

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 12.01.2023

% **Judgment delivered on: 09.02.2023**

+ LPA 21/2023

DD GEARS EMPLOYEES UNION REGD Appellant

Through: Mr. Umesh Chandra Sharma, Adv
versus

DD GEARS LTD & ORS. Respondent

Through: Mr. Rishikesh Kumar, Additional
Standing Counsel, GNCTD with Mr.
Muhammad Zaid, Mr. Sudhir Kumar
Shukla and Mr. Sumit Choudhary,
Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA is arising out of the order dated 19.12.2022 passed in W.P.(C.) No. 17136/2022 titled *DD Gears Employees Union Vs. DD Gears Pvt. Ltd. & Ors.*

2. The facts of the case reveal that the Writ Petition was preferred by the Appellant before this Court for issuance of appropriate writ, order or direction for initiating prosecution against the Respondent No.1, and, as well

as for issuance of a recovery certificate in respect of statutory and legal dues.

3. A further prayer was made for initiating proper action for violation of the provisions as contained under the Employees' Provident Fund Act, 1952 (EPF Act) and Employees' State Insurance Act, 1948 (ESIC Act).

4. The facts of the case reveal that the appellants were employed by Respondent No.1 DD Gears Pvt. Ltd., and Respondent No.1 on 02.04.1999 sought permission, keeping in view the Section 25(N) of the Industrial Disputes Act, 1947 (ID Act) for retrenchment of the employees. The permission sought by Respondent No.1 was declined on 27.10.1999 by the Government of NCT of Delhi (GNCTD).

5. The Respondent No. 1, thereafter, declared a lockout during pendency of conciliation proceedings which were pending in respect of general demand of the workers on 13.01.2000 and the workers on 14.01.2000 alleging violation of Section 23 of the ID Act initiated conciliation proceedings before the authorities.

6. On 10.02.2000, the GNCTD prohibited the lockout as declared by the Respondent No.1 being illegal and also forwarded a reference under Section 10 of the ID Act to the Industrial Tribunal for adjudication.

7. The Respondent Employer on 19.04.2000 preferred a W.P.(C.) No. 1659/2000 before this Court against the order passed by the GNCTD as well as against the action of the GNCTD in forwarding the reference for

adjudication. However, the writ petition i.e. W.P.(C.) No. 1659/2000 was dismissed by an order dated 24.02.2004.

8. While all this was going on, the Industrial Tribunal on 16.05.2000 directed the Respondent No.1 Employer to pay half of the wages to workers keeping in view the financial condition. However, the order dated 16.05.2000 was not complied by the Respondent No.1 Employer.

9. The facts further reveal that the Respondent No.1 Employer preferred another Application on 14.06.2000 before the GNCTD under Section 25(N)(6) of the ID Act seeking review of its earlier order for grant of permission to retrench 156 employees and on 14.06.2000, the Application was dismissed against which a Writ Petition was preferred in the matter.

10. The Employer, thereafter, preferred an Application under Section 25(O) of the ID Act on 18.10.2000, and the GNCTD on 15.12.2000 dismissed the Application preferred under Section 25(N) of the ID Act, and again a Writ Petition was preferred i.e. W.P.(C.) No. 3629/2001. Finally, an Award was passed by the Industrial Tribunal on 29.10.2002 under Section 10 of the ID Act holding that the workers are entitled to wages with effect from 01.09.2000.

11. The facts of the case further reveal that this Court in W.P.(C.) No. 3069/2001 has passed an order dated 11.03.2015 setting aside the order of the GNCTD declining the permission of closure, and to comply with the provision of Section 25(O)(8) of the ID Act. However, the Respondent Employer did not grant statutory dues of the workers.

12. In another writ petition i.e. W.P.(C.) No. 1091/2003, this Court by an order dated 11.03.2015 has held that the workers are not entitled to wages after 13.01.2000, and the Respondent No.1 Employer is justified in continuing the lockout.

13. The Appellant Union did challenge the order passed in W.P.(C.) No. 1091/2003 and W.P.(C.) No. 7667/2003 before Division Bench, however, the LPA was dismissed as barred on the ground of delay and laches.

14. The present Writ Petition, which is the subject matter of the present LPA, has been filed for issuance of a direction to the Respondent Employer to comply with the statutory provisions as contained under Section 25(O)(8) of the ID Act as directed by the Learned Single Judge in W.P.(C.) No. 3069/2001 and for initiating appropriate action against the employer for complying with the statutory provisions as contained under the ESCI and EPF Act.

