

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.17462 of 2020 and W.M.P.No.21651 of 2020

The Management of Integral Coach Factory
Rep.by its General Manager, Perambur
Chennai 600 038.

..Petitioner

-Vs-

1. The Deputy Chief Labour Commissioner (Central)
"A" Wing, 5th Floor, 26, Shastri Bhawan
Haddows Road, Chennai 600 006.

2. The Assistant Labour Commissioner (Central)
6, Haddows Road, Shastri Bhawan
Chennai 600 006.

3. G.Sridhar, Plot No.10, F-2, Kavins Castle
Thirumal Srinivasa Nagar, Kathirvedu
Chennai - 600 099.

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records of the 1st respondent in proceedings No.M.8/2/2020-A1 dated 21.08.2020 and 28.08.2020 and quash the same.

For Petitioner : Mr.V.Radhakrishnan, Senior Counsel
for Mr.M.Vijay Anand

O R D E R

The prayer sought for in this writ petition is to call for the records of the 1st respondent in proceedings No.M.8/2/2020-A1 dated 21.08.2020 and 28.08.2020 and quash the same.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows.

3. The third respondent was working as Technician at the petitioner Management viz., Integral Coach Factory (in short 'ICF'). There has been a disciplinary proceedings against the third respondent, pursuant to which, charge memo was issued against the third respondent by the ICF on 07.06.2005. Challenging the said charge memo, the third respondent filed Original Application before the Central Administrative Tribunal (CAT) in O.A.No.310/01893/2016. The said original application

was ultimately dismissed by the CAT by its order dated 20.11.2018. In view of the dismissal of the O.A., by the CAT by an order dated 20.11.2018, the ICF seems to have proceeded against the third respondent, by way of disciplinary proceedings. However, the third respondent felt aggrieved over the order passed by the Tribunal, filed a writ petition before this Court in W.P.No.1689 of 2019. In the meanwhile, the ICF seems to have proceeded against the third respondent by way of disciplinary proceedings and ultimately the said disciplinary proceedings ended in punishment, whereby, the order of termination of service was inflicted against the third respondent vide order dated 27.11.2018.

4. When the aforesaid writ petition was pending before this Court, it seems that the third respondent has filed an appeal under the Statute before the appellate authority as against the order of punishment of termination from service. When the writ petition was taken up for hearing before a Division Bench of this Court, it was brought to the notice of the Division Bench that, pursuant to the impugned charge memo, which was confirmed by the CAT order and that was the subject matter before this Court in the said writ petition, since the ICF completed the disciplinary proceedings which ended in punishment, by virtue of that, the third respondent was terminated from service, as against which, he filed statutory appeal before the appellate authority, which is pending.

5. Having taken note of the said factor, the Division Bench of this Court passed the following order on 14.06.2019.

" We are informed that the petitioner has filed an appeal before the General Manager, I.C.F., challenging the order of dismissal from service and the said appeal was not taken on account of the pendency of the writ petition.

2. We direct the appellate authority to take up the appeal stated to have been filed by the petitioner and dispose of the same on merits and as per law as expeditiously as possible, and in any case, on or before 30 August, 2019 and produce a copy of the order before this Court on 09.09.2019."

6. Pursuant to the order passed by the Division Bench of this Court, the appellate authority, having considered the appeal filed by the third respondent against the order of termination, has rejected the said appeal by order dated 26.08.2019. Thereby, the order of termination, made against the third respondent by the disciplinary authority, was confirmed.

7. As against the said confirmation order made by the appellate authority in respect of the punishment of termination from service inflicted against the third respondent, he approached the Labour Department for referring the matter to the Industrial Tribunal / Labour Court for adjudication. Accordingly, though initially the Department of Labour, Government of India represented by the Labour Commissioner has declined to refer the matter to the Industrial Tribunal, subsequently has referred the matter by an order dated 21.08.2020 to the Industrial Tribunal for adjudication, by exercising the powers vested in him under Section 10(2A)(1)(d) of the Industrial Disputes Act, 1947.

8. Though such a referral order was made on 21.08.2020 by the Labour Commissioner, verbatim a similar order has been passed by the Labour Commissioner on 28.08.2020 exactly with same wordings, once again referring the matter to the Industrial Tribunal.

9. Pursuant to the said reference made to the Central Government Industrial Tribunal-cum-Labour Court, Chennai, the third respondent raised an Industrial Dispute by filing a Claim Petition in I.D.No.29 of 2020, which is pending before the CGIT, where notice seems to have been ordered.

10. Only at this juncture, challenging the order passed by the Labour Commissioner dated 21.08.2020 and subsequently on 28.08.2020 again referring the matter before the CGIT for adjudication, the present writ petition has been filed by the Management / ICF.

11. Heard Mr.V.Radhakrishnan, learned Senior Counsel appearing for the petitioner ICF, who would contend that, the third respondent having invoked the jurisdiction of the CAT already approached the said forum challenging the charge memo filed against him, where he failed, as against which subsequently he filed a writ petition before this Court, which is also pending as on date.

12. While that being so, if he suffered with an order of termination from service at the hands of the petitioner ICF, of course after the departmental proceedings, where due enquiry was conducted by the Enquiry Officer and ultimately in view of the charges framed against the third respondent, having been proved as per the Enquiry Officer's report, the said punishment of termination from service was inflicted, of course in commensurate with the proved charges and against which, admittedly the third respondent filed a statutory appeal before the appellate authority which was also disposed of / decided in favour of the ICF, whereby the appellate authority dismissed the

appeal filed by the third respondent and that order in fact was passed pursuant to the interim order passed by the Division Bench of this Court in the writ petition filed by the very same third respondent, once again he cannot choose another forum ie., the Industrial Tribunal.

