In the High Court of Judicature at Madras

Dated : 12.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.26618 of 2023

The Management, Tamil Nadu
Telecommunications Ltd.,
Maraimalai Nagar, Chengalpattu
Taluk, Kancheepuram District. ...Petitioner

Vs

1.K.Sugumaran
2.R.Vinayagam
3.M.Balu
C/O Chengai General Labour Union ...Respondents

Prayer: This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records relating to the general order dated 31.10.2022 passed by the Labour Court, Kancheepuram (CP.Nos.27, 28 and 52 of 2019) and quash the same.

For Petitioner : Mr.T.Selvaraju

ORDER

This is a petition filed by the petitioner seeking to quash the common order dated 31.10.2022 passed by the Labour Court, Kancheepuram.

2. The facts leading to filing of this case are as follows :

(i) The petitioner-Management was promoted by M/s. Telecommunications Consultants India Limited - a Government of India Enterprise, M/s.Tamil Nadu Industrial Development Corporation - a Government of India Enterprise and M/s.Fujikara Ltd., Japan. It was registered under the Companies Act, 1956. It was in the process of manufacturing jelly filled copper cables at Arakonam and Maraimalai Nagar. Due to change in the telecom technology, optical fibre was preferred over the copper cable and as a result, the prices of the copper cables fell down drastically.

(ii) As the petitioner could not sustain the loss incurred on account of lack of demand, it was constrained to close the plant at Arakonam in 2003. Subsequently, when the petitioner was referred to the Board for Industrial and Financial Reconstruction, it was declared as a sick industrial company by order dated 16.5.2006. In spite of the revival policy, the petitioner could not revive. Rather, it accumulated loss to the tune of Rs.159 Crores as on

31.3.2019.

(iii) The petitioner is not operating from August 2017 nor there is any revenue generation from 2017. Since all the employees were sitting idle from August 2017, at the instance of the petitioner, one of the promoter companies accepted to take the employees of the petitioner on deputation in their organization. Accordingly, all the employees except the respondents joined in that promoter company. The respondents had not accepted the proposal for alternate jobs.

(iv) Further, claiming salary for the period from June 2018 to January 2019 and medical allowance for the financial years 2016-17 and 2017-18, the respondents filed the computation petitions before the Labour Court, Kancheepuram. In that, the petitioner filed counters. Ultimately, after contest, by the impugned common order, the Labour Court, Kancheepuram allowed the petitions together with interest at the rate of 6% per annum from the date of petitions till the date of payment. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that due to the loss

incurred by the petitioner company, they were constrained to close the plant at Arakonam in the year 2003. He further submits that the employees were idle from August 2017 and in order to alleviate their misery and also to protect them from being retrenched and be without any job at the hands of the petitioner company, the petitioner requested one of the promoter companies to take their employees on deputation in their organization, however, the respondents did not accept the proposal of alternate job.

4. He further submitted that though all the employees except the respondents accepted the proposal of alternate job, however, the respondents alone made a claim before the Labour Court seeking salary for the period from 2018 to January 2019 and medical allowance for the financial years 2016-17 and 2017-18 and the Labour Court allowed the claim made by the respondents, which is per se unsustainable. Accordingly, he prayed to allow this writ petition.

5. Heard the learned counsel for the petitioner. In view of the limited nature of the order which this Court proposes to pass, the writ petition itself

is taken up for final disposal without ordering notice to the respondents.

6. There is no dispute about the fact that the respondents were employed as operators in the petitioner company. Due to change in telecom technology, the unit of the petitioner was not feasible of operation and resultantly due to heavy loss, the petitioner unit is not operating since August, 2017, which fact is admitted by the petitioner.

7. The stand of the petitioner is that as the employees were without any work since during the said period and as the petitioner could not meet out their monthly wages, one of the promoter companies accepted to take the employees, which was accepted by the other employees, barring the respondents. However, without accepting the offer and without rendering work, , the respondents filed computation petitions claiming salary for the period from June, 2018 to January, 2019 and medical allowance for the financial years 2016-2017 and 2017-2018, which were erroneously by the Labour Court.

8. Even according to the petitioner, the unit could not be operated, and, therefore, to mitigate the plight of the workmen, one of the promoter companies accepted to take the employees of the petitioner on deputation, as otherwise the employees would have to be retrenched.

9. In the present case, neither the employees, viz., the respondents were retrenched, nor the unit was closed down as per the provisions of Section 25-N and 25-O of the Industrial Disputes Act. Resultantly, the only inference that could be drawn is that the unit was not closed.

10. If the petitioner unit is not functioning, the proper course for the petitioner is either to proceed with retrenchment of the workmen u/s 25-N of the ID Act by giving three months notice to the workmen in writing and also seek the approval of the Government prior to such retrenchment setting out the reasons for such retrenchment. If the petitioner intends to close down the unit, the provisions u/s 25-O of the ID Act necessarily have to be followed by filing necessary application to the appropriate Government for permission.

11. However, the main contention of the learned counsel for the petitioner is that the company sustained huge loss and since it is not able to operate and pay wages to the workmen, which was properly substantiated before the Labour Court, yet the Labour Court had not accepted the said plea, resulting in the filing of the present writ petition.

12. However, in the case on hand, the fact remains that the respondents were neither retrenched nor the unit closed down and, therefore, the act of the respondents to approach the Labour Court cannot be said to be erroneous. In the above factual scenario, the order of the Labour Court cannot be said to be erroneous, as the remedy available for the petitioner lies elsewhere, viz., before the appropriate Government, either by invoking the provisions of Section 25-N or 25-O of the ID Act, as the petitioner may think fit and proper and without resorting to the said remedy, filing of the present writ petition to set aside the award passed by the Labour Court is wholly misconceived and unsustainable.

13. For the reasons aforesaid, the award passed by the Labour Court cannot be interfered with and this writ petition is liable to be dismissed. However, it is open to the petitioner to seek appropriate relief before the proper authority in the manner known to law, if so advised. Accordingly, this writ petition is dismissed with the aforesaid observation. There shall be no order as to costs.

12.9.2023

rap/GLN
Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Presiding Officer
Labour Court
Kancheepuram.

M.DHANDAPANI, J.

rap/GLN

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