



WEB COPY



W.P.Nos.29409 to 29412 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.Nos.29409 to 29412 of 2017
and W.M.P.Nos.31681 to 31684 of 2017**

Management of
M/s.Lotus Footwear Enterprises Limited, (Unit – II)
Plot No.3, SIPCOT Industrial Park,
Mathur Post, Mangal Village,
Vembakkam Taluk,
Thiruvannamalai District.

... Petitioner in all W.Ps.

Vs.

1.The Presiding Officer,
Principal Labour Court,
Vellore.

... 1st Respondent in all W.Ps.

2. A.Asaithambi
S/o.Arumugagounder

... 2nd Respondent in W.P.No.29409 of 2017

C.Radhakrishnan
S/o.Chakkarai Naicker

... 2nd Respondent in W.P.No.29410 of 2017

V.Vedhachalam,
S/o.Venu

... 2nd Respondent in W.P.No.29411 of 2017

N.Venkatesan

... 2nd Respondent in W.P.No.29412 of 2017



W.P.Nos.29409 to 29412 of 2017

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records connected with the I.A.Nos.34 and 35 of 2016 in I.D.Nos.177 and 178 of 2015 respectively and I.A.Nos.74 & 75 of 2017 in I.D.Nos.51 and 122 of 2016 respectively and quash the order dated 05.10.2017 made therein by the first respondent / Principal Labour Court, Vellore.

For Petitioner : Mr.M.Kandasamy
(in all W.Ps.)

For Respondents : R1- Labour Court
(in all W.Ps.) R2- No appearance

C O M M O N O R D E R

Since the issue raised in these Writ Petitions is one and the same, all these Writ Petitions are heard together and are disposed of by this common order.

2. The Management is the writ petitioner. All these Writ Petitions have been filed against the order passed by the first respondent / Principal Labour Court, Vellore. in I.A.Nos.34 and 35 of 2016 in I.D.Nos.177 and



W.P.Nos.29409 to 29412 of 2017

WEB COPY

178 of 2015 respectively and I.A.Nos.74 & 75 of 2017 in I.D.Nos.51 and 122 of 2016 respectively. The second respondent in all these Writ Petitions were the employees of the petitioner / Management and due to various acts of misconduct committed by them, they were terminated from service. Subsequent to the receipt of the termination order, the second respondent / workmen in all these Writ Petitions filed a compliant under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') before the Labour Officer - II, Vellore alleging that the Management has terminated them without complying with the provisions of Section 33(2)(b) of the Act. The petitioner / Management has filed counter in the said compliant. Ultimately, the failure report was filed by the Labour Officer - II, Vellore. Pursuant to the same, the claim petitions were filed by the second respondent / workmen before the first respondent under Section 2A(2) of the Act in I.D.Nos.177 and 178 of 2015 and I.D.Nos.51 and 122 of 2016. Questioning the maintainability of the claim petitions, the petitioner / Management filed I.A.Nos.34 and 35 of 2016 in I.D.Nos.177 and 178 of 2015 respectively and I.A.Nos.74 & 75 of 2017 in I.D.Nos.51 and 122 of



W.P.Nos.29409 to 29412 of 2017

WEB COPY

2016 under Section 11 of the Act praying to hold that the claim petitions filed by the second respondent / workmen without complying with provisions mandated under Section 2A(2) of the Act were not maintainable. The Labour Court on a perusal of the materials placed before it and the evidences adduced, dismissed the I.As. Challenging the same, the petitioner / Management has filed the present Writ Petitions.

3. The learned counsel appearing for the petitioner / Management submits that the Labour Court failed to appreciate that the complaint under Section 33-A of the Act is maintainable only when the employer contravenes the provisions of Section 33 of the Act during the pendency of the proceedings before the Conciliation Officer / Labour Court / Tribunal as the case may be. When there is no contravention of Section 33 by the employer, then the complaint filed under Section 33-A of the Act is clearly not maintainable. Moreover, the Labour Officer has not given any findings regarding the Management violating Section 33 of the Act and has straight away issued a failure report under Section 12(4) of the Act, which is clearly



W.P.Nos.29409 to 29412 of 2017

WEB COPY

without jurisdiction. The learned counsel further submits that Section 2(A) of the Act mandates the workmen to move an application before the Conciliation Officer before approaching the Court and hence, without raising a dispute before the Conciliation Officer, the second respondent / workmen cannot straight away raise a dispute before the Labour Court based on the failure report issued by the Labour Officer in a compliant filed under Section 33-A of the Act. Such a procedure adopted by the second respondent / workman was wholly impermissible in law and hence, the order passed by the Labour Court is violative and is liable to be set aside.

4. The learned counsel for the petitioner / Management further submitted that the Labour Court had erred in arriving at the conclusion that in the compliant filed under Section 33-A of the Act by the second respondent / workmen, they not only sought for recommendation against the maximum punishment and to set aside the termination order and seeking for reinstatement. When the Management has not violated Section 33 of the Act, then the compliant filed under Section 33-A of the Act is not at all



W.P.Nos.29409 to 29412 of 2017

WEB COPY

maintainable and therefore, the question of further adjudication does not arise. Without appreciating these facts, the Labour Court erred in dismissing the applications filed by the petitioner Management and hence, the impugned orders are liable to be set aside.

5. Though the name of the learned counsel for the second respondent / workmen has been printed in the cause list, however, none appears on their behalf. Considering that the petitions are of the year 2017, this Court is inclined to take up the same and dispose of the same on merits.

6. Pending Writ Petitions, this Court passed the interim order of *status quo* on 17.11.2017.

7. The main grievance of the petitioner / Management is that only when the employer contravenes the provisions of Section 33-A, the workman could move the Tribunal and in the present case, there being no contravention, the said order is wholly erroneous. However, the said



W.P.Nos.29409 to 29412 of 2017

contention cannot be accepted for the reason that the service condition of the workmen was altered by dismissing them from service in spite of the fact that proceedings were pending conciliation before the Conciliation Officer. It is not disputed that the Union had raised an conciliation proceeding, which was pending and in such circumstances, when the Management decides to dismiss a workman, necessarily, the provisions of Section 33 (2) (b) of the Act has to be complied with. However, in the case on hand, no approval was obtained with regard to the dismissal of the workmen by resorting to Section 33 (2) (b) of the Act and, therefore, the workmen had approached the authority by invoking Section 33-A of the Act. Appreciating all the aforesaid issues, the Labour Court has rightly arrived at the conclusion and dismissed the interim applications preferred by the petitioner / Management, which cannot be said to be erroneous.

8. For the reasons aforesaid, the Writ Petitions fail and, accordingly, the same are dismissed. However, liberty is granted to the petitioner to work out its remedies in the manner known to law with regard



W.P.Nos.29409 to 29412 of 2017

WEB COPY

to the dispute raised by the workmen u/s 2(A) (2) of the Act. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

02.08.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

The Presiding Officer,
Principal Labour Court,
Vellore.



WEB COPY



W.P.Nos.29409 to 29412 of 2017

M.DHANDAPANI, J.

vji

**W.P.Nos.29409 to 29412 of 2017
and
W.M.P.Nos.31681 to 31684 of 2017**

02.08.2023