IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.4924 & 4955 of 2018
& WMP.Nos.6069 & 6109 of 2018

Larsen & Toubro Ltd.,
rep.by its Assistant Manager
Mr.A.Nepolian ...Petitioner in both WPs

Vs

1.The Presiding Officer, Industrial
Tribunal-cum-Labour Court,
Puducherry-1. ...R1 in both WPs

2.Larsen & Toubro Pattali Thozhil
Sangam rep.by its President
Mr.A.R.Sivakumar, Puducherry. ...R2 in WP.No.4924 of 2018

3.Mr.R.Karthikeyan, President,
Larsen & Toubro Employees'
Union, Puducherry. ...R2 in WP.No.4955 of 2018

PETITIONS under Article 226 of The Constitution of India praying for the issuance of

(i) a Writ of Certiorari to call for the records relating to the impugned award dated 24.10.2017 passed by the first respondent in I.D.(T) No.28 of

2012 on the file of the Industrial Tribunal-cum-Labour Court, Puducherry and quash the same (WP.No.4924 of 2018); and

(ii) a Writ of Certiorari to call for the records relating to the impugned award dated 24.4.2017 passed by the first respondent in I.D.(T) No.7 of 2013 on the file of the Industrial Tribunal-cum-Labour Court, Puducherry and quash the same (WP.No.4955 of 2018).

For Petitioner in both WPs	:	Mr.K.S.Jeyaganeshan for Mr.M.Vaikunth
For respective R-2 in both WPs	:	Mr.P.R.Thiruneelakandan

COMMON ORDER

These petitions are filed by the petitioner - management seeking to quash the awards respectively (i) dated 24.10.2017 in I.D.(T) No.28 of 2012; and (ii) dated 24.4.2017 in I.D.(T) No.7 of 2013, both on the file of the first respondent.

2. For the sake of convenience, the petitioner in both Writ Petitions hereinafter will be referred to as "*Management*", the respective 1st respondent will be referred to as "*Labour Court*" and the respective 2nd

respondents will be referred to as "*Respondent Union*".

3. The facts leading to filing of these cases are as follows :

(i) The respective second respondent were registered under the Trade Union Act, 1926. Every year before Diwali festival, the petitioner management used to pay one time lump sum amount in addition to payment of bonus under the Payment of Bonus Act without any reference to profit or loss. For the years from 2006-07, the respective second respondent demanded for one time lump sum amount and after negotiation, the petitioner management agreed to increase a sum of Rs.1,500/- from 2005-06. Further, till 2009-10, the petitioner management gave increased reasonable one time lump sum amount.

(ii) The respective second respondent - trade union initiated the respective conciliation proceedings before the Labour Officer concerned for non payment of increased one time lump sum amount for the year 2010 to 2011 and it ended in failure. Thereafter, the respective second respondent raised the respective industrial disputes before the first respondent for adjudication. In those industrial disputes, the petitioner filed their counter.

(iii) However, the first respondent allowed the industrial disputes on the ground that since the petitioner management granted one time lump sum amount to the members of the respective second respondent continuously for a period of six years i.e from 2005-06 to 2009-10, it should be treated as a customary concession and that therefore, the petitioner management could not unilaterally withdraw from granting such benefits without notice under Section 9A of the Industrial Disputes Act, 1947, as it would amount to change in service condition as specified under Schedule IV of the Industrial Disputes Act, 1947. Further, by the respective impugned awards, the first respondent directed the petitioner to pay a sum of Rs.3,000/- as one time lump sum amount for the period 2010-11 to the members of the respective second respondent. Challenging the same, the petitioner management is before this Court.

4. This Court, while entertaining the writ petitions on 08.3.2018, granted an order of status quo for a period of four weeks.

