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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14115 of 2021,
W.P.No.1334 of 2020
and
W.P.No.20871 of 2019

W.P.No.14115 of 2021:

G.Basker

... Petitioner

vs.

1. The Secretary to Government (Labour)-cum-
Commissioner of Labour,
Office of the Commissioner of Labour Puducherry,
2nd Floor, Labour Complex,
Vazhudavur Road, Mettupalayam,
Pondicherry,
Gandhi Nagar 605 009.

2. The Management Eaton,
Eaton Power Quality Pvt. Ltd.,
rep. by its Factory Manager,
Factory at EVR Street, Sedarapet,
Puducherry - 605 111.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records of the 1st Respondent pertaining to the impugned order vide Reference No.2869/LAB/AIL/T/2019/631, Government of Puducherry Labour Department, dated 18.05.2021 and quash the same.

For Petitioner	:	Mr.P.R.Thiruneelakandan
For 1 st Respondent	:	Ms.G.Djearani, Government Advocate (Pondy)
For 2 nd Respondent	:	Ms.D.Nishalaya, for Mr.R.Prabakaran

W.P.No.1334 of 2020:

M/s.Eaton Power Quality Pvt. Ltd.,
No.2, EVR Street, Sedarapet,
Villianur Commune,



Puducherry - 605 111
rep. by its General Manager-HR/
Authorized Signatory

... Petitioner

vs.

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1. The Commissioner of Labour-cum-
Addl. Secretary to Government (Labour),
Government of Puducherry,
Vazhudavur Road, Gandhi Nagar,
Puducherry - 605 009.

2. G.Baskar

3. S.Ramesh

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records culminated in the 1st Respondent's impugned order in Ref.No.2869/LAB/AIL/T/2019/358, dated 05.04.2019, and quash the same as illegal.

For Petitioner : Ms.D.Nishalaya,
for Mr.R.Prabhakaran

For 1st Respondent : Ms.G.Djearani,
Government Advocate (Pondy)

For Respondents 2 & 3 : Mr.P.R.Thiruneelakandan

W.P.No.20871 of 2019:

1. G.Baskar
2. S.Ramesh

... Petitioners

vs.

1. The Commissioner of Labour,
Office of the Commissioner of Labour Puducherry,
2nd Floor, Labour Complex,
Vazhudavur Road, Mettupalayam,
Pondicherry,
Gandhi Nagar 605 009.

2. The Management Eaton,
Eaton Power Quality Pvt. Ltd.,
rep. by its Factory Manager,
Factory at EVR Street, Sedarapet,
Puducherry - 605 111.

... Respondents



Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the 2nd Respondent herein to reinstate the Petitioners in their service in compliance of the order of the 1st Respondent/Commissioner of Labour, dated 05.04.2019 bearing Reference No.2869/LAB/AIL/T/2019/358 within the stipulated time and on failure to comply the said order, direct the 1st Respondent herein to initiate appropriate legal action including launching prosecution against the 2nd Respondent for commission of unfair labour practice against the Petitioners.

For Petitioners : Mr.P.R.Thiruneelakandan
For 1st Respondent : Ms.G.Djearani,
Government Advocate (Pondy)
For 2nd Respondent : Ms.D.Nishalaya,
for Mr.R.Prabakaran

C O M M O N O R D E R

W.P.No.14115 of 2021 is filed challenging the impugned order dated 18.05.2021 passed by the 1st Respondent/Secretary to Government (Labour)-cum-Commissioner of Labour, Office of the Commissioner of Labour Puducherry vide Ref.No.2869/LAB/AIL/T/2019/631, Government of Puducherry Labour Department; W.P.No.1334 of 2020 is filed challenging the order dated 05.04.2019 passed by the 1st Respondent vide Ref.No.2869/LAB/AIL/T/2019/358 and W.P.No.20871 of 2019 is filed seeking a direction to the 2nd Respondent to reinstate the Petitioners in their service, in compliance of the order of the 1st Respondent/Commissioner of Labour, dated 05.04.2019 bearing Reference No.2869/LAB/AIL/T/2019/358 within the stipulated time and on failure to comply the said order, direct the 1st Respondent herein to initiate appropriate legal action including launching prosecution against the 2nd Respondent for commission of unfair labour practice against the Petitioners.

2. Since the issue involved in all these Writ Petitions is one and the same, cases are taken up for disposal by a common order.

