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W.P.Nos.3246 of 2022 and etc batches

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2024

PRONOUNCED ON : 13. 08.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.Nos.3246, 3615, 3583, 3517, 3619, 3599, 3620, 3593, 3595, 3254, 3250, 3269, 3267, 3266, 3261, 3258, 3606, 3597, 3591, 3585, 3584, 3580, 3566, 3564, 3596, 3558, 3562, 3575, 3582, 3586, 3589, 3592, 3605, 3600, 3602, 3581, 3587, 3590, 3594, 3598, 3621, 3256, 3578, 3579, 3262, 3617 and 3588 of 2022

and

W.M.P.Nos.3740, 3656, 3692, 3730, 3752, 3750, 3747, 3732, 3720, 3721, 3728, 3383, 3387, 3394, 3398, 3400, 3401, 3390, 3393, 3389, 3380, 3693, 3722, 3735, 3687, 3690, 3729, 3733, 3739, 3731, 16272, 3738, 3737, 3734, 3736, 3710, 3714, 17049, 3725, 3717, 3719, 17054, 16281, 16301, 16303, 3723, 3726, 3727, 3757, 3754, 3724, 3716 and 3718 of 2022

Mother'son Automotive Technologies & Engineering
(A Division of Samvardhana Mother'son International Ltd.,)
Chengalpattu- Sriperumbudur Road,
Pondur Village & Post,
Sriperumbudur Taluk,
Kancheepuram District-602 105
Rep., by its Factory Manager Mr. Prakash.T

...Petitioner

(Cause Title amended by its Factory Manager Mr.Prakash T. in WMP.No.17112 of 2022 in W.P.NO.3246 of 2022 by MSRJ)

versus

1. The Deputy Commissioner of Labour,
(Conciliation-I), Sriperumbudur,
Kancheepuram District-602117.
2. Saravanan. S

... Respondents



Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records connected with AP.No.425 of 2020 and to quash the impugned order dated 29.10.2021 made by the 1st respondent/ Deputy Commissioner of Labour (Conciliation-I) Sriperumbudur.

For Petitioner : Mr.A.L.Somayaji
for M/s.Gupta & Ravi

For Respondents : Mr.K.Tamilvendahan
Government Advocate for R.1

: M/s.Kumarasamy for R.2

ORDER

This Writ Petition is filed for issuance of Writ of certiorari to quash the orders passed in A.P.No.425 of 2020 dated 29.10.2021 passed by the first respondent / Deputy Commissioner of Labour (Conciliation – I), Sriperumbudur.

2. The facts in brief as per the affidavit enclosed to this petition are as under:

The petitioner factory is engaged in manufacturing of automotive interior and exterior components like IP parts, handles, pillar trims, under body parts, lifesaving machine components, electronic charger points etc. The second respondent is working in the petitioner factory along with other workmen. On 26.08.2019, the second respondent along with other workmen went on strike which resulted in conciliation proceedings before the Additional Labour



Commissioner. The said conciliation proceedings have resulted in “ Agreed Advice” letter dated 09.01.2020 wherein it was accepted that except 51 workers who were suspended by the petitioner factory all other workmen will go back to work from 13.01.2020 and the said letter also further states that the Management will take its final decision regarding the disciplinary action taken against the 51 workmen as per the advice of the Assistant Commissioner of Labour (Conciliation-I) Sriperumbudur, after submitting the enquiry findings.

3. The petitioner has issued individual charge memo to second respondent and also to other similarly placed workers and called for explanation. The second respondent and others have submitted their explanations stating that they could not understand the charge sheet as it was in English language and sought for Tamil translation copy of the charge sheet and copy of the standing orders. During the course of the domestic enquiry, the petitioner factory has provided copy of the Tamil version of the charge sheet and relevant portion of the standing orders to the second respondent. The second respondent has submitted his explanation and similarly the other workmen have also submitted their explanations. The explanations submitted by them were not satisfactory. Enquiry was conducted against the second respondent and others in fair and proper manner by complying the principles of natural justice. The second respondent



and other workman have participated fully in the enquiry which were held on various dates. Enquiry officer has filed his report on 24.02.2020 holding that the second respondent and other similarly placed persons are guilty of misconduct. The petitioner has sent letter to the second respondent and other similarly placed workers enclosing the copy of the enquiry report dated 24.02.2020 and called for the comments.

4. The second respondent and other workmen have submitted their reply to the report of the enquiry officer dated 24.02.2020. Show cause notice was issued by the petitioner by proposing the punishment of dismissal from service. The second respondent and other workmen have submitted explanation and the same was not accepted, thereby orders dated 02.09.2020 were passed dismissing the second respondent and other workmen.

5. The petitioner has filed Approval Petition No.425 of 2020 under Section 33 (2) (b) of the Industrial Act before the first respondent seeking approval of the dismissal of the second respondent and also filed other approval petitions seeking approval of the dismissal of other workmen. The first respondent authority has held that enquiry was conducted in fair and proper manner. However, it was observed in the impugned orders dated 29.10.2021 that



consultation was not done by the petitioner with the Assistant Commissioner of Labour (Conciliation – I), before the order of dismissal were passed, thereby all the approval petitions were dismissed on 29.10.2021. Aggrieved by the same these Writ Petitions were filed.

