



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2021	Pronounced on : 23.12.2021
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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30593 of 2012
and
M.P. No. 2 of 2012
and
M.P. No. 1 of 2014

The Management,
State Express Transport Corporation (Tamil Nadu) Limited,
Pallavan Salai,
Chennai - 600 002.

... Petitioner

-vs-

1. The Presiding Officer,
Labour Court,
Chennai.
2. L.Thillaivasan
3. The Commissioner of Labour,
DMS Campus,
Chennai.

... Respondents

(R3 suo motu impleaded vide order dated 07.10.2021)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent in C.P. No. 327 of 2006 dated 29.11.2011 and quash the same.

For Petitioner : Mr. Kathiresan

For Respondents: R1 - Court

Mr. S.T.Varadarajulu (for R2)

Mr. C.Harsha Raj,
Additional Government Pleader
(for R3)



O R D E R

(through video conference)

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Heard Mr. Kathiresan, Learned Counsel for the Petitioner, Mr. S.T.Varadarajulu, Learned Counsel for the Second Respondent and Mr. C.Harsha Raj, Learned Additional Government Pleader appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who was employed in the establishment of the Petitioner, had been terminated from service by Order No. 180/179504/TL9/ SETC/02 dated 20.03.2003 citing unauthorized absence from duty. According to the Second Respondent, such termination has taken place during the pendency of conciliation proceedings in an industrial dispute between the Petitioner and its Trade Union under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). In that backdrop, the Second Respondent straightaway made an application in C.P. No. 327 of 2006 under Section 33-C(2) of the Act before the II Additional Labour Court, Chennai (hereinafter referred to as 'the Labour Court' for short) for computation of the monetary benefits to which he was entitled for the period from April 2003 to September 2006 relying on the ratio laid down by the Constitution Bench of the Hon'ble Supreme Court of India in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. -vs- Ram Gopal Sharma [(2002) 2 SCC 244] that the termination from service at the time when conciliation proceedings were pending is ineffective in the absence of obtaining express permission in writing under Section 33(1)(b) of the Act from the concerned authority. Though the Petitioner contended that the prosecution of an application under Section 33-C(2) of the Act, which is in the nature of execution proceedings, cannot be made without a prior adjudication on the validity of the termination of the Second Respondent from the service of the Petitioner, the Labour Court by order dated 29.11.2011 in C.P. No. 327 of 2006 accepted the explanation of the Petitioner that the termination made without obtaining prior permission from the concerned authority under Section 33(1)(b) of the Act was ineffective relying on the admission made by the witness of the Petitioner in cross-examination that conciliation proceedings were pending at the relevant point of time when the order of termination has been passed. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the order dated 29.11.2011 in C.P. No. 327 of 2006 passed by the Labour Court.

3. A vain endeavour is made by the Petitioner to re-agitate the same issue in this Writ Petition, but there does not



appear to be any acceptable reason to take a different view from what has been concluded by the Labour Court in the impugned order. In furtherance to the order dated 24.08.2021 passed by this Court, Learned Additional Government Pleader appearing for the Third Respondent has produced copy of the proceedings dated 30.03.2002, 07.05.2002 and 30.08.2005 issued by the Commissioner of Labour showing that there had been conciliation proceedings pursuant to the strike notice dated 14.03.2002 received from the recognized Trade Union of the employees of the Petitioner, which had ultimately ended on 31.08.2005 when a settlement under Section 12(3) of the Act was entered between the Petitioner and the Trade Union of its employees on that industrial dispute. Inasmuch as the termination of the Second Respondent had taken place on 20.03.2003 during the pendency of the said conciliation proceedings, it is beyond any pale of doubt that the permission of the concerned authority under Section 33(1)(b) was required following the prescribed procedure. The Petitioner has not produced any material either before the Labour Court or in this Court to establish that such permission under Section 33(1)(b) of the Act had been obtained, which necessarily gives rise to an inference that the Second Respondent was entitled to claim for computation of monetary benefits invoking Section 33-C(2) of the Act by making application before the Labour Court following the dictum laid down in the authoritative pronouncement of the highest court of the land referred supra, which holds the field.

4. Learned Counsel for the Petitioner lastly made a fervent plea that the Second Respondent, who had been engaged on casual basis as and when there was any vacancy when regular staff were on leave, was not a beneficiary of the said industrial dispute relating to which conciliation proceedings were taking place at the time of his termination from service, meaning thereby that the requirement to obtain permission under Section 33(1)(b) of the Act does not arise in this case and the Petitioner cannot be mulcted with any liability when the order of termination has not been set aside in a manner recognized by law. In this context, reference must, at once, be made to the decision of the Hon'ble Supreme Court of India in *New India Motors (P) Ltd. -vs- K.T.Morris* (AIR 1960 SC 875), where it has been explicated as follows:-

