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W.P.Nos.3451 & 5723 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.Nos.3451 & 5723 of 2024

and

W.M.P.Nos.6338 & 6339 of 2024

W.P.No.3451 of 2024

Talema Minnanu Thozhilalargal Paadhugaapu Sangam,
Rep. by its Secretary,
Reg.No.1421/SLM,
Registered Office,
At No.6/2 – Sathyanarayana Street,
Swarnapuri, Salem District,
Tamilnadu.

... Petitioner

Vs

1.The Additional Chief Secretary,
Secretariat,
St.George Fort,
Chennai – 09, Tamilnadu.

2.Assistant Commissioner of Labour (Conciliation),
Salem – 636 008, Tamilnadu.

3.The General Manager,
Talema Electronic India Pvt Lmt.,
Door No.221, 1st and 2nd Floor,
KG Plaza, Meyannur Main Road,
Opp to Vidhya Mandir School,



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... Respondents

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W.P.No.5723 of 2024

Talema Pothu Thozhilalar Sangam,
(Regn.No.1069/SLM), Rep. by its General Secretary,
5/243, Zakir Ammapalayam, Near M.G.R. Statute,
Salem – 636 005.

... Petitioner's

Vs

1. Government of Tamil Nadu,
Rep. by its Addl. Secretary to Government,
Labour Welfare and Skill Development Department,
Fort St. George, Chennai – 600 009.
2. The Management of Talema Electronics (India) Pvt. Ltd.,
Door No.221, 1st and 2nd Floor, K.J.Plaza,
Meyanoor Main Road, Opp. To Vidya Mandir School,
Salem – 636 004.
3. Salem Talema Minnanu Pothu Thozhilalargal
Munnetra Sangam (LPF),
60/4, Balaji Nagar Main Road,
Ammapettai, Salem – 636 003.
4. Talema Minnanu Anna Thozhilalar Sangam (ATP),
242, Metha Nagar, Thiruvakkounder By-pass Post,
Salem – 636 005.
5. Talema Minnanu Thozhilalar Pathukappu Sangam (TLPS),
6/2, Sathyanarayana Street,
Swarnapuri, Salem – 636 004.
6. Salem Bharathiya Pothu Thozhilalar Sangam Talema
Minnanu Piruvu (BMS), No.2/2-14,



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WEB COPY Kullagounder Engineering College Post,
Salem – 636 012.

7. Talema Desiya Thozhilalar Sangam (INTUC),
52, Dr. Subbarayan Road, Salem – 636 001.

8. Salem District General Labour Union (CITU),
39-E1, V.P. Chinthan Street,
Cinema Nagar, Salem – 636 009.

... Respondents

Prayer in W.P.No.3451 of 2024 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first respondent to review the Government order GO.(D) No.663, Labour Welfare and Skill Development (D1) Department, dated 15.12.2023 with regard to granting permission for lay-off in the 3rd respondent factory, considering the petitioner's representation dated 19.12.2023 or otherwise refer the dispute over the lay-off in the 3rd respondent factory before the concerned Industrial Tribunal for adjudication.

Prayer in W.P.No.5723 of 2024 : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned G.O.(D).No.663, Labour Welfare and Skill Development (D1) Department dated 15.12.2023 and quash the same.

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For Petitioner : Mr.P.R.Thiruneelakandan
For Respondents : Mr.P.Sanjaygandhi
Government Advocate [R1 & R2]
M/s.S.Eshwari Saisundar [R3]

W.P.No.5723 of 2024

For Petitioner : Mr.K.M.Ramesh
Senior Counsel
For Respondents : Mr.P.Sanjaygandhi
Government Advocate [R1]
Mr.P.Saiprasad
for M/s.Sairaj Associates [R2]
No appearance [R3, R4 to R6 & R8]
M/s.M.G.Martinmanivannan [R7]

COMMON ORDER

Writ Petition in W.P.No.3451 of 2024 is filed for a Writ of Certiorari, to call for the records relating to the impugned G.O.(D).No.663, Labour Welfare and Skill Development (D1) Department dated 15.12.2023 and quash the same.

