



W.P.No.33155 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 26.09.2023

DELIVERED ON : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.33155 of 2013

The Managing Director
Super Fil Products Ltd.,
Pondicherry.

... Petitioner

-Vs-

1. The Presiding Officer,
The Labour Court,
Puducherry.

2. A.Thiruneelakantan ... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records from the first respondent herein in I.D.No.1 of 2011 and quash the Award passed therein and dated 20.02.2013 and published in the Pondicherry Gazette on 02.07.2013.

For Petitioner : Mr.Prasad Vijaya Kumar

For Respondents

R1 : Court

R2 : Mr.C.Sivanesan



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ORDER

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This Writ Petition has been filed challenging the award passed by the first respondent herein in I.D.No.1 of 2011 dated 20.02.2013, thereby ordered to reinstate the second respondent into service with continuity of service and full backwages.

2. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

3. The second respondent is the permanent worker of the petitioner Management having put in more than six years of service. While the second respondent was in service, he was suspended from service by an order dated 16.05.2009 on the allegation that he had committed serious misconducts. After the order of suspension, the petitioner had declared lockout and as such the order of suspension was revoked. Thereafter, on 16.07.2009, the lockout was lifted. The second respondent was issued with a charge memo dated 16.09.2009. Without being satisfied with the explanation submitted by the second respondent,



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enquiry was ordered. However, the second respondent did not appear for enquiry. After the enquiry, the Enquiry Officer concluded that the charges were proved. Even before the enquiry, the second respondent raised an Industrial Dispute before the Conciliation Officer, aggrieved by his suspension. Since no settlement was arrived, the Conciliation Officer submitted his failure report and by the order dated 06.01.2011 referred the matter to the Labour Court. The Labour Court allowed the Industrial Dispute and directed the petitioner Management to reinstate the second respondent into service with continuity of service and full backwages.

4. The learned counsel for the petitioner would submit that the Conciliation Officer had sent his failure report dated 06.01.2011 with reference as follows:-

(i) The refusal of employment and unfair labour practice of the second respondent is justified or not?

(ii) If justified, to what relief, the second respondent is entitled to?

(iii) To compute the relief, if any, awarded in terms of money, if it can be so computed.

5. It is a well settled principle of law as laid down by the Supreme



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Court of India and this Court that the Courts constituted under the Industrial Disputes Act derive their powers to adjudicate the dispute only on the basis of reference and they have to decide on the points referred to them and cannot go beyond the reference. However, the Labour Court dealt with the subsequent events and allowed the dispute. It has no jurisdiction to deal with the subsequent events, since it confines to deal only with reference and it cannot go beyond the issues referred by the Government.

6. The second respondent had raised a dispute by invoking the jurisdiction of the conciliation department in refusal of employment and unfair labour practices of the workers. The copy of the termination order dated 15.12.2011 was marked as Ex.P43 before the Labour Court. Therefore, the order of termination is a subsequent event and not covered by the order of reference. After the enquiry report, the petitioner filed an approval petition on 09.01.2011 before the Labour Court as required under Section 33(2)(b) of the I.D Act. However, the Labour Court held that for the very same charge sheet, the second respondent was dismissed without any prior permission of this Court and as such, the order of



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dismissal is violative of Section 33(2)(a) of the I.D.Act. The Labour Court has passed award without any reference to the Labour Court under Section 10 of the I.D.Act which confers jurisdiction to decide an issue. In the absence of a reference regarding non employment, the Labour Court has no jurisdiction to deal with the order of termination. The Labour Court also failed to note the seriousness and gravity of the charges levelled against the second respondent and ordered reinstatement of the second respondent with continuity of service with backwages.

7. In support of his contention, the learned counsel for the petitioner relied upon the Judgment of this Court in ***W.A.Nos.1235 of 1983 and 72 of 1984 dated 19.12.1985*** in the case of ***English Electric Company of India Ltd., Vs Industrial Tribunal Madras and another***, wherein this Court held that the Industrial Tribunal dealing with a reference made to it has no general or inherent jurisdiction to cover all matters which a party might raise before it for the first time and its jurisdiction is limited only to the dispute referred to it. Section 10(4) of the I.D Act permits the Tribunal to decide only disputes or points referred to it and matters incidental thereto. It was further held that the Tribunal



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cannot widen the scope of the enquiry beyond the terms of reference.