5. Learned counsel appearing for the petitioner management would submit that giving of one time lump sum amount is only based on the discretion of the company and not under any law and therefore the respondents cannot seek for One Time Lump Sum amount as a matter of right. However, it is to be pointed out that it is not a change of service condition and also the same cannot be termed as "Customary Concession" and hence, notice under Section 9(A) of the Act is not necessary before issuing the circular since the said provision is not applicable to the present case. However without adverting to the above facts, the Labour Court has mechanically held in favour of the respondent union and therefore, the impugned award requires interference. Accordingly, he prayed for the allowing these Writ Petitions.

6. Per Contra, learned counsel for the respondent union would submit that though they sent several letters requesting the petitioner management to reasonably increase one time lump sum amount for the year 2010-2011 at least on par with the increase given to the employees in the managerial staff

category, however, there was no response from the petitioner with regard to increase in one time lump sum amount. However, without a notice mandated under Section 9(A) of the Act and without having any negotiation with the respondent union with regard to stoppage of increase in one time lump sum amount to the employees which they were being granted for the past six years, the act of the petitioner in unilaterally cancelling an increase in one time lump sum amount is wholly unsustainable**.** The said fact has been rightly appreciated by the Labour Court while passing the impugned award, which cannot at all be interfered with. Accordingly, he prayed for dismissal of Writ Petitions filed by the management.

7. Heard the learned counsel appearing on behalf of the petitioner in both the writ petitions and the learned counsel appearing for the respective second respondent in both the writ petitions.

8. Admittedly, the respondent union raised an Industrial Dispute before the Labour Court for stoppage of increase in payment of One Time Lumpsum Amount for the period of 2010-2011 to the employees resulting in

changes in the service conditions of the workmen by withdrawing the said increase in payment of one time lumpsum amount, wherein, the Labour Court has allowed the Industrial Dispute on the sole ground that since the petitioner management has paid the one time lump sum amount to the workmen of the respondent continuously for a period of six years i.e., from the year 2005-2006 to 2009-2010 and that the same should be treated as customary concession and therefore, the petitioner management cannot unilaterally withdraw from granting such benefits without issuing notice under Section 9A of the Industrial Disputes Act, 1947 as the same would amount to change in service conditions of the employees. However, it is the stand of the petitioner management that grant of certain benefits for a minimum period by the management cannot be brought within the purview of "Customary Concession" unless it is granted right from immemorial period or atleast for a considerable long period.

9. A careful perusal of the materials available on record reveals that there was a Memorandum of Understanding dated 28.10.2005 entered into between the petitioner management and the respondent union with regard to

disbursement of OTLS (One Time Lumpsum amount) stating that they had an informal discussion regarding OLTS, though it is not mandatory for the management to consider OTLS for permanent operators, as proposed and requested by the workmen unit and that the said Lumpsum payment will not attract any benefits such as provident fund, gratuity etc., nor reckoned for any other benefits. It is further stated that since the OTLS payment is the discretion of the management and not mandatory, the management reserves the right to decide the applicability and modality of the disbursement.

10. However, it is seen from the impugned award that though the said MoU was marked as Ex.R1 before the Labour Court by the petitioner management, however, the Labour Court has failed to consider the same while passing the impugned award. Further, in view of the Memorandum of Understanding entered into between the parties, notice under Section 9A of the Act before stopping an increase in one time lumpsum amount to the workmen is not mandatory. Since, the Labour Court having failed to take into consideration the said MoU and that the issuance of notice under Section 9A being not mandatory, the impugned award passed by the Labour

Court is liable to be set aside.

11. Accordingly, the impugned award is set aside and the matter is remanded back to the Labour Court. The Labour Court is directed to decide the issue after perusing Ex.R1 the memorandum of understanding dated 28.10.2005 and pass appropriate orders after providing an opportunity of personal hearing to the petitioner management as well as the respondent union.

12. Accordingly, these Writ Petitions are allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

08.09.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No
NHS

To
The Presiding Officer, Industrial
Tribunal-cum-Labour Court,
Puducherry-1.

M.DHANDAPANI, J

NHS

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WMP.Nos.6069 & 6109 of 2018

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