6. It is submitted by the learned counsel for the petitioner that since the first respondent has concluded in the impugned order that principles of natural justice have been followed in respect of domestic enquiry against the second respondent and other similarly placed persons, there was no need to make submissions in detail by the petitioner in respect of merits. It is submitted further that second respondent and other similarly placed workers were given one month wages and complied with that all other requirements of Section 33(2)(b) of the Industrial Dispute Act.

7. As per the proceedings dated 13.08.2021, the only commitment made by the petitioner was that for mere participating in the strike, no action would be taken against the workmen, however no commitment was made by the petitioner that those who indulge in the active of misconduct would be let of scot free. Further as per proceedings dated 09.01.2020, the petitioner has agreed to consult



the Additional Commissioner of Labour (Conciliation) before passing of final orders, as accordingly the consultation process were started by means of petitioner's letter dated 14.07.2020, as per agreed advice dated 09.01.2020 the petitioner however it resulted in no response.

8. It is mentioned further that merely because the petitioner did not wait for the reply of the Assistant Labour Commissioner (Conciliation I) prior to passing of the orders of dismissal would not render the dismissal order in violation of the provisions of the Section 33(2)(b) of the Industrial Dispute Act, 1947, as the consultation process already been started however there was no response from the Assistant Labour Commissioner thereby it cannot be said that the petitioner has not carried out the obligations as per the understanding dated 09.01.2020. It is further mentioned that it was only a consultation and any form of settlement under the provisions of the Industrial Dispute Act. It is further mentioned that as per the understanding dated 09.01.2020 it was only a consultation and that the petitioner is not bound by the advice given by the learned authority arising out of such consultation, thereby failure to wait for the opinion of the Assistant Commissioner of Labour will not render the dismissal of employee null and void. It is further submitted that the petitioner has filed



Approval Petitions for approval of 51 dismissed workmen. Out of the 51 Approval Petitions, 47 Approval Petitions were dismissed by the first respondent, one Approval Petition was settled out of the Court and remaining three Approval Petitions were allowed by *ex-parte* orders, therefore sought for setting aside the impugned orders.

9. The learned counsel for the second respondent has filed written submissions and also made oral submissions that trade union has submitted charter of demands to the Management in respect of increase in wages and other service conditions. As there was no proper response from the Management, the Trade Union has given strike notice on 12.08.2019 indicating that the workers will go on strike from 26.08.2019. On the following day of commencement of strike, the Management has terminated 27 probationers on 27.08.2019. The petitioner Management has issued suspension orders against 50 workmen in the month of August 2019 and charge sheet was issued to them in the third week of September.

10. It is submitted by the learned counsel for the second respondent that the workers and the Trade Union have agreed to withdraw the strike and to



resume the work on 13.01.2020 on the condition that there will not be any unilateral decision in respect of the disciplinary proceedings initiated against 51 workers and that the final decision will be taken only on the basis of advice of the conciliation officer before whom the enquiry reports will be placed. It is further submitted that the petitioner Management has issued second show cause notice dated 14.08.2020 indicating the proposed punishment of dismissal to the second respondent and to the other similarly placed persons and while giving the reply, it is mentioned that the proposed punishment is contrary to the agreed advice dated 09.01.2020. Finally, the petitioner Management has issued order of dismissal on 02.09.2020 without properly appreciating the explanation and in violation of the agreed advice dated 09.01.2020.

11. It is further submitted that though workmen have not been challenging the procedural validity of the domestic enquiry, the Management has victimized and played unfair labour practices. According to the learned counsel for the second respondent as per Section 2(ra) of the Industrial Dispute Act, unfair labour practices are listed out in the 5th schedule and unfair labour practices were prohibited under Section 25T and are punishable under Section 25U of the Industrial Dispute Act. It is also further submitted that as per item 5a,b and f of



5th schedule to discharge or dismiss workmen by way of victimization and in colourable exercise of the employers's rights by not following principles of natural justice in conducting domestic enquiry unfair labour practices. It is further submitted that dismissal order was completely based on extraneous and irrelevant considerations and the dismissal is arbitrary and illegal and suffers from non application of mind.

12. Heard both sides and perused the records.

13. Section 33(2)(b) of the Industrial Dispute Act, 1947 runs as under:

“for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

14. On considering the above provision it is clear that no workmen shall be discharged or dismissed unless he has been paid wages for one month, application has been made by the employer to the authority for approval.



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15. Petitioner factory is engaged in a manufacturing of automotive interior and exterior components. The second respondent and many other workers are been working in the petitioner factory. The trade union of the employees of the petitioner factory has submitted a charter of demands to the petitioner management in respect of increase in wages and other service conditions. As there was no response from the management of the petitioner factory, the Trade Union has given a strike notice dated 12.08.2019 informing the petitioner management that it would go on strike with effect from 26.08.2019. Accordingly, the second respondent and other workmen went on strike from 26.08.2019. Petitioner Management has placed 51 workers under suspension.

