



W.A. No. 3081 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 3081 of 2021

&

C.M.P. No. 21353 of 2021

1. P. Nareshkumar
 2. A. Kannan
 3. R. Vimal
 4. V. Vijay
 5. R. Senthil
 6. K. Velu
 7. P.G. Lokesh
 8. A. Nagarajan
- ..Appellants

Vs.

1. The Management of
M/s. Kwang Sang Brake India
Pvt. Limited,
No.49, Sengadu Village,
Sriperumbudur Taluk,
Kancheepuram – 602 105.



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2. Mr. Ganesh,
Enquiry Officer,
C/o. The Management of
M/s. Kwang Sang Brake India
Pvt. Limited,
No.49, Sengadu Village,
Sriperumbudur Taluk,
Kancheepuram – 602 105.

..Respondents

Prayer: Writ Appeal as against the order dated 01.12.2021 passed in
W.P. No. 25543 of 2021.

For Appellants	::	Mr.V. Prakash, Senior Advocate for U. Manogar
For Respondents	::	Mr.K. Jayachandiran for R1 R2- not ready in notice

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The present appeal has been preferred by workmen challenging the order dated 01.12.2021 passed in W.P. No. 25543 of 2021 by which the learned Single Judge dismissed the writ petition on the ground that a writ would not be maintainable against a private body and that the workmen will have to seek redress before the appropriate forum.

2. When the matter is taken up for hearing, learned counsel



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appearing for the Management would submit that the employees concerned were asked to report for work, which they refused to do, pursuant to which memo has been issued and disciplinary proceedings are pending in which the workmen will have to participate.

3. Mr.V. Prakash, learned Senior Counsel appearing for the appellants/workmen would submit that one of the employees suffered an accident during the course and out of employment, which resulted in spontaneous strike and after intervention by the authorities, the workmen resumed work. According to the learned Senior Counsel, presuming that the employees herein were instrumental for the strike, the Management did not provide them work while the others were given work. It is also his submission that the employees/appellants have been placed under suspension and that the employer is trying to conduct an enquiry without payment of subsistence allowance. There is no need for a written order of suspension and that the employees cannot be asked to attend the enquiry without payment of subsistence allowance. He would further submit that the employees/appellants have not been allowed to enter the premises and that



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they are willing to report for work.

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4. However, the learned counsel for the Management would refute the contention of the learned Senior Counsel for the appellants that the employees/appellants have been placed under suspension and that being so, the question of payment of subsistence allowance would not arise. He would further submit that the employees/appellants, who are willing to work, will have to join the post and thereafter, they can participate in the enquiry. The payment of wages for the past period would depend upon the outcome of the enquiry that would be conducted.

5. Since the appellants/employees are willing to report for work and the employer is also ready to give them work, without going into the question of maintainability of writ petition and to give a quietus to the litigation, we direct the employees concerned to report for work on 12.06.2023. Wages, prior to the date of reporting by the employees will be decided based on the outcome of departmental proceedings. It is open to the employer to videograph the enquiry to be conducted. The employees are



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expected to attend the enquiry and ensure smooth running of the industry without any disruption . The enquiry shall go on a day-today basis and it shall not be adjourned for more than seven working days at any point of time.

6. The writ appeal is closed with the above observations. No costs. Connected W.M.P. is closed.

7. It is made clear that all factual pleas available to both parties are not curtailed by this order since the employees have agreed to return to work and the employer has agreed to provide work and without prejudice to the rights of parties, we have not answered the maintainability of writ petition. The disposal of the writ appal does not mean that we have agreed with the contention of the workmen that writ petition is maintainable.

nv

(S.V.N.J.) (K.R.S.J.)
07.06.2023

(Note to Office: Issue order copy by **09.06.2023**)

S. VAIDYANATHAN,J.



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AND

K. RAJASEKAR,J.

nv

To
The Management of
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