



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16126 of 2020
and WMP.No.20114 of 2020

M/s.Hindustan Unilever Limited
Synthetic Detergents Factory
Off NH 45A, Vadamangalam,
Puducherry 605 102.
Rep.by Ms.Divya Srikanth
Asst. Legal Manager

... Petitioner

-vs-

1. Commissioner of Labour
Labour Department
Government of Puducherry
Vazhudavoor Road, Gandhi Nagar,
Puducherry.

2. M. Karthikeyan

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, call for the records in the impugned order being the order dated 11.02.2020 bearing reference No.1111/LAB/AIL/T/2020/173 passed by the 1st respondent and quash the same.

For Petitioner : Mr.Sanjay Mohan
for Mr.S.Ramasubramaniam

For Respondents : Mr.K.Sasindran for R2

ORDER

This writ petition has been filed, seeking to call for the records in the impugned order dated 11.02.2020 bearing reference No.1111/LAB/AIL/T/2020/173 passed by the 1st respondent and quash the same.

2. Heard the learned counsel on either side and perused the material documents available on record.



3. The petitioner Management has come forward challenging the order of the Commissioner of Labour cum Additional Secretary to Government (Labour) dated 11.02.2020 directing the Management to revoke the suspension order dated 06.07.2019 issued to the second respondent workman and to reinstate him in service.

4. In the order dated 11.02.2020 impugned herein, the 1st Respondent / Commissioner has stated that pending Industrial Dispute and Conciliation Proceedings in I.D.(T) No.6/2019 and No.1279/2018 and 1779/2018, there is no application filed by the Management under Section 33 of the Act, seeking permission of the Labour Court concerned to initiate action against the 2nd Respondent / Workman.

5. The provision of Section 33 nowhere states that an employer, who intends to initiate action against an employee, who has committed misconduct must obtain permission before such initiation, as the question of seeking permission under Section 33 will come only at the time of giving effect to the final orders and not before that.

6. In this case, the Commissioner, by way of such observation in the impugned order, has put the cart before the horse, as the issue is still born child. Since no finality has attained and that the employee has been placed under suspension pending enquiry, it cannot, at any stretch of imagination be construed, as change of service condition attracting Section 33 (1) of the Industrial Dispute Act 1947. Hence, I am inclined to set aside the impugned order and it is open to the parties to recourse to the appropriate forum after any final orders are passed by the Management based on the disciplinary proceedings.

7. With the above observation, the Writ Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



dpq

To

WEB COPY

The Commissioner of Labour,
Labour Department,
Government of Puducherry,
Vazhudavoor Road, Gandhi Nagar,
Puducherry.

+lcc to M/s.S.Ramasubramaniam & Associates, Sr.23931

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rsi[co]
srg 14/07/2021