



W.P.No.21031 of 2008

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.21031 of 2008

and

MP.Nos.1 of 2008 and 1 of 2009

The Managing Director
The Tamil Nadu Magnesite Ltd.,
5/53, Omalur Road,
Jagirammappalayam,
Salem 636 302.

... Petitioner

Vs.

1. The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
First Floor, 'B' Wing,
26, Haddows Road,
Shastri Bhavan, Chennai 6.
2. The General Secretary,
Salem Mavatta Anna Thozhir Sangam,
Arisipalayam,
Salem 636 009.



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3. The General Secretary,
Magnesite Thozhilalar Munnetra Sangam,
Vellakkalpatty P.O.,
Salem 636 012.

4. The General Secretary,
Magnesite Workers Union,
3/138, Mamangam,
Salem 636 002.

5. The General Secretary,
Pattali Thozhir Sangam,
Arbic College Building,
Vellakalpatti Post,
Salem 12.

6. The General Secretary,
Magnesite National Labour Union,
52, Dr.Subbarayan Road,
Salem 636 001.

7. The Government of Tamil Nadu
Rep.by its, the Secretary,
Finance [BPE] Department, Secretariat,
Chennai 2.

...Respondents

**[R7 impleaded vide order dated
29.09.2022 made in MP.1/2010 in
WP.No.21031/2008 by MSRJ]**

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, to call for the records in I.D.No.62 of 2003 on the



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file of Central Government Industrial Tribunal-cum-Labour Court, at First Floor, B Wing, 26, Haddows Road, Shashtri Bhavan, Chennai 600 006, the first respondent herein, quash the award dated 31.01.2008 passed therein.

For Petitioner : Mr.M.R.Raghavan

For Respondents : R1-Tribunal

Mr.K.M.Ramesh
Senior Counsel
Assisted by

Ms.C.S.Monica for R2 to R4 & R6

Mr.G.Pugazhenthhi for R5

Mr.Azizulla Khan for R7
Government Advocate

ORDER

This Writ Petition is filed challenging the award of the Industrial Tribunal made in ID.No.62 of 2003 dated 31.01.2008. 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 2000-2001. The management namely, the Managing Director, Tamil Nadu Magnesite Ltd, Salem, has filed the present Writ Petition,



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aggrieved by the said award.

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2. Heard, Mr.M.R.Raghavan, learned counsel appearing on behalf of the petitioner, Mr.K.M.Ramesh, the learned Senior Counsel appearing on behalf of the respondents 2 to 4 & 6, Mr.G.Pugazhenthii, learned counsel appearing on behalf of the fifth respondent and Mr.Azizulla Khan, learned Government Advocate appearing on behalf of the seventh 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 which 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



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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 Learned Senior Counsel appearing on behalf of the workmen would point out to the findings and submit that the contentions are not sustainable. As a matter of fact, pending the Writ Petition, the Government was also directed to be impleaded and the Government has also filed a separate counter affidavit on the same lines as that of the contention of

1. *AIR 1976, Supreme Court, 1957*



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the learned counsel for the petitioner.

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6. I have considered the submissions made on behalf the petitioner management as well as the counter affidavit filed by the seventh respondent Government.

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



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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 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 2000-2001 at the rate of 8.33% alone is sustained.



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

(i) the impugned award of the Industrial Tribunal dated 31.01.2008 in ID.No.62 of 2003 is upheld in as much order payment of an ex gratia of sum equivalent to 8.33% to the Workmen for the accounting year 2000-2001;

(ii) The said award shall stand set aside in as much as it directs grant of Pongal gift in kind of the value of Rs.300/-;

No costs. Consequently connected Miscellaneous Petitions are closed.

02.12.2024
(1/2)

Neutral Citation : Yes
dna



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D.BHARATHA CHAKRAVARTHY, J.

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