15. The prayer clause of the Writ Petition reads as under:

*“I) Writ, Order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction in favour of the petitioner, and against the Respondent No.2 to initiate prosecution proceedings against the Respondent No.1 for illegal closure of its establishment.*

*II) Writ, Order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction in favour of the petitioner, and against the Respondent No.2 to issue a recovery certificate against the statutory and legal dues of the employees of the Respondent No.1 and to recover the same with penal interest.*

III) Writ, Order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction in favour of the petitioner, and against the Respondent No.3 to initiate prosecution proceedings against the Respondent No.1 for non compliance of the provisions of EPF Act and to recover the due amount from the Respondent No.1 with penalty and interest in favour of the workers employed with the Respondent No.1

IV) Writ, Order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction in favour of the petitioner, and against the Respondent No.4 to initiate prosecution proceedings against the Respondent No.1 for non compliance of the provisions of ESIC Act and to recover the due amount from the Respondent No.1 with penalty and interest in favour of the workers employed with the Respondent No.1.

Any other order which the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case be also passed in favour of the petitioner."

16. The Learned Single judge has disposed of the W.P.(C.) No. 17136/2022, and the order dated 19.12.2022 passed by the Learned Single Judge as contained in Paragraphs 4, 5, 6 & 7 read as under:

"4. At the outset, it has been put to the learned counsel for the petitioner as to how the present writ petitioner would be maintainable when the petitioner has not approached the respondent no. 2 seeking initiation of any action against respondent no.1. In response, he submits that even though till date, the petitioner has not approached the respondent no.2 with its grievances, it is the duty of the respondent no.2 itself to ensure that respondent no.1 complies with the directions issued by this Court in W.P.(C.) No. 3069/2001 on 11.03.2015.

5. Having considered the submissions of the learned counsel for the petitioner and perused the record, I am of the view that the present writ petitioner is pre-mature. The petitioner, having admittedly not even approached the

respondent no.2 with a grievance that the respondent no.1 had not complied with the directions issued by this Court to comply with provisions of Section 25-O of the ID Act or had not followed the directions, was first required to approach the respondent no.2 with its grievance that respondent no.1 was not complying with provisions of Section 25-O of the ID Act. The writ petitioner, is therefore, not maintainable at this stage and is, accordingly, dismissed.

6. *Needless to state, this will not preclude the petitioner from approaching the respondent no.2 by way of a representation raising its grievances, which representation if made, will be considered by the respondent no.2 in accordance with law.*

7. *It is further made clear that in case the petitioner is aggrieved by any orders passed by respondent no. 2, it will be open for it to seek legal recourse as permissible in law.”*

17. The Learned Single Judge arrived at a conclusion that in case the provisions of the ID Act are not being complied with, at the first instance the workers are required to approach the GNCTD and it have a remedy to ventilate their grievances under the provisions of the ID Act.

18. In the considered opinion of this Court, the Learned Single Judge was justified in disposing of the Writ Petition with a liberty to the Appellant herein to avail the other legal remedies. The Industrial Disputes Act, 1947 is a complete code in itself, and it also provides for prosecution of the employer, in case, an Award has not been complied with or, in case, there is a violation of other statutory provisions under the ID Act.

19. Similarly, the ESIC and the EPF Act also provide for the mechanism for redressal of grievances, and, therefore, in the considered opinion of this Court, the Learned Single Judge was justified in disposing of the writ

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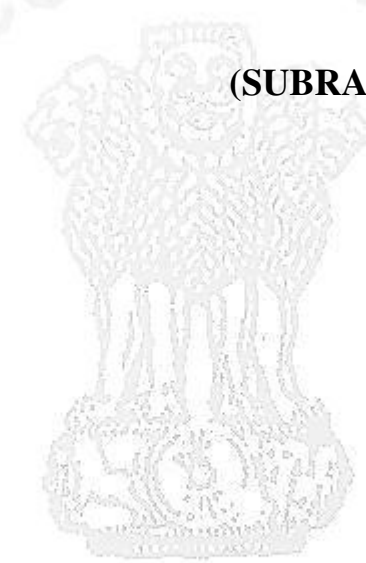
petition with liberty to avail alternative remedies available. Therefore, this Court does not find any reason to interfere with the order passed by the Learned Single Judge. Accordingly, the admission of the present LPA is dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

FEBRUARY 09, 2023

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