This was not a matter of mere technicality but went into the jurisdiction to decide a dispute which has not been referred to it.

8. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2015 4 SCC 71** in the case of ***Oshiar Prasad and others Vs Employers in relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanbad, Jharkhand***, wherein it was held that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the questions referred and has no jurisdiction to travel beyond the questions or/and the terms of the reference while answering the reference. He further submitted that the second respondent never raised for the dispute against the order of termination. Therefore, the Labour Court has no jurisdiction to deal with the order of termination.



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9. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2005 1 SCC 639** in the case of ***Mahendra L Jain and others Vs Indore Development Authority and others***, wherein it was held that the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four-corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom. A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof.

10. The second respondent filed counter and it revealed that the second respondent is permanent worker of the petitioner Management. He was suspended from service on 16.05.2009 alleging commission of misconducts. Within five days of suspension, the petitioner had declared a lockout and the order of suspension was revoked. Thereafter, the petitioner had lifted the lockout on 16.07.2009. Thereafter, he was served with a charge memo dated 21.08.2009 alleging that he had violated clauses 14(3)(a), 14(3)(c), 14(3)(h), 14(3)(i) and 14(3)(k) of Model Standing Orders of the petitioner. Though the second respondent



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submitted his explanation, without satisfying with the same, an enquiry was ordered. The Enquiry Officer had conducted enquiry and found all the charges were proved against the second respondent. The Enquiry Officer submitted his report dated 14.12.2010. Even before that, as against the order of suspension, the second respondent raised an Industrial Dispute before the Labour Officer and the conciliation proceedings failed. The Government referred the Industrial Dispute to the Labour Court on 06.01.2011.

11. The Government had referred the following issues:-

- (i) The refusal of employment and unfair labour practice of the second respondent is justified or not?
- (ii) If justified, to what relief, the second respondent is entitled to?
- (iii) To compute the relief, if any, awarded in terms of money, if it can be so computed.

12. Pending adjudication of the Industrial Dispute raised by the second respondent, the petitioner had terminated the second respondent by an order dated 15.12.2011. Therefore, the second respondent marked



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all the documents as Exs.P1 to 72. After considering the issues, the Labour Court allowed the Industrial Dispute, directing the petitioner to reinstate the second respondent into service with continuity of service and full backwages.

13. The learned counsel for the petitioner mainly contended that the Labour Court has no jurisdiction to decide the issue beyond any reference. The order of termination was marked as Ex.P43 dated 15.12.2011. Even before that, the second respondent filed a claim petition with regard to the above reference. In order to substantiate the said contention, he relied upon the above Judgments.

14. Initially, the second respondent was suspended from service and thereafter, his suspension order was revoked. Though the petitioner lifted the lockout and revoked the order of termination, the second respondent was permitted to join duty. Immediately, the second respondent raised an Industrial Dispute. While pending adjudication, the petitioner proceeded with the enquiry and terminated his service by an order dated 15.12.2011. Therefore, the order of termination is nothing



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but incidental thereto.

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15. Section 10(4) of the I.D Act permits the Tribunal to decide only disputes or points referred to it and matters incidental thereto. Therefore, the Labour Court has jurisdiction to deal with the order of termination, since it is consequential to the order of suspension. In fact, the second respondent also raised dispute for his non-employment, since he was not permitted to join duty, though his suspension order was revoked after lifting the lockout.

16. It is relevant to extract the provisions under Section 33 of the I.D Act as follows:-

“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 a Labour Court or Tribunal or National 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



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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 dispute [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.”

17. Thus, it is clear that no employer shall alter the conditions of service of a workman when the dispute is pending before any authority. During the pendency of the dispute before any authority, if a workman is terminated which are not connected with the dispute, an application for approval has to be made. Therefore, when such an illegality was brought before the Labour Court, it was answered by the Labour Court. Therefore, there is no infirmity or illegality in the award passed by the first respondent and the Judgment cited by the learned counsel for the



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petitioner are not helpful to the case on hand.

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18. In view of the above, this Court finds no infirmity or illegality in the award passed by the first respondent in I.D.No.1 of 2011 dated 20.02.2013 and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

10.10.2023

Internet : Yes
Index : Yes
Speaking order
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To

The Presiding Officer,
The Labour Court,
Puducherry.

G.K.ILANTHIRAIYAN, J.



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Pre-Delivery order made in

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