3. The Commissioner of Labour, by an order dated 05.04.2019, passed an order directing reinstatement of the employees involved in this case. Be it an Industrial Dispute or a complaint against unfair labour practice under Section 25-T of the Industrial Disputes Act, 1947 (in short 'I.D. Act'), the role of the Commissioner of Labour is very limited in terms of Section 12 of the I.D. Act. It is no doubt true that, if an



Industrial Dispute is pending before the Conciliation Officer, be it the Commissioner of Labour/ Joint Commissioner of Labour/Deputy Commissioner of Labour/Assistant Commissioner of Labour/Inspector of Labour or Labour Officer, when the Management violates the provisions stipulated under Section 33 (1) of the I.D. Act, either of the aforesaid Authorities has powers to pass appropriate orders. At the same time, they have got powers to refuse to grant approval when an Application under Section 33(2)(b) of the I.D. Act is filed, provided the Industrial Dispute is pending. Similarly, when the Authority concerned coming under the aforesaid designation, has powers to pass orders under Section 33(3) of the I.D. Act read with Industrial Disputes Rules, it does not mean that, the Authority has got inherent powers to pass any order according to his whims and fancies.

4. In a similar circumstance, this Court has already observed that, the present Commissioner of Labour-cum-Additional Secretary to Government is acting beyond the powers conferred under the provisions of the Industrial Disputes Act, 1947, and that, the Government must think of posting some other person in his place. However, the Authority concerned, knowing very well that, his earlier order dated 05.04.2019 is erroneous, recalled the same vide order dated 18.05.2021.

5. As the order dated 05.04.2019 passed by the 1st Respondent is recalled by him, W.P.No.20871 of 2019 and W.P.No.1334 of 2020 have become infructuous and there is no need to adjudicate with the same. Insofar as W.P.No.14115 of 2001 is concerned, the employee viz. Baskar has challenged the order dated 18.05.2021 passed by the 1st Respondent, recalling the earlier order dated 05.04.2019.

6. For the sake of convenience, relevant provisions of the Industrial Disputes Act, 1947, discussed supra, are extracted below:

Section 33 of the Industrial Disputes Act, 1947:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings:

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before ² an arbitrator or] a Labour Court or Tribunal or National



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Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute² or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding



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in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.-- For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being ¹ a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

7. Learned counsel for the Petitioner in W.P.No.14115 of 2021 contended that, the impugned order dated 18.05.2021 passed by the 1st Respondent/Secretary to Government (Labour)-cum-Commissioner of Labour, Pondicherry is a non-speaking order and the same is liable to be quashed. In support of his stand, learned counsel has relied on the following Apex Court decisions:

(i) Grindlays Bank Ltd. vs. Central Government Industrial Tribunal reported in AIR 1981 SC 606

"6. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory



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prohibition. On the other hand, there are indications to the contrary."

(ii) Dhani Devi vs. Sant Bihari Sharma, AIR 1970 SC 759

"In the absence of any statute or statutory rule the Regional Transport Authority may devise any reasonable procedure for dealing with the situation. As stated in American Jurisprudence, 2d. Vol. 2 (Administrative Law), Article 340, p. 155: "where the statute does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its functions". (see also Corpus Juris Secundum, Vol. 73 (Public Administrative Bodies and Procedure, Article 73, p. 399). The Regional Transport Authority has complete discretion in the matter of allowing or refusing substitution. It is not bound to embark upon prolonged investigation into disputed questions of succession. Nor is it bound to allow substitution if such an order will delay the proceedings unreasonably or will otherwise be detrimental to the interests of the public generally."

8. Learned counsel for the Petitioner in W.P.No.14115 of 2021 has also relied on a Kerala High Court judgment in the case of K.V.Aboo vs. Commissioner, Workmen's Compensation, reported in 1977 (2) LLJ 134, wherein, it is held as under:

"It might be noted that the principle of inherent power to remedy injustice applies to quasi-judicial authorities also. The Madhya Pradesh High Court has held in Sunderlal Mannalal v. Nandramdas Dwarkadas A.I.R. 1958 Madhya Pradesh 760(261) (D.B.) that an Election Tribunal has inherent power, ex debito justitiae to restore an election petition dismissed by it for default. Thus, whether or not Section 151 of the Civil Procedure Code itself applies to proceedings under the Madras Rent Control Act, XV of 1946, a quasi-judicial Tribunal like the Rent Controller or the Appellate Tribunal has an inherent power to set right to mistakes made by inadvertence. See Rajammal v. R Gopalaswami Naidu Also it was held in Manohar Lal v. Mohan Lal Gianchand A.I.R. 1997 Punj. 72, 73, that the Rent Controllerr under East Punjab Rent



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Restriction Act 3 of 1949 has inherent power to set aside ex parte order passed by himself. In Subbanna v. Labour Officer A.I.R. 1930 Madras 618, it was held that a Court or an Officer exercising judicial functions can exercise inherent power. "