16. This unrest has resulted in conciliation proceedings before the Additional Commissioner of Labour (Conciliation I). Conciliation proceedings resulted in “agreed advice” dated 09.01.2020 wherein it was accepted that except 51 workers who were suspended by the petitioner Management, rest of the workers will go back to the work from 13.01.2020 and in respect of 51 workers, the Management will take its final decision on the disciplinary proceedings after consulting with the Assistant Labour Commissioner (Conciliation),



Sriperumbudur by submitting the enquiry report.

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17. In pursuance of the “agreed advice” dated 09.01.2020, except 51 workers who were suspended rest of the workmen have resumed their work. The charge sheet has been given to the second respondent and other similarly placed workmen. Domestic enquiry was initiated as the explanation submitted by the second respondent and other similarly placed workmen was not satisfactory. The enquiry proceedings were held on various dates. Finally enquiry report was submitted on 24.02.2020. The second respondent and other similarly placed workmen were served with the copy of the enquiry report seeking comments. The second respondent and other similarly placed workmen have submitted their replies individually. The petitioner Management has found that the reply submitted by the second respondent and other similarly placed workmen are not satisfactory. The petitioner Management has issued show cause notice proposing to punishment of dismissal. The second respondent has submitted reply stating that the proposed action is in violation of agreed advice dated 09.01.2020, however, the petitioner Management has passed orders dated 02.09.2020 dismissing the second respondent and other similarly placed workmen.



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18. The petitioner Management has filed Approval Petition under Section 33(2)(b) seeking approval of the dismissal of the second respondent and other similarly placed workmen. After enquiry, the said Approval Petition in A.P.No.425 of 2020 and other approval petitions were dismissed by way of impugned order dated 02.09.2015.

19. On perusal of the impugned orders of the first respondent Deputy Commissioner of Labour, it is clear that first respondent authority has observed that domestic enquiry was conducted by following the principles of natural justice and in fair and proper manner, the dismissal of the second respondent and other similarly placed workmen was proved on the basis of legally admissible evidence in the domestic enquiry, that the second respondent and other similarly placed persons was paid one month salary and that the petitioner Management has filed application before the concerned authority simultaneously while issuing the proceedings of the second respondent and other similarly placed persons.

20. However, while considering the issue as to whether the Management had come to the conclusion that the action of dismissal from service was taken



against the second respondent and other similarly placed persons was not a retaliatory action and anti labour practice, it is observed by the first respondent that dismissal of workman is a retaliatory action and anti labour practice.

21. When the strike of the employees has broke out, the conciliation proceedings were initiated in order to resolve the issues between the petitioner and the workmen. During the process in the presence of the Additional Commissioner of Labour (Conciliation I), both the parties have arrived at “Acceptable Advice” dated 09.01.2020 according to which it is was agreed that except 51 workers who were suspended by the petitioner Management rest of the workers will return to the work with effect from 13.01.2020. And in respect of 51 workers, it is mentioned in the “Acceptable Advice” dated 09.01.2020 that after submitting the final enquiry report to the Deputy Commissioner of Labour (Conciliation I), the final decision in respect of the 51 workers will be taken subject to advice of the Deputy Commissioner of Labour. The relevant portion is extracted hereunder for ready reference:

“2. It was accepted by both the Management and the Workers side that full co-operation will be given in order to complete the enquiry on the deisciplinary action against the 51 workers and to submit an Equiry Report to the Deputy



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Commissioner of Labour (Conciliation)-1, Sriperumbur within one month.

3. Both the sides have agreed that the Management would take a final decision subject to the advise of the Deputy Commissioner of Labour (Conciliation)-1, Sriperumbudur after submitting the Final Enquiry Report before him, pertaining to the 51 workers against whom disciplinary action is being taken by the Management.”

22. The petitioner management basing on this “Acceptable Advice” dated 09.01.2020 has though submitted the enquiry report to the Deputy Commissioner of Labour, Sriperumbudur having waited for the advise of the Deputy Commissioner of Labour, for a period of one month, the Management has initiated process of dismissing the second respondent and other similarly placed workmen from service.

23. It is submitted by the learned counsel for the petitioner that first respondent authority has erroneously interpreted the “Acceptable Advice” dated 09.01.2020. According to the learned counsel for the petitioner the “acceptable advice” dated 09.01.2020 is only advices made by the Deputy Commissioner of Labour and proceedings signed by the representative of the petitioner and the



representatives of the workmen. The “acceptable advice” dated 09.01.2020 is not an agreement and thereby the “acceptable advice” dated 09.01.2020 cannot be enforced. It is also further submitted by the learned counsel for the petitioner that in order to give a colour of an agreement, the “Acceptable Advice” dated 09.01.2020 should have been executed as an agreement as required under Industrial Dispute Act, 1947.

24. The learned counsel for the respondent workmen on the other hand submitted that “Acceptable Advice” dated 09.01.2020 is an agreement between the petitioner Management and workmen and basing on such agreement only except 51 workers who were on suspension, rest of the workers went on to report for the duty. And in respect of the 51 workers the petitioner Management has agreed that after submission of the enquiry report before the Deputy Commissioner of Labour (Conciliation)-1, the petitioner Management will take final decision subject to the advise of the Deputy Commissioner of Labour (Conciliation)-1, in respect of disciplinary action against the 51 workmen. That means, according to respondents only after the Deputy Commissioner of Labour (Conciliation)-1, gives advice, the petitioner Management shall pass any orders in respect of disciplinary action on the suspended workmen.



