



W.A. Nos.1060, 1061, 1067, 1070 and 1072 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos.1060, 1061, 1067, 1070 and 1072 of 2020

SPEL Semiconductor Ltd.

Having its Registered Office and factory at:

No.5, CMDA Industrial Estate

Maraimalai Nagar

Kancheepuram District 603 209

Appellant in all the appeals

v

V. Senthilnathan

T. Murugan

J. Vuvaraj

S. Thiagarajan

K. Varadarajan

Respondent in W.A.No.1060 of 2020

Respondent in W.A.No.1061 of 2020

Respondent in W.A.No.1067 of 2020

Respondent in W.A.No.1070 of 2020

Respondent in W.A.No.1072 of 2020

Writ Appeals filed under Clause 15 of the Letters Patent challenging the common order dated 09.03.2020 passed in W.P. Nos.517 of 2020, 521 of 2020, 523 of 2020, 34614 of 2019 and 34619 of 2019, respectively.

For appellant
in all W.As.

Mr. R. Srinivas, Sr. Advocate
For Mr. S. Sithirai Anandan

For respondent
in all W.As.

Mr. R. Surya Prakash



COMMON JUDGMENT

Inasmuch as these five writ appeals emanate from a common order, they are considered and decided by this common judgment.

2 To avoid prolixity, the parties are adverted to as per their rank in these writ appeals.

3 The minimum germane facts necessary for considering these writ appeals are as under:

3.1 The respondents were dismissed from service on 01.03.2016 on certain charges, the important being, apart from indulging in strike, they incited other workmen to join them in strike. It was *inter alia* stated in the dismissal order that since the respondents stated that they had no faith on the Enquiry Officer, the enquiry had to be closed at the threshold and that the appellant reserves the right to let in evidence before the Tribunal when an application is filed seeking approval of their action in dismissing the respondents.

3.2 On the same day, the appellant filed approval petitions before the Industrial Tribunal, Chennai, under Section 33(2)(b) of the Industrial Disputes



Act, 1947. Pending those approval petitions, the appellant filed separate interlocutory applications in respect of each respondent seeking permission to conduct fresh enquiry before the Tribunal for the purpose of proving the charges and to establish that a *prima facie* case has been made out for dismissal of the respondents. Even in the approval petitions, at paragraph no.14, the appellant had raised a plea for conduct of a fresh enquiry before the Tribunal since the respondents had levelled an allegation of bias against the appellant.

3.3 The main ground canvassed by the appellant in the interlocutory applications was that the respondents stalled the domestic enquiry stating that they did not repose faith in the Advocate who was appointed as Enquiry Officer.

3.4 The Tribunal, on the grounds that once an enquiry is concluded, a fresh enquiry cannot be conducted for the same charges and that the interlocutory applications were filed at a belated stage after the pleadings on either side were completed in the approval petitions, dismissed the interlocutory petitions on 06.11.2019 *vide* separate orders.

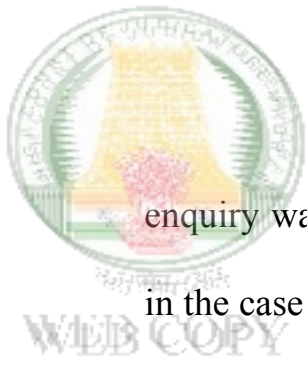
3.5 Thereagainst, the appellant filed separate writ petitions which were disposed of by a common order dated 09.03.2020, whereby and whereunder, the



Single Bench set aside the orders passed by the Tribunal in the Interlocutory Applications and remanded the matter to the Tribunal for conduct of enquiry, besides directing the Management to pay 50% of last drawn wages as subsistence allowance to the respondents, from the date of filing of approval petitions, on they filing an affidavit stating that they are not gainfully employed.

3.6 Calling into question the legality and validity of the common order passed by the Single Bench, the Management is before us.

4 In our considered view, without expressing any opinion on the charges, as the charges levelled against the respondents are grave in nature, when the appellant had sought permission to lead evidence before the Tribunal to prove the charges framed against the respondents, permission ought to have been granted by the Tribunal. In this context, it is apropos to advert to the judgment of the Supreme Court in **Shankar Chakravarti v Britannia Biscuit Co. Ltd. (1979) 3 SCC 371**, wherein, it was categorically held that there is no duty cast upon the Industrial Tribunal or the Labour Court, while adjudicating upon a penal termination of service of a workman, to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic



enquiry was at all held, or if held, was defective, in favour of the workman. But, in the case on hand, the appellant, besides filing interlocutory applications seeking permission to conduct enquiry before the Tribunal, as stated above, has pleaded to the same effect at paragraph no.14 of the approval petition as well. That apart, the Supreme Court, in **John D'souza v Karnataka State Road Transport Corporation**¹, has held that in case the domestic enquiry is held to be bad, the employer shall be given permission to let in evidence. In the instant case, the appellant has sought permission by way of interlocutory application in the approval petition and also in the approval petition, at paragraph 14, to let in evidence to prove the charges levelled against the respondents.

5 In such perspective of the matter, the rejection by the Tribunal, of the request made by the appellant for conduct of enquiry before the Tribunal, is erroneous and in fact, the appellant ought not to have filed interlocutory petitions at all for this purpose. Further, the Single Bench, though correct in interfering with the order passed by the Tribunal and remanding the matter to the Tribunal, ought not to have directed the appellant to pay subsistence allowance, since, in the light of the Constitution Bench judgment of the Supreme Court in **P.H. Kalyani v Air France**², if it is proved that the appellant has complied with the mandatory

¹ (2019) 18 SCC 47

² <https://www.mhc.tn.gov.in/judis> C 1756



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condition laid down in **Lalla Ram v Management of D.C.M. Chemical Works Ltd. and another³**, the order of dismissal will relate back to the order passed by the appellant.

6 The Industrial Tribunal, Chennai, is expected to take up the matter and proceed on a day-to-day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to its logical end before the end of this year.

These writ appeals stand disposed of in the above terms. No costs. C.M.P.Nos.12966, 12972, 13003, 13028 and 13045 of 2020 are closed.

(S.V.N., J.) (K.R.S., J.)
14.07.2023

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Note:

Registry is expected to forward the order and papers to the Industrial Tribunal, Chennai, within 10 days.

To

The Industrial Tribunal
Chennai



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S. VAIDYANATHAN, J.

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