13. Learned Senior Counsel would further contend that, when the third respondent approached the Labour Commissioner to refer the matter to the Industrial Tribunal, initially the Labour Commissioner rejected the claim. Even within a week, the Labour Commissioner has changed his mind and passed the present impugned order dated 21.08.2020, where he referred the matter to the Industrial Tribunal.

14. Despite that order being passed on 21.08.2020, the very same Labour Commissioner has once again passed another order dated 28.08.2020, once again referring the matter to the Industrial Tribunal. Therefore, these orders would go to show that there was a total non-application of mind on the part of the Labour Commissioner in exercising his power and therefore the impugned orders dated 21.08.2020 and 28.08.2020 are not sustainable for the said reason of non-application of mind itself.

15. Learned Senior Counsel would also submit that, insofar as the punishment is concerned, the matter has been seized of by this Court, where the writ petition filed by the third respondent is pending before a Division Bench and once the writ petition pending before the Division Bench is taken up in future and decided, if any decision comes in favour of the third respondent, certainly the charge memo filed against the third respondent would go and in that case, what are all the subsequent actions taken in this regard, including the termination from service made against the third respondent by the petitioner ICF would also go automatically.

16. When that being the position, without pursuing the writ petition already filed before this Court, the third respondent has chosen to go before another forum ie., the Industrial Tribunal. Therefore, the learned Senior Counsel would submit that, the workman cannot invoke more than one forum and in this regard, the jurisdiction should be confined only with one forum viz., the CAT. If at all the third respondent has suffered with an order of termination from service, as against which also if he further suffered with an order of rejection by the appellate authority, he should have explored the possibility to challenge that order before the same forum ie., CAT, whereas the third respondent has chosen to go before another forum under the Industrial Disputes Act, which is impermissible and in this regard the learned Senior Counsel would contend that, for want

of jurisdiction as well as on the basis of non-application of mind by the Labour Commissioner in referring the matter to the Industrial Tribunal, for both reasons the impugned orders are liable to be interfered with and therefore challenging these orders, rightly the writ petition has been filed and therefore he seeks the indulgence of this Court to interfere with the impugned orders.

17. I have considered the submissions made by the learned Senior Counsel and also perused the materials placed on record.

18. Insofar as the narration of facts, where this case has travelled, is concerned, there could be not much dispute between the parties and moreover this writ petition is only at the admission stage, where notice has not been ordered.

19. However, on perusal of the documents filed before this Court in the typed set of papers filed by the petitioner, this Court feels that, insofar as the third respondent approaching the Labour Commissioner for referring the matter to the Industrial Tribunal is concerned, certainly he can do so and whether the Industrial Tribunal is having jurisdiction to try the matter or not, can also be agitated by the ICF before the Industrial Tribunal, where the I.D., has already been numbered and notice has been given to the petitioner.

20. Once a preliminary issue is raised in this regard with regard to the jurisdiction itself before the Industrial Tribunal, the same can very well be decided by the Industrial Tribunal and in that case, if any contra order is passed with regard to the jurisdiction of the Industrial Tribunal and if the petitioner ICF is ultimately aggrieved against the said order, the petitioner ICF can work out its remedy in the manner known to law.

21. That apart, insofar as the third respondent is concerned, he has already been terminated from service and he is out of service. Moreover, as has been pointed out by the learned Senior Counsel for the petitioner, if ultimately the Division Bench of this Court, where the writ petition filed by the third respondent is pending, decided in favour of the third respondent, whatever the aftermath or consequences of the decision to be made by the Division Bench of this Court in the pending writ petition, it has to be faced by the parties, ie., both by the petitioner as well as the third respondent and in this case, if any disadvantage has to be faced, it is only for the third respondent to face it and in no way the petitioner is going to be prejudiced, and therefore, that reason cannot be attributed to make out a case to say that the third respondent's approach before the Labour Commissioner to refer the matter to the Industrial Tribunal, is bad in law.

22. Therefore, for all these reasons, this Court feels that there is absolutely no infirmity in the orders passed by the Labour Commissioner dated 21.08.2020 and 28.08.2020. Moreover, if at all two orders have been passed for the same reference ie., one is on 21.08.2020 and another is on 28.08.2020, the second order can very well be ignored as mistake or error committed by the Labour Commissioner and in this regard the Industrial Tribunal has already acted upon only in respect of one such order, based on which, the statement of claim filed by the third respondent was accepted and the I.D., was numbered as I.D.No.29 of 2020 and taken on file by the Industrial Tribunal and therefore, if at all any grievance is still available for the petitioner with regard to the jurisdiction of the Industrial Tribunal, the same can very well be agitated, as stated above in the manner known to law, by raising this point as preliminary issue before the Industrial Tribunal itself.

23. For all these reasons, this Court feels that the impugned orders cannot be said to be unsustainable and the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

//True Copy//

KST
To

Sub Assistant Registrar

1. The Deputy Chief Labour Commissioner (Central)
"A" Wing, 5th Floor, 26, Shastri Bhawan
Haddows Road, Chennai 600 006.
2. The Assistant Labour Commissioner (Central)
6, Haddows Road, Shastri Bhawan
Chennai 600 006.

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.38495

W.P.No.17462 of 2020

ssd(CO)
rv(03/02/2021)