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25. I have gone through the document “acceptable advice” carefully. The title of the document is “acceptable advices” dated 09.01.2020. This documents was signed by G.M and AGM on behalf of the petitioner factory and Executive committee members on behalf of union. The nomenclature “Acceptable Advice” denotes that this document is acceptable advice given by the Deputy Commissioner of Labour (Conciliation)-1. However, on perusal of the contents of this document, it is clear that the Management and the second respondent and other workers have agreed to submit the enquiry report to the Deputy Commissioner of Labour (Conciliation)-1, who will advice the petitioner in respect of the punishment to be inflicted on the second respondent and other similarly placed persons. Therefore, though document dated 09.01.2020 titled “Acceptable Advices”, in reality both the parties have agreed that petitioner management will take decision in respect of awarding the sentence to the workmen only after receiving advice from the Deputy Commissioner of Labour (Conciliation)-1. Therefore, insofar as “Acceptable Advices” dated 09.01.2020, the interpretation of the petitioner that it was not settlement, it was not agreement and that it cannot be enforced cannot be accepted.



26. It is submitted vehemently by the learned counsel for the petitioner that in order to give approval by the first respondent in respect of the dismissal of the second respondent under Section 33 (2) (b) of the Industrial Dispute Act, it is not required to consider whether the petitioner management has not followed “acceptable advise” dated 09.01.2020. On going through the provision of the Section 33(2)(b) of Industrial Dispute Act, it is clear that in order to get the approval of dismissal of workmen one month wages should have been paid and the approval petition should have been filed in respect of the seeking approval for the dismissal of the workmen. The provision as referred above did not require a finding from the first respondent authority as to whether the petitioner Management has played unfair labour practices against the workmen.

27. Though Section 33 (2)(b) of the Industrial Dispute Act did not specifically mention about unfair labour practices being played by the Management as one of the grounds for dismissal of the approval petition, the law as laid down by the Hon'ble Apex Court in ***Lalla Ram vs. Management of D.C.M., Chemical Works Ltd., and Ors.*** Reported in AIR1978 SC 1004 mandates the same and the relevant portion is extracted under:

“12. The position that emerges from the above quoted decisions or this Court may be stated thus : In



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proceedings Under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and, the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co, v. Ram Probesh Singh MANU/SC/0136/1963 : (1963)ILL J291SC , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511, Hind Construction & Engineering Co. Ltd. v. Their Workmen MANU/SC/0210/1964 , Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd." v. Management and Ors. MANU/SC/0305/1973 : (1973)ILL J278SC ., and Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the



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punishment or whether excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay Wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant: the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on Its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”



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28. Therefore, though Section 33 (2)(b) of the Industrial Dispute Act does not disclosed anything with regard to the victimization of the employee and unfair labour practices, still basing on the judgment referred above, the competent authority will have to be consider whether the dismissal of an employee is on account of unfair labour practices and whether it was intended to victimize the employee.

29. It is submitted by the learned counsel for the respondents that Section 2(ra) of the Industrial Dispute Act, defines unfair labour practices as the practices as specified in the 5th Schedule. Further as per Section 25T of the Industrial Dispute Act, no employer or workmen or trade union shall commit any unfair labour practices and Section 25U of the Industrial Dispute Act specifies that penalty for committing unfair labour practices.

30. 5th Schedule of the Industrial Dispute Act 1947 lists unfair labour practises that are prohibited. As per paras 5a, b and f of 5th schedule of the Industrial Dispute Act dismissing of an employee by way of victimization colourable exercise of the employees rights, conducting of domestic enquiry disregarding the principles of natural justice amounts to unfair labour practices.



Further as per clause 13 of V schedule failure to implement award settlement or an agreement amounts to unfair labour practice. In the case on hand, the first respondent had categorically held that domestic enquiry was conducted in a fair and proper manner and that there is no complaint from the workmen that the principles of natural justice have not been followed. However, it is to be examined whether failure to implement the “acceptable advices” dated 09.01.2020 and thereby passing final order of dismissal of the second respondent, without advice of the Deputy Commissioner of Labour amount to failure to implement the agreement thereby whether it amounts to unfair labour practices.

31. According to the learned counsel for the respondent that since the agreement between the petitioner and the trade union entered into on 09.01.2020 in the form of “Acceptable Advices” was not followed by the Management in not adhering to the terms of settlement in respect of awarding the punishment to workmen as per the advices of the Deputy Commissioner of Labour (Conciliation)-1 amounts to unfair labour practice.

32. Learned counsel for the petitioner has cited the decision of the Hon'ble



Supreme Court in *Hindustan and Zinc Workers Union and Ors. vs.*

Management of Agnigundala Lead Project, Hindustan Zinc Ltd., and Ors.,

reported in MANU/AP/0171/1987, wherein it is observed as under:

“10. Two questions arise for consideration based on the facts stated above. They are : (a) Whether the minutes of the discussions dated 25th March 1983 constitute a ‘settlement’ within the meaning of S. 2(p) of the Industrial Disputes Act; if the answer is in the negative whether the matter should go back to the Industrial Tribunal for purpose of adjudication pursuant to the reference made in I.D. No. 36/84 ?

