



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10088 of 2006
and
WP.M.P.No.11399 of 2006

The Manager (P & A),
The Tamil Nadu Magnesite Ltd.,
5/53, Omalur Main Road,
Jagir Ammapalayam,
Salem 636 302.

... Petitioner

Vs.

1. The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
I Floor 'B' Wing,
26, Haddows Road,
Shastri Bhavan, Chennai 6.

2. The General Secretary,
Salem District Magnesite Labour Union,
No.237, Tharamangalam Road,
Old Subramangalam, Salem.

...Respondents



W.P.No.10088 of 2006

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records in I.D.No.136 of 2003 on the file of Central Government Industrial Tribunal-cum-Labour Court, First Floor, 'B' Wing, 26, Haddows Road, Shashtri Bhavan, Chennai 6, the first respondent herein quash the award dated 05.09.2005 passed therein.

For Petitioner : Mr.M.R.Raghavan

For Respondents : Tribunal-R1
Mr.K.M.Ramesh
Senior Counsel
Assisted by
Ms.C.Monica for R2

ORDER

This Writ Petition is filed challenging the award of the Industrial Tribunal made in ID.No.136 of 2003 dated 05.09.2005. By the said award, the Central Industrial Tribunal had directed the payment of *ex-gratia* at the rate of 8.33% and Pongal gift in kind worth of Rs.300/- for the workmen, for the accounting year 2001-2002. The management namely, the Managing Director, Tamil Nadu Magnesite Ltd, Salem, has filed the present Writ



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Petition, aggrieved by the said award.

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2. Heard, Mr.M.R.Raghavan, learned counsel appearing on behalf of the petitioner and Mr.K.M.Ramesh, the learned Senior Counsel appearing on behalf of the second respondent.

3. The learned counsel appearing on behalf of the petitioner would submit that the petitioner management is a fully owned undertaking of the Government of Tamil Nadu. It has to go by the instructions and Government Orders passed from time to time with reference to the matter of payment of *ex-gratia*. It can be seen that the benefit which is claimed is only the *ex-gratia* and the Pongal gift is conferred on the workmen as a matter of benevolence. Therefore, when the Government has directed for discontinuance of the said benefit in the organization such as the petitioner, the petitioner management does not even have the authority to pay the same. Secondly, the finding of the Industrial Tribunal as if the workmen is entitled for the same is erroneous in law.



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4. The learned counsel would rely upon the judgement of the

Honourable Supreme Court of India, in *Management of Indian Oil Corporation Limited versus Workman* reported in *AIR 1976, Supreme Court, 1957*¹ to contend that purely discretionary benefits not forming part of the employment contract do not constitute conditions of service. Therefore, when the benefit does not constitute a condition of service, there was no question of issuing of any notice under Section 9-A of the Industrial Disputes Act, 1942 and consequently, the award of the Industrial Tribunal is erroneous in law and as such has to be interfered with by this Court.

5. The said contentions were resisted by the Learned Senior Counsel appearing for the workmen pointing out to the findings.

6. I have considered the submissions made and perused the records.

7. It may be true that the petitioner management namely Tamil

1. *AIR 1976, Supreme Court, 1957*



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Nadu Magnesite Limited, will be bound by the directives of the Government.

But that is an internal administrative matter between the petitioner management and the Government. As far as the workmen is concerned, so long as the petitioner management is an establishment to which the Industrial Disputes Act applies, the workmen is entitled to raise a dispute and if the Workmen raised a dispute, the same will be considered on merits by the Industrial Tribunal. In this case, a reference has been made and therefore the same is answered by the Tribunal. The same cannot be assailed merely on the ground that the benefit was stopped only because of the directive of the Government.

8. Secondly, there can be no quarrel over the proposition that the payment like *ex-gratia* are purely discretionary benefits that are granted by the management by way of benevolence. The same will not be a condition of service. But that is not the premise on which the Industrial Tribunal has passed the award. The grant of these benefits is continued consistently over a period of time. The Industrial Tribunal has considered that the same stands elevated to the status of a customary practice. The Industrial Tribunal



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appraised the evidence on record and came to the conclusion that it got elevated to the level of a customary practice. Once it becomes a customary practice, then if the same has to be discontinued, the management is duty bound to issue a notice under section 9-A of Industrial Disputes Act and accordingly, I do not find any error whatsoever in the award of the Industrial Tribunal. In view of the efflux of time, the grant of benefits in kind for Pongal may not even be relevant. Therefore, the impugned award of the Labour Court with reference to the payment of *ex-gratia* for the year 2001-2002 at the rate of 8.33% alone is sustained.

9. In view thereof, the Writ Petition is disposed on the following terms;

i) *the impugned award of the Industrial Tribunal dated 05.09.2005 in ID.No.136 of 2003 is upheld in as much it orders payment of an ex-gratia of sum equivalent to 8.33% to the workmen for the accounting year 2001-2002;*

ii) *The said award shall stand set aside in as much as it directs grant of Pongal gift in kind of the value of*



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Rs.300/-.

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*No costs. Consequently, connected Miscellaneous
Petition is closed.*

**02.12.2024
(2/2)**

Neutral Citation : Yes
dna

To

The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
I Floor 'B' Wing,
26, Haddows Road,
Shastri Bhavan, Chennai 6.



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D.BHARATHA CHAKRAVARTHY, J.

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