not turned up for third shift duty on 18.06.2020, procedures to be adopted for closing or shutting down of the foundry / factory, could not be taken place smoothly. Therefore, the Management had to face the struggle like anything and therefore, in order to ensure strict compliance of the service regulations and standing operation procedure or standing orders governing the service conditions of the employees of the third respondent factory, they wanted to get explanation from these employees. Accordingly, separate show cause notices, of course with charges, have been issued to all these employees on 14.07.2020 by the third respondent / Management. On receipt of the same, every individual employee of the Petitioner / Employees' Union had given their reply in July 2020. However, not satisfying with the said reply given by each of the employees, the third respondent / Management started conducting the enquiry and in this regard, notice of enquiry has also been issued by the third respondent / Management to each of the employees. Only at this juncture, this Writ Petition has been filed on behalf of the employees by the Petitioner / Employees' Union.

3.Mr.V.Prakash, learned Senior Counsel appearing for the Petitioner / Employees' Union brought to the notice of this Court about the salient features of the G.O.(Ms).No.305 dated 17.06.2020 referred to above, as well as the G.O.(Ms).No.299 of the same department dated 16.06.2020. By relying upon these Government Orders, the learned Senior Counsel appearing for the Petitioner / Employees' Union contended that, since there has been complete lock down by the State Government from mid night on 18.06.2020 i.e., from 0.00 hours of 19.06.2020 till 30.06.2020 including the Greater Chennai Police Commissionarate Area, where, admittedly, the third respondent / factory is

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located, these employees could not attend the third shift duty on 18.06.2020 at 10 P.M. Though attempt has been made in this regard by the employees to the Supervisory Level Officers, there was no definite answer from the Management side to ensure smooth passage of the employees to return back to their homes on 19.06.2020. Therefore, these employees have not attended the factory on 18.06.2020.

4.When show cause notices were issued, it has been clearly stated by each of the employees by giving a separate or individual reply letter and requested the Management to drop the proceedings. However, despite the reply given by each of the employees, the respondent / Management decided to proceed against the employees by way of disciplinary enquiry and notices for enquiry, since has been issued, having no other option, this Petitioner / Employees' Union has approached this Court.

5.The learned Senior Counsel appearing for the Petitioner / Employees' Union also contended that, since it is not intentional on the part of the employees to take leave or to become absent on 18.06.2020 in the third shift duty and only due to the aforesaid reasons, wherein complete lock down, since has been commenced by the State Government, in violation of the lock down procedures, these employees cannot be expected to come to attend the third shift duty. Therefore, the impugned charge memos issued by the Management by way of show cause notices dated 14.07.2020 is per se unlawful and unjustifiable and therefore, indulgence of this Court is sought for, he contended.

6.I have heard Mr.S.Shyam Kumar, learned Counsel appearing for the third respondent / Management. By relying upon the averments made in the counter affidavit, he stated that, in the counter affidavit, the Management wanted from the ten employees to give satisfactory answers for not attending the third shift duty on 18.06.2020. If at all, the employees' reason that only due to lock down procedures, they could not attend the third shift duty on 18.06.2020, the Management is certainly, ready and willing to drop the proceedings provided, if each of the employees come forward with letter of regret stating that, this kind of inconvenience will not be caused to the Management in future. The learned Counsel relied upon Paragraph No.20 of the counter affidavit which reads thus:

> "20. I state that though the enquiry had been conducted and the third respondent can take action on the admissions by the ten workers. If the ten workers are willing to give an unconditional apology with an further undertaking that they would not continue to disobey the standing orders and strike / take mass leave of

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absence without information to the third respondent, the third respondent will take no further action and all enquiry and its proceedings by the fourth respondent on behalf of the third respondent would be dropped."

7.The learned Counsel appearing for the respondent / Management would also contend that, since there are eleven permanent workers in the respondent / Management and since all these workers have not been turned out to attend the third shift duty on 18.06.2020, the Management struggled like anything even to smoothly shut down the factory / foundry.

8.Only in this context, the Management wanted to know the real reason for the en mass absence of the employees and therefore, show cause notices were issued. If at all, the employees wanted to express their inability to attend third shift on the particular date, for the said reason of Covid - 19 lock down and if they come forward to give such a written communication to that effect, the Management can smoothly conclude this proceedings, even to the extent of withdrawing these proceedings, against the employees.

9.The learned Counsel appearing for the third respondent also submitted that, in fact, on 18.06.2020, after some enquiry had come from the employees, the supervisor had contacted the local Police and obtained instructions, of course, orally, that, if these employees turned to duty in the third shift, the next day morning, if they come with Identity Card and Uniform, certainly, there will be in smooth passage or pass would be given and police will not stand in their way to return from the factory premises to their home.