(b) Even if the minutes of discussions dated 25th March 1983 cannot be considered to be a ‘settlement’ within the meaning of S. 2(p) of the Act, is the Management bound by the minutes and the same can be enforced independent of any adjudication of dispute by the industrial Tribunal ?

*11. Learned Counsel for the Respondents, Sri Srinivasa Murty, urges that the minutes of discussions dated 25th March 1983 cannot be held to be ‘settlement’ within the meaning of S. 2(p) of the Act. In order to appreciate the contention of the learned counsel, Section 2(p) may be extracted below :
‘S. 2(p) : ‘Settlement’ means a*



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settlement arrived at in the course of a conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer", Sri Srinivasa Murty points out that Petitioner No. 2 was initially dismissed from service by order dated 6th March 1983. As a protest, the labour struck work from 9th March 1983. The matter was referred for conciliation purposes to the Asst. Labour Commissioner (C), Vijayavada. After discussions with parties, the Asst. Labour Commissioner reported failure; the conciliation proceeding came to an end. After the Labour Commissioner sent his report of failure, there was again a flare up and the labour struck work. There was some informal discussions between the Management and the Union and it looked as though the matter could be resolved to the mutual satisfaction of the Management and the Workmen. It was in that context that on 25th March 1983, the Management informed the Asst. Labour Commissioner that there was a possibility of resolving the issue and, therefore, the Commissioner was requested to visit the



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mines immediately. Responding to the request the Labour Commissioner visited the mines on 25th March 1983, held discussions with the Management and the workers' Union on the issue of reinstatement of Petitioner No. 2 as a result of which certain understanding was reached which was reduced to writing by way of minutes. The above facts are borne out the minutes recorded on 25th March 1983.

12. On these facts, it is contended that the ingredients of a 'settlement' for the purpose of S. 2(p) of the Act are not satisfied. It is contended that the settlement evidenced by the minutes was not arrived at in the course of conciliation proceeding, because by that time the Asst. Labour Commissioner reported failure of the conciliation proceeding. According to the learned counsel, the so called settlement; was reached after the conciliation proceedings ended, but not in the course of conciliation proceeding. The settlement must be considered to have been arrived at otherwise than in the course of conciliation proceeding as specified in S. 2(p) of the Act. Learned counsel submits such an agreement has to be signed by the parties in the manner prescribed and copy of that agreement has to be sent to an officer authorised in that behalf by appropriate Government and the conciliation officer. Learned counsel urges that



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the requirements specified in the latter part are not satisfied because the agreement is not in the prescribed form nor has it been sent to the persons specified. Attention is invited to Rule 58 of Industrial Disputes (Central) Rules, 1957, which provides that the Memorandum of Settlement, arrived at in the course of conciliation proceeding or otherwise, shall be in Form;. It is also pointed out that copies of Form ; have to be sent, according to Rule 58, to the Asst. Labour Commissioner (Central) of the local area concerned, Regional Labour Commissioner (Central), Chief Labour Commissioner (Central), New Delhi and the Secretary to Government of India, Ministry of Labour, New Delhi. Learned counsel points out that the settlement arrived at between the parties and evidence by the minutes of discussion is not in the form prescribed and the copies of the prescribed form have also not been sent to the parties concerned. It is urged by the learned counsel that the minutes drawn up cannot themselves be considered to be a "settlement" for the purpose of S. 2(p) of the Act. There is a bar against making a reference for adjudication by the Industrial Tribunal if the settlement is arrived at between the employed and the workmen satisfying the requirements of S. 2(p) of the Act. If the requirement for a valid settlement are not satisfied, it



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must be held that there is no settlement in the eye of law and consequently a reference of the dispute between the employed and the workmen is liable to be referred to the Industrial Tribunal. Learned Counsel submits that in the present case the reference was made to the Industrial Tribunal because there is no valid settlement satisfying the requirement of S. 2(p) of the Act and the Industrial Tribunal was in error in accepting the contention of the Petitioners that the minutes of the discussions dated 25th March 1983 represent a valid settlement and consequently no dispute exists. Learned counsel submits that the termination of the reference by the Industrial Tribunal is grossly erroneous. Learned counsel further urges that on the facts and circumstances, it must be held that there is no valid settlement satisfying the requirements of S. 2(p) of the Act and consequently the dispute should go back to the Industrial Tribunal for adjudication. Learned Counsel also claims that the Industrial Tribunal which terminated the reference did not pass any Award for reinstatement of Petitioner No. 2 and consequently the question of Management complying with the Award does not arise.

13.