9. Above decisions relied on by the learned counsel for the Petitioner/employee may not be applicable to the facts in W.P.No.14115 of 2021, moreso in the light of the Apex Court decision in the case of Padma Sundara Rao Vs. State of Tamil Nadu, reported in 2002 (3) SCC 533, wherein, it is held as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

10. Firstly, Grindlays' case (supra) may not be applicable to the facts in W.P.No.14115 of 2021, as, in that case, the Application to restore the Industrial Dispute on file was made and the Court held that, the Labour Court/Tribunal will not become functus officio till the Award comes into force after publication of the Award in the official Gazette, as contemplated under Section 17-A of the I.D. Act. It has been held therein that, every Authority exercising quasi-judicial powers has inherent or incidental powers in discharge of its functions to ensure that, justice is done to the parties. Unless the powers are traced to the provisions of the Act, the said Authority cannot usurp the powers that are not contemplated under the I.D. Act.

11. Similarly, the other Apex Court decision in the case of Dhani Devi (supra) will also not be applicable to the facts in W.P.No.14115 of 2021. 12. Also, the Kerala High Court judgment in the case of K.V.Aboo (supra) may not be applicable to the facts of the case, as it is one rendered under the Workmen's Compensation Act, 1923.

13. A reading of the above judgments makes it clear that,



the Authority can devise reasonable procedures to collect the details to be placed before the appropriate forum for it to decide.

14. Under the Industrial Disputes Act, 1947, certain powers are conferred to the Authorities mentioned supra and only under exceptional circumstances, the Authority has got inherent powers. But, when the provisions of the I.D. Act does not confer powers to the Authority to order reinstatement of an employee, the Authority has no power to order so.

15. A reading of Section 34 of the I.D. Act would make it very clear that, the Authority can collect the details and place it before the Commissioner of Labour for sanctioning prosecution. Ultimately, the Authority has no power to prosecute. Only the Government can sanction prosecution. If the Authority has made a complaint, it must be under the authority of the appropriate Government. If an Industrial Dispute is pending before the Authority, the said Authority, while dealing with Section 33(1) or Section 33(2)(b) of the I.D. Act, can render a finding that, there is unfair labour practice. But, he has no power to order reinstatement when a complaint under Section 25-T of the I.D. Act is made, as adjudication is mandatory. In case of absence of any one of the parties, the Labour Court/Tribunal, while dealing with the issue can get the details from the Labour Department/Conciliation Officer, scrutinize the records and come to a conclusion about the unfair labour practice and the like.

16. In the present case on hand, I find that, the order dated 18.05.2021 passed by the 1st Respondent withdrawing the earlier order dated 05.04.2019, is perfectly in order. In fact, even though the order dated 05.04.2019 has been impugned in the other Writ Petition, it can only be treated as an intimation and it will not bind the Management under any circumstance and that, it can be used as a document to substantiate their arguments. But, that document alone cannot be treated as a gospel truth to accept the contention of the employees.

17. Hence, this Court makes it clear that, there is no error apparent on the face of record on the part of the 1st Respondent in W.P.No.14115 of 2021, in withdrawing the earlier order dated 05.04.2019, and this Court is not inclined to grant the relief sought for by the Petitioner/employee. However, this order will not preclude the Officer from conciliating including the complaint under Section 25-T of the I.D. Act and take a decision in accordance with the provisions of the I.D. Act and the matter has to be referred for adjudication, if the dispute is pursued by the Union. After adjudication, in case of favourable decision, an individual can seek remedy for



prosecution and at that stage, Union's role is not mandatory, as individual is the beneficiary of the decision that, may be rendered in his/her favour.

18. In fine, W.P.No.14115 of 2021 stands dismissed; W.P.No.20871 of 2019 and W.P.No.1334 of 2020 are dismissed as infructuous. No costs. Consequently, connected W.M.P.Nos.14991 & 14992 of 2021 in W.P.No.14115 of 2021; W.M.P.No.20077 of 2019 in W.P.No.20871 of 2019; W.P.Nos.1596 & 1597 of 2020 and W.M.P.No.5187 of 2020 in W.P.No.1334 of 2020 are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government (Labour)-cum-
Commissioner of Labour,
Office of the Commissioner of Labour Puducherry,
2nd Floor, Labour Complex,
Vazhudavur Road, Mettupalayam,
Pondicherry, Gandhi Nagar 605 009.
2. The Commissioner of Labour-cum-
Addl. Secretary to Government (Labour),
Government of Puducherry,
Vazhudavur Road, Gandhi Nagar,
Puducherry - 605 009.

+1cc to the Government Pleader, S.R.No. 32831

W.P.No.14115 of 2021,
W.P.No.1334 of 2020
and W.P.No.20871 of 2019

PVS (CO)
GN(11/08/2021)