2. Writ Petition in W.P.No.5723 of 2024 is filed for a Writ of Mandamus, directing the first respondent to review the Government order GO.(D) No.663, Labour Welfare and Skill Development (D1)



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Department, dated 15.12.2023 with regard to granting permission for lay-off in the 3rd respondent factory, considering the petitioner's representation dated 19.12.2023 or otherwise refer the dispute over the lay-off in the 3rd respondent factory before the concerned Industrial Tribunal for adjudication.

3. The aforesaid writ petitions are filed by two unions, namely Talema Minnanu Thozhilalargal Paadhugaapu Sangam and Talema Pothu Thozhilalar Sangam. Both the unions are hereinafter referred to as 'petitioners' and the third respondent in W.P.No.3451 of 2024 and the second respondent in W.P.No.5723 of 2024 is hereinafter referred to as 'management'.

4. The petitioners are registered trade unions registered under the Trade Unions Act, 1926 and the members of the petitioners are permanent workers employed in the management. The management is covered under Chapter V-B of the Industrial Disputes Act, 1947 (in short 'the I.D. Act'). On 18.10.2023, the management made an application to the first respondent in W.P.No.5723 of 2024 for grant of permission for



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lay-off for its workmen as per Section 25M of the I.D. Act. The petitioners were notified about the said application by the Assistant Commissioner of Labour (Conciliation), Salem through notice dated 27.10.2023. The said notice was received by the petitioners on 29.10.2023. The Assistant Commissioner of Labour (Conciliation), Salem fixed the meeting on 30.10.2023, which was attended by the petitioners and in the said meeting, the petitioners were served with copy of the application along with annexure and the petitioners sought time to file objections and requested the Assistant Commissioner of Labour (Conciliation), Salem to fix the date of the meeting. As no notice of meeting was served on the petitioners, the petitioners submitted their objections on 04.12.2023. On 15.12.2023, the first respondent in W.P.No.5723 of 2024 vide impugned GO.(D) No.663, Labour Welfare and Skill Development (D1) Department, dated 15.12.2023 granted permission to the management for lay-off. The petitioner therefore filed the above writ petitions challenging the lay-off.

5. The management filed a counter narrating the back drop of facts leading to the lay-off. It is stated that the management is situated at Salem



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and specializes in custom design of magnetic components such as, toroidal power transformers and current transformers of different ranges of power inductors, common mode chokes, communication transformers and modules. The management is an export-oriented unit under EHTP scheme predominantly (Around 93% of the total sales) catering to Europe and US market. According to the management, the petitioners could not claim that they were not provided adequate opportunity in view of the fact that they submitted their response to the application on 04.12.2023. It is further stated in the counter that the management filed another application seeking for extension of lay-off from 01.04.2024 to 30.09.2024 as there was no improvement in the order position. The sum and substance of the counter was that grant of lay-off by the first respondent in W.P.No.5723 of 2024 was valid as the said respondent considered all relevant particulars and thereafter, granted the permission.

6. The learned Senior Counsel appearing for the petitioner in W.P.No.5723 of 2024 submitted that there was gross violation of the provisions of Section 25M of the I.D. Act, in that, the application of the



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management was not served simultaneously to the petitioners or to the workmen. The learned Senior Counsel further submitted that the first respondent had not afforded any opportunity of hearing to the petitioners and its workmen. The learned Senior Counsel therefore, submitted that the impugned G.O. was in violation of the law and the same deserved to be set aside.

7. The learned counsel appearing for the petitioner in W.P.No.3471 of 2024 submitted that there is a violation of the provisions of the I.D. Act, this petitioner submitted a representation dated 19.12.2023 to review the permission granted by the first respondent in W.P.No.5723 of 2024 or refer the dispute on lay-off to the concerned Tribunal for adjudication.

8. The learned Government Advocate appearing for the respondents 1 and 2 in W.P.No.3451 of 2024 and the first respondent in W.P.No.5723 of 2024 submitted that the permission was granted on consideration of the entire materials on record including the petition of the petitioners and therefore, the impugned G.O. was valid and did not call for any interference.