14. Even assuming for the sake of arguments that the agreement was arrived at after the conciliation



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proceedings ended, still S. 2(p) provides that every written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceedings should be regarded as a settlement, provided it has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer. Now in the present case the minutes recorded on 25th March 1983 were duly signed by four representatives of the employer and the office bearers of the Union. The only criticism is that the written agreement is not in the prescribed form 'H' and a copy thereof has not also been sent to the officers concerned. A perusal of Form; would show that the names of the parties representing the employer and the workmen should be specified therein; a short recital of the case must be given; the terms of the settlement should be indicated and then the parties should sign. There must be attestation by witnesses. Copies of that form should be sent to the Assistant Labour Commissioner (Central), Chief Labour Commissioner (Central) and the Secretary to Government of India, Ministry of Labour. Now the minutes recorded substantially comply with these requirements. The names of the parties representing the employer and the workmen are



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specifically stated therein. Not merely a short but a detailed recital of the case was given. The terms of settlement were clearly indicated in the minutes. On behalf of the employer four senior officers signed. On behalf of the workmen five office bearers of the Union signed. The Assistant Labour Commissioner (Central), Vijayavada, Sri K. Ramakrishna, himself signed as a witness. The minutes of the discussions thus comply substantially with the form prescribed except that it is described as Form 'H'. There is no substance in the criticism that the minutes are not in the prescribed form when the contents of the minutes wholly conform to the requirements. This contention is, therefore, rejected.

15. The next criticism is that copies of the minutes were not forwarded to the officers concerned. It is clear that the minutes were drawn up in the presence of Sri K. Ramakrishna, Asst. Labour Commissioner, Vijayavada, as clearly indicated in the minutes of discussions. It must, therefore, be held that a copy were duly forwarded to the Assistant Labour Commissioner (Central) of the local area concerned. As regards copies to the Regional Labour Commissioner (Central), Chief Labour Commissioner (Central) and the Secretary to the Government of India, Ministry of Labour, there is no authentic information on record



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that these minutes were not communicated to the respective parties by the Assistant Labour Commissioner at whose instance the minutes were drawn up. Even assuming that there is failure to do so, in my opinion it is not fatal to the validity of the settlement reached at the instance of the Assistant Labour Commissioner. It must be borne in mind that transmission of copies to higher authorities is merely a procedural requirement to keep them informed of the development in any dispute concerning the employer and the workmen. So long as the Assistant Labour Commissioner, who is the conciliation officer, is seized of the matter and the settlement was reached at his instance and was duly attested by him, the omission to transmit copies of the Memorandum of Settlement to the higher authorities does not, in my opinion, invalidate the settlement. In any event, I am unable to accept the plea that the transmission of copies should be held to be a mandatory requirement for the validity of the settlement. On the clear terms of S. 2(p) of the Act read with Rule 58, it is clearly directory.

16. In view of my above findings, it must be held that the minutes of discussions dated 25th March 1983 constituted a valid settlement within the meaning of S. 2(p) of the Act in either view of the matter. It is a valid settlement because the agreement was arrived at in the



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course of conciliation proceedings. It is also valid because it was arrived at otherwise than in the course of conciliation proceedings and the requirements of S. 2(p) of the Act are satisfied. The Industrial Tribunal & 39;s view that the minutes of discussions dated 25th March 1983 constituted a valid settlement within the meaning of S. 2(p) of the Act is accordingly upheld. The settlement is clearly binding on the employer and also the workmen.”

33. Though this judgment cited by the learned counsel for the petitioner is it in fact helpful for the respondent. According to the learned counsel for the petitioner “acceptable advices” entered into between parties on 09.01.2020 cannot be termed as a settlement within the meaning of Section 2(p) of the Industrial Dispute Act, thereby it cannot be said that since agreement/settlement entered into between the parties has not been honoured by the Management, it amounts to unfair labour practices as per 5th schedule of the Industrial Dispute Act. It is true that in principle the procedure to be followed as per Section 2(p) of the Industrial Dispute Act has not been followed in order to consider the “acceptable advices” as settlement under section 2(p) of the Industrial Dispute Act.



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34. Section 2(p) of the Industrial Dispute Act runs as under:

“2 p["settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to] [<A TITLE =][an officer authorised in this behalf by] [Inserted by Act 35 of 1965, Section 2 (w.e.f. 1.12.1965).][the appropriate Government and the conciliation officer;] [Inserted by Act 43 of 1953, Section 2 (w.e.f. 24.10.1953).] “

35. The “acceptable advice” was not entered into in the format required under Section 2(p) of the Industrial Dispute Act and copy of which thereof has not been sent to authorised officer and conciliation officer. Insofar as these two aspects are concerned the judgment referred above by the petitioner will come to rescue of the respondent. It is mentioned in the above referred judgment that thought the settlement is not strictly in the format as required under the Industrial Dispute Act still if the alleged settlement contains the signature of both parties



and the agenda and substance of agreement, it is more or less amounts to complying of the format as required under Section 2(p) of the Industrial Dispute Act. In respect of submitting the copy of the said settlement to the officer authorised and other government officers are concerned, it is also held in the judgment referred above that in the presence of conciliation officer one of the requirements that it has to be submitted to the conciliation officer has already been met with. In the case on hand, the “acceptable advise” was entered into between the representatives of the management and the representatives of the union, in the presence of the Deputy Commissioner of Labour. Therefore, since it executed in the presence of the Deputy Commissioner of Labour, the said requirement has also deemed to have been met. Finally in respect of submitting the copies thereof to the Government is concerned, in the above referred judgement it is mentioned that submission of copies to the Government is purely procedural in nature, thereby non submission of the copies to the Government will not render the settlement as unacceptable. Therefore, in view of the judgment referred the “acceptable advice” entered into between the parties on 09.01.2020 can be treated as a settlement. Once the “acceptable advice” dated 09.01.2020 is considered to be a settlement under Section 2 (p) of the Industrial Dispute Act, paragraph 13 of schedule 5 of the Industrial Dispute Act will come



into play according to which failure to implement the award, settlement and agreement amounts to unfair labour practices.