"6. Section 33(1)(a) as it stood prior to the amendment of 1956 provided, inter alia, that during the pendency of any proceedings before a tribunal, no employer shall alter to the prejudice of the workmen concerned in the said dispute the conditions of service applicable to them immediately before the commencement of the said proceedings, save with the express permission in writing of the Tribunal. Section 33 has been modified from time to time and its scope



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has been finally limited by the amendment made by Act 36 of 1956. With the said amendments we are, however, not concerned. The expression "the workmen concerned in such dispute" which occurred in the earlier section has not been modified and the construction which we would place upon the said expression under the unamended section would govern the construction of the said expression even in the amended section. What does the expression "workmen concerned in such dispute" mean? The appellant contends that the main dispute was in regard to the discharge of 7 apprentices employed by the appellant, and it is only the said 7 apprentices who were concerned in the said dispute. The respondent was not concerned in the said dispute, and so the termination of his services cannot attract the provisions of Section 33(1)(a). Prima facie the argument that "workmen concerned in such dispute" should be limited to the workmen directly or actually concerned in such dispute appears plausible, but if we examine the scheme of the Act and the effect of its material and relevant provisions this limited construction of the clause in question cannot be accepted.

7. Let us first consider the definition of the industrial dispute prescribed by Section 2(k). It means, inter alia, any dispute or difference between employers and workmen which is connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person. It is well settled that before any dispute between the employer and his employee or employees can be said to be an industrial dispute under the Act it must be sponsored by a number of workmen or by a union representing them. It is not necessary that the number of workmen of the union that sponsors the dispute should represent the majority of workmen. Even so, an individual dispute cannot become an industrial dispute at the instance of the aggrieved individual himself. It must be a dispute between the employer on the one hand and his employees acting collectively on the other. This essential nature of an industrial dispute must be borne in mind in interpreting the material clause in Section 33(1)(a).

8. Section 18 of the Act is also relevant for this purpose. It deals with persons on whom awards are binding. Section 18(3) provides, inter alia, that an award of a tribunal which has become enforceable shall be binding on (a) all parties to the industrial



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dispute, (b) all other parties summoned to appear in the proceedings as parties to the dispute unless the Tribunal records the opinion that they were so summoned without proper cause, and (d) where a party referred to in clause (a) or clause (b) is composed of workmen all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part. It is thus clear that the award passed in an industrial dispute raised even by a minority union binds not only the parties to the dispute but all employees in the establishment or part of the establishment, as the case may be, at the date of the dispute and even those who may join the establishment or part subsequently. Thus the circle of persons bound by the award is very much wider than the parties to the industrial dispute. This aspect of the matter is also relevant in construing the material words in Section 33(1)(a).

9. In this connection the object of Section 33 must also be borne in mind. It is plain that by enacting Section 33 the Legislature wanted to ensure a fair and satisfactory enquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for disharmony between them. During the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. That being the object of Section 33 the narrow construction of the material words used in Section 33 (1)(a) would tend to defeat the said object. If it is held that the workmen concerned in the dispute are only those who are directly or immediately concerned with the dispute it would leave liberty to the employer to alter the terms and conditions of the remaining workmen and that would inevitably introduce further complications which it is intended to avoid. Similarly it would leave liberty to the other employees to raise disputes and that again is not desirable. That is why the main object underlying Section 33 is inconsistent with the narrow construction sought to be placed by the appellant on the material words used in Section 33(1)(a).

10. Even as a matter of construction pure and simple there is no justification for assuming that the workmen concerned in such disputes must be workmen directly or immediately concerned in the said



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disputes. We do not see any justification for adding the further qualification of direct or immediate concern which the narrow construction necessarily assumes. In dealing with the question as to which workmen can be said to be concerned in an industrial dispute we have to bear in mind the essential condition for the raising of an industrial dispute itself, and if an industrial dispute can be raised only by a group of workmen acting on their own or through their union then it would be difficult to resist the conclusion that all those who sponsored the dispute are concerned in it. As we have already pointed out this construction is harmonious with the definition prescribed by Section 2(s) and with the provisions contained in Section 18 of the Act. Therefore, we are not prepared to hold that the expression "workmen concerned in such dispute" can be limited only to such of the workmen who are directly concerned with the dispute in question. In our opinion, that expression includes all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be made in the said dispute."

Viewed from that perspective, it is not possible to countenance the submissions made by the Learned Counsel for the Petitioner in that regard.

5. The result of the foregoing discussion is that the impugned order dated 29.11.2011 in C.P. No. 327 of 2006 passed by the Labour Court, which does not suffer from infirmity, cannot be interfered by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

In the upshot, the Writ Petition is dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vjt



To

1. The General Manager,
State Express Transport Corporation (Tamil Nadu) Limited,
Pallavan Salai,
Chennai - 600 002.

2. The Presiding Officer,
Labour Court,
Chennai.

3. The Commissioner of Labour,
DMS Campus,
Chennai.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.4 [26/04/2022]

W.P. No. 30593 of 2012

VBM(CO)
SU(27/12/2021)