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9. The learned counsel appearing on behalf of the second respondent/management in W.P.No.5723 of 2024 submitted that the notice of the application was given by the first respondent in W.P.No.5723 of 2024 to the petitioners and thereafter, the petitioners submitted their objections, which was duly considered by the first respondent in W.P.No.5723 of 2024 while granting permission and therefore, there was no violation of the provisions of Section 25M of the I.D. Act. The learned counsel further submitted that in case the court finds that there was violation of Section 25M of the I.D. Act, this Court should direct the first respondent in W.P.No.5723 of 2024 to review the permission granted and this Court may also direct the first respondent in W.P.No.5723 of 2024 to also consider the review of the subsequent application made by the management for the period from 01.04.2024 to 30.09.2024.

10. I have heard the learned counsels appearing for the parties and I have perused the materials on record.



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11. Under Section 25M of the I.D. Act, the procedure for lay-off is provided. It is seen that under sub section (2) of Section 25M, a copy of the application shall be served simultaneously on the workmen concerned in the prescribed manner. Under sub section (4), the specified authority or appropriate Government is mandated to conduct enquiry as it thinks fit after giving a reasonable opportunity of hearing to the employer, the workmen concerned and the persons interested in such lay-off. Sub section (7) of Section 25M of the I.D. Act provides for review of the order granting or refusing to grant permission for lay-off either by the appropriate government or the specified authority on its own motion or on the application of the employer or workmen. The said sub section further provides that the Government or the specified authority may refer to a Tribunal the issue for adjudication.

12. In the present case, it is the specific case of the petitioners that the petitioners were not served with a copy of the application as mandated under sub section (2) and also no opportunity of hearing was given to the workmen as mandated under sub section (4). The said fact is disputed by the the respondents 1 and 2 in W.P.No.3451 of 2024 and the



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first respondent in W.P.No.5723 of 2024, but reading of the counter of the management shows that the notice of the application was not served simultaneously with the application, but was informed to the petitioners by the Assistant Commissioner of Labour (Conciliation), Salem vide notice dated 27.10.2023. As far as the objection of the learned counsel for the petitioners on the failure to give opportunity of hearing to the workmen is concerned, the learned counsel appearing for the management fairly submitted that personal hearing was not given, but the objections of the petitioners dated 04.12.2023 were considered. It is therefore, seen that the mandatory provisions of sub section (2) and (4) have not been followed by the respondents 1 and 2 in W.P.No.3451 of 2024 and the first respondent in W.P.No.5723 of 2024. Be that as it may, it is seen that under sub section (7), the petitioners are entitled to file review against the order granting permission. The petitioner in W.P.No.5723 of 2024 has not filed a review petition under sub section (7), but the petitioner in W.P.No.3451 of 2024 submitted his representation on 19.12.2023 to the first respondent in W.P.No.3451 of 2024, requesting the said respondent to revoke the permission granted to the management. In the light of the sub section (7) of Section 25M of the



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I.D. Act, I am of the view that the first respondent in W.P.No.3451 of 2024 should be directed to consider the representation of the petitioner in W.P.No.3451 of 2024 dated 19.12.2023 as an application for review.

13. The learned counsel appearing for the management at this point would invite the attention of this Court to the subsequent development of the application of the management, for extension of the lay-off for the period from 01.04.2024 to 30.09.2024. According to the learned counsel, the permission granted vide impugned G.O. would expire by 31st March, 2024 and therefore, the extension petition has been filed for further extension from 01.04.2024 to 30.09.2024.

14. Considering that the subsequent application is also pending with the first respondent in W.P.No.3451 of 2024, this Court directs the first respondent in W.P.No.3451 of 2024 to consider both the applications together by conducting an enquiry as contemplated under sub section (4) by giving an opportunity of hearing to the employer and the workmen/unions and thereafter, pass appropriate orders on merits and in accordance with the provisions of Section 25M of the I.D. Act. The



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said exercise shall be completed within a period of three (3) weeks from the date of receipt of a copy of this order.

15. The above writ petitions are accordingly disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

27.03.2024

Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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N.MALA,J.,

sp

To

- 1.The Additional Secretary to Government,
Labour Welfare and Skill Development Department,
Fort St. George, Chennai – 600 009.
- 2.The Additional Chief Secretary,
Secretariat,
St.George Fort,
Chennai – 09, Tamilnadu.
- 3.The Assistant Commissioner of Labour (Conciliation),
Salem – 636 008, Tamilnadu.

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