36. Learned counsel for the petitioner has cited the decision of the Hon'ble Supreme Court in ***Ganesan G. and Ors. vs. Presiding Officer, Labour Court and Ors.***, reported in MANU/TN/0907/2001 wherein it is observed as under:

“13. Coming to the last submission made by the learned counsel for the petitioners that in the absence of compliance of Para 4 of the proceedings of the Special Deputy Commissioner of Labour, Madras, dated November 28, 1985, the entire disciplinary proceedings are vitiated, it is to be noted that in the said paragraph, the Special Deputy Commissioner of Labour has directed the second respondent that on completion of the enquiry proceedings and after considering the nature of findings against them, the management will pass the order in respect of each of the 7 workmen independently. However, the order so passed by the management shall be kept in abeyance and a decision will be taken in the matter only after discussions before the Special Deputy Commissioner of Labour, Madras. In my view such a direction cannot be in law sustainable since under the Standing Order, there is no provision brought to my notice enabling the management to place such a decision before the Special Deputy



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Commissioner of Labour before passing final orders. Moreover, once the charges are proved, against the workmen, a right vests with the management to take further action on the basis of the enquiry conducted. Only in the event if any final decision is taken and orders passed as to the punishment and only in the event if any dispute is raised, the role of the Special Deputy Commissioner of Labour would come into play. In my view, the directions issued by the Special Deputy Commissioner of Labour, Madras in Para 4 of his proceedings, dated November 28, 1985, cannot be in any way taken advantage of by the petitioners for challenging the orders of dismissal made on the basis of the report of the enquiry. When once it was agreed for an enquiry to be conducted against the petitioners before the Conciliation Officer, Conciliation Officer cannot impose any restrictions on the management from proceeding with the findings of such enquiry and pass orders and impose punishment depending upon the seriousness of the offence. Therefore, non-compliance of Para 4 of the proceedings of the Special Deputy Commissioner of Labour, dated November 28, 1985, will not in any way vitiate the orders of dismissal passed by the second respondent.”

37. Above referred judgment is not applicable to the facts of the case



because in the case referred above the issue was whether the conciliation officer can pass orders in respect of imposing of punishment by the Management. In the case on hand the issue is whether the agreement entered into by the Management and union in respect of imposing of punishment can be ignored by the Management and impose punishment in turn waiting for the advice of the Deputy Commissioner of Labour. Hence, above judgment will not help the petitioner

38. Learned counsel for the petitioner has cited the decision of the Hon'ble Supreme Court in ***John D'Souz vs. Karnataka State Road Transport Corporation***, reported in (2019) 18 SCC 47, wherein it is observed as under:

24. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the Forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non- existent misconduct.



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25. The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an 'industrial dispute' referable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.

31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not



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suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise ratio – decendi of the decisions of this Court in (i) Punjab National Bank, (ii) Mysore Steel Works Pvt. Ltd. and (iii) Lalla Ram's cases (supra).

39. Learned counsel for the petitioner has cited this authority that in respect of legal requirements of Section 33(2)(b) of the Industrial Dispute Act and contended that since requirement of Section 33(2)(b) of Industrial Dispute Act have already been complied with by the Management, the Labour Court should not raised the issue of unfair labour practices etc. Learned counsel for the



respondent has also cited the decision of the ***John D'Souza vs. Karnataka State Road Transport Corporation***, reported in (2019) 18 SCC 47 and took the Court to various paragraphs of the judgment to show that in the above referred judgment, the first respondent authority while considering the approval application is also required to see if there is any victimisation is there from the management to the workmen and if it is found that the workmen are victimized, then approval should not be granted.

40. Learned counsel for the respondent has cited the decision of the Hon'ble Supreme Court in in ***Ganesan G. and Ors. vs. Presiding Officer, Labour Court and Ors.***, reported in MANU/TN/0907/2001 wherein it is observed as under:

“10. Admittedly, by charge-memos, dated August 21, 1985 and September 28, 1985, 17 workmen were asked to submit their eXplanation with regard to the incidents that took place on the midnight of August 19, 1985 and at 7.00 a.m. on September 25, 1985. However conciliation proceedings were held before the Special Deputy Commissioner of Labour, Madras and when the disputes were taken up for discussion by him on November 20, 1985, November 21, 1985 and finally on November 28, 1985 the management was represented by Sri S. Devarajan, Director of the mills and the workmen were represented by Sri D. Shanmugam



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(TNTUC), Sri P. Thangavelu, Vice President, Salem District TNTUC, Sri M. Gurusamy, Secretary, TNTUC and Sri M. Periasami, worker in the mill. In order to end the prolonged strike and in the interest of maintaining industrial peace, the representatives of both the management and the workers accepted the suggestions of the Special Deputy Commissioner of Labour, Madras and agreed to follow those suggestions. Accordingly, the following suggestions made by the Special Deputy Commissioner of Labour were accepted by both the management and the representatives of the workmen and the same was issued in the proceedings of the Special Deputy Commissioner of Labour, Madras, in No. A3/76925 of 1985, dated November 28, 1985.