10.Therefore, the learned Counsel appearing for the third respondent / Management would submit that, all these developments had happened because of the employees, who unilaterally decided not to attend the third shift duty on 18.06.2020 and therefore, in order to avoid, this kind of unpleasantness in future, if this truce comes into effect between the Management and the employees, accordingly, these proceedings can be dropped, he contended.

11.I have heard the rival submissions made by the learned Counsel appearing for both sides and also considered the proposal comes from the management side, to have a truce between the Management and the Employees' Union.

12.As has been rightly pointed out by Mr.V.Prakash, learned Senior Counsel appearing for the Petitioner / Employees' Union , since there had been a complete lock down as announced by the State Government in the Government Order referred above, which comes into effect in the mid night on 18.06.2020 i.e., from 0.00

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hours on 19.06.2020, during which time, the third shift on 18.06.2020 was also fixed by the respondent factory i.e., from 10 P.M. on 18.06.2020 to 6 A.M. on 19.06.2020, we cannot expect the employees to take risk to come to the factory in violation of the lock down procedure.

13.If at all the Management side get an information or assurance from the local Police for smooth passage, that could have been forwarded by the Supervisory level officer or employee of the respondent, over phone to these workers. Instead of convincing the minds of the employees, the Management cannot expect the employees to come to the factory during night hours, knowing very well that due to complete lock down, they would be troubled for having smooth passage from the factory premises to home.

14.In that circumstances, it cannot be expected that employees could have made their attendance or presence on 18.06.2020 at 10 P.M. for third shift to the factory of the third respondent.

15.However, it is also to be noted that, since all the permanent employees of the factory who are all supposed to report duty on 18.06.2020 were absent, there was some embarrassment to the Management to have smooth shutting down of the machineries concerned in the factory / foundry. Therefore, viewing from that angle, at least one or two could have contacted the management over phone to have expectable assurance from the Management side to have smooth passage to return back to their home on the next day and accordingly, if not all of them, at least two employees could have attended the third respondent factory on 18.06.2020.

16.Therefore, this had happened, because of the miscommunication or communication gap between the Management's side supervisory level people as well as the employees side or union people. Now, in order to purchase peace, both have come forward to settle the issue as indicated by the Management side. Therefore, this Court feels that, instead of going in to the merits of the show cause notices, claim and counter claim, the issue can be smoothly settled with the following raprochment between the Management and Employees' union.

17.Accordingly, this Court passes the following order disposing the Writ Petition:

(i)Each of the Employees represented by the Petitioner / Employees' Union shall give a letter to the Management through the Petitioner / Employees' Union that, the unpleasantness taken place on 18.06.2020 at third shift, where, these employees

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could not present due to the complete lock down announced by the State Government through G.O.(Ms).No.305, Revenue and Disaster Management (DM-II) Department, dated 17.06.2020, could have been avoided by having direct or smooth conversation or communication between the employees' side and Management side and also they may state in the letter that, in future, this kind of misunderstanding would not be permitted to occur by both employees as well as the Management. If this kind of situation occurs in future or if situation warrants, they will come forward to have a direct communication or negotiation and sort out the issue smoothly then and there. With these kind of contents, each of the employees can address to the Management through the Employees' union and the Employees' union to collect their letters from each of the employees and hand over the same to the Management. On the date of the receipt of the letters of the employees through the Union, the third respondent / Management shall issue proceedings, dropping the disciplinary proceedings initiated by the issuance of the charge memos dated 14.07.2020, in respect of each of the employees and consequential proceedings, as closed.

(ii)It is made clear that, despite the letter having been given by the employees' side and on receipt of the same, still the third respondent / Management does not come forward to issue proceedings as indicated above to close the disciplinary proceedings including the withdrawal of charge memos dated 14.07.2020, on the next date i.e., the date next on which such letters are given to the Management by the Union, the impugned charge memos dated 14.07.2020 issued by the Management, shall stand rescinded.

18.With these observations and directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Chief Secretary,
Department of Revenue and Disaster Management,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2. The District Collector,
Collectorate of Chennai Singaravelar Maaligai,
62, Rajaji Salai,
Chennai – 600 001.

3. The Managing Director,
The Management of Best Cast IT Limited,
Plot No. 58, (SP) SF No. 184, 185 (Part),
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Chennai – 600 058.

4. The Enquiry Officer,
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Ambattur,
Chennai – 600 058.

+1cc to Mr.S.R.Bubala Chandran, Advocate SR.No.35493

+1cc to Mr. Shayam Kumar, Advocate SR.No.35149

W.P. No. 11626 of 2020
and
W.M.P. No. 14254 of 2020

SPD(CO)
GMY(04/11/2020)

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