(1) The workmen shall call off the strike and resume normal work effective from December 2, 1985. The workmen will not be entitled for any wages for the period of strike. The management in turn will not taken any disciplinary action against the workmen in connection with the strike, eXcept in the case of the 17 workmen referred to above.

(2) Out of the 17 workmen involved in disciplinary cases, the management shall revoke the order of suspension in respect of the following 10 workmen and permit them to resume work on the dates specified against them. The workmen agreed that the period of no work/non-employment till the date of their actual resumption of work shall be treated as specific punishment. In view of this, the



management shall drop all disciplinary proceedings against them.

Name of the worker Date to report for work Tvl. 1.

Chinnasamy

2. P.G. Govindasamy

3. T. Ganesan

4. K.M. Raja

5. K.R. Rajendran

6. G. Narayanaswamy

7. K. Manoharan

8. K. Loganathan 6 December 1985

9. R.K. Palaniswamy and

10. C. Chellakkannu 16 December 1985 (3) In the case of the following 7 workmen, the suspension order already passed by the management will be accepted by them and as a consequence thereof, they will be under suspension - pending enquiry from the date the strike is called of.

1. T. Algappan

2. G. Ganesan

3. T. Mani

4. N. Johnrose

5. M. Rajendran

6. M. Ayyavu and

7. C. Rajagopal They will be paid full monthly wages comprising of basic and D. A. based on their last drawn wages for their subsistence: during the period of suspension.



The management shall proceed to conduct the enquiry into the charges against them and complete the enquiry proceedings within a period of 3 months from the date of resumption of work in the mill. The concerned workmen shall co- operate with the management in completing the enquiry expeditiously.

(4) On completion of the enquiry proceedings and after considering the nature of findings against them, the management will pass the order in respect of each of the 7 workmen independently. However, the order so passed by the management shall be kept in abeyance and a decision shall be taken in the matter only after discussions before the Special Deputy Commissioner of Labour, Madras.”

41. In view of the discussions made above, the “Acceptable Advices” dated 09.01.2020 can be interpreted as settlement between the parties and by not following the said agreement, by not waiting until the advice of the Deputy Commissioner of Labour (Conciliation) -1, is received before inflicting of punishment amounts to failure to implement the settlement as per para 13 of the 5th schedule of the Industrial Dispute Act. Thereby, rejection of Approval Petition is proper.

42. Once this Court has come to the conclusion that rejection of the



Approval Petition is not perverse then normal course would be to direct the management to reinstate 51 workmen. However, it is a special case where the Approval Petition is rejected on the ground of victimisation and not on any other ground as required as per Section 33 (2)(b) of the Industrial Dispute Act and basing on the judgment of the Hon'ble Supreme Court of India in ***Lalla Ram vs. Management of D.C.M, Chemical works Ltd.*** It is a case where the Approval Petition was rejected on the ground that the Management has imposed the punishment of dismissal of workmen even before the Deputy Commissioner of Labour has given advice to the Management. In respect of punishment of the punishment to be imposed on the 51 workmen as per “acceptable advice” dated 09.01.2020. Had been the Management waited for some more time, the Deputy Commissioner of Labour could have expressed his opinion basing on the enquiry report and basing on such advice, the Management could have taken steps to inflicting the punishment on the workmen. Therefore, it is not a case where simply because this Court has confirmed the dismissal of rejection of Approval Petition by the first respondent authority, the 51 workmen should be automatically ordered to be reinstated. This Court is of the opinion that the matter has to be sent back to the stage where the Deputy Commissioner of Labour required to give his opinion basing on the enquiry officer report so that



basing on the advice of the Deputy Commissioner of Labour, the Management will take appropriate decision in respect of inflicting of punishment.

43. In view of the discussions made above, this Writ Petition is allowed in part, setting aside the impugned order dated 29.10.2021 made in A.P.No.425 of 2020 passed by by the first respondent/ Deputy Commissioner of Labour (Conciliation-I) Sriperumbudur and matter is remitted back to the Deputy Commissioner of Labour for giving opinion on the basis of enquiry report in respect of punishment to be imposed on the workmen. Consequently, this Court also quashes the orders passed by the petitioner Management of dismissing the 51 workmen dated 02.09.2020. The petitioner Management is directed to submit a copy of enquiry report dated 24.02.2020 to the first respondent the Deputy Commissioner of Labour within three weeks from the date of receipt of copy of the order and on submission of such enquiry report, the first respondent the Deputy Commissioner is directed to advice as per “acceptable advice” dated 09.01.2020 within four weeks thereafter and the petitioner Management is further directed to pass appropriate orders in respect of disciplinary proceedings against 51 workmen within three weeks from the date of receipt of advice from the Deputy Commissioner of Labour. No costs. Consequently, connected



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miscellaneous petitions are closed.

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13.08.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
jai

To

The Deputy Commissioner of Labour,
(Conciliation-I), Sriperumbudur,
Kancheepuram District-602117.

Dr.D.NAGARJUN, J.
jai

Pre-delivery order

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