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W.A.No.1771 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.06.2024

Pronounced on: 12.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.No.1771 of 2022

and

C.M.P.Nos.13000 of 2022 and 14859 of 2023

Neyveli Lignite Corporation Limited,
(presently known as M/s. NLC India Limited),
represented by its Chairman-cum-Managing Director,
Neyveli Township, P.O. Neyveli - 607 801. ... Appellant

vs.

1. CITU-NLC Labour and Staff Union,
represented by its President,
Behind CBS, Block No.24,
Neyveli - 607 801.

2. S. Karthikeyan,
No.27-B, 408 Quarters,
Block-12, Neyveli -3.

3. Government of India,
Ministry of Labour,
Shram Aur Rozgar Matralaya,



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New Delhi.

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4. The Regional Labour Commissioner (Central),
Office of the Regional Labour Commissioner,
No.14, Haddows Road, Shastri Bhavan,
Chennai-600 006.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patents to set aside the impugned order dated 18.04.2022 in W.P. No.17705 of 2013 and consequently dismiss the Writ petition.

For Appellant : Mr. N. Nithianandam

For Respondents : Mr. N.G.R. Prasad
for Mr. V. Stalin [for R1]

R2 - died.

Mr. K. Subbu Ranga Bharathi
[for R3 and R4]

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ appeal has been preferred by the management as against the order passed in W.P. No.17705 of 2013 dated 18.04.2022. The respondents 1 and 2 herein / Labour Union and workman have filed the said Writ petition before the Writ Court challenging the deduction of 8 days wage cut from June 2013 salary payable in July 2013 and the said Writ



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petition was allowed.
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2. According to the appellant Management, the respondents 1 and 2 viz., Labour Union and workman herein have filed the Writ petition for a direction to the appellant not to deduct 8 days wage from the 1st respondent members. The Writ petition involves disputed questions of fact, concerning different individual workman and hence, cannot be adjudicated by invoking the powers under Article 226 of the Constitution of India. Further, as per Clause 44 of Standing Orders, the appellant is entitled to deduct 8 days wages and no previous notice is required and the said Clause 44 of the Standing Orders is in conformity with Section 24 read with 22 of the Industrial Disputes Act, hence the proposed strike itself is deemed to be illegal. Therefore, the deduction of 8 days wages is in order and the Writ Court without considering the Standing Orders of Clause 44, issued Writ order refraining the appellant from deducting 8 days of wages pursuant to their proposals dtd 22.06.2013 and 24.06.2013. Therefore, the order passed by the Writ Court is liable to be set aside.

3. According to the respondents 1 and 2, the 1st respondent Union



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indulged in strike after giving notice to the Management and therefore, as per Clause 44 of the Standing Orders, pre-notice for a period of fortnight was issued in respect of strike. Therefore, deduction of 8 days wages under Clause 44 of the Standing Orders would not attract in this case. Therefore, the Writ Court after considering the above said aspect, allowed the Writ petition and issued Writ order refraining the 3rd respondent from deducting 8 days wages. Therefore, the order passed by the Writ Court is reasonable and the present Writ appeal is liable to be dismissed.

4. The learned counsel appearing for the appellant mainly argued that the Management has issued Show Cause Notice for the individual workman and the individuals alone have to challenge the order and the Union cannot file the Writ petition. The disputed facts cannot be adjudicated through Article 226 of Constitution of India. As per Clause 44 of the Standing Orders, the Management is entitled to deduct 8 days wages, since they indulged in strike. The Writ Court failed to consider the same and allowed the Writ petition. Therefore, the order of the Writ Court is liable to be set aside by allowing this Writ appeal.



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5. The learned counsel for the respondents 1 and 2 would contend that already Union has issued a notice in respect of strike. Therefore, Clause 44 of the Standing Orders is not applicable to the present case and further, there is no Show Cause Notice issued by the appellant and therefore, the appellant has no power and cannot deduct 8 days wages and therefore, Writ Court has passed reasoned order and the present Writ appeal is liable to be dismissed.

6. Heard both sides'. Perused all the materials available on record.

7. The main contention of the appellant is that the individual workman have not challenged the Show Cause Notice and challenged the standing order. The Union cannot file Writ petition straight away without raising industrial dispute under Industrial Dispute Act. In order to support his contention, the learned counsel appearing for the appellant has relied upon judgement in M/s. ***Binny Limited v. Madras Labour Union, Madras and another in Civil Appeal Nos.208-209 of 1991 and Madras Labour Union and others v. M/s.Binny Limited in Civil Appeal Nos.210-211 of 1991.***



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wherein, the Hon'ble Supreme court held that *remedy under Article 226 of the Constitution of India against a private employer was not appreciated and even otherwise the proper remedy was to proceed under the relevant industrial law against deduction of any wages by the Management*. However, in the same judgment, the Hon'ble Supreme Court has also observed that *"but at this stage of the litigation, we consider it inappropriate to dispose of the matters on this ground alone. It also appears that before the Division Bench of the High Court, the Management, with a view to ensure an early conclusion of the controversy and in order to prevent disturbance of industrial peace in the establishment, agreed to have the matter adjudicated on merits by the High Court. Learned counsel for the Management advanced his arguments before us also in the same spirit appreciating that it may not be conducive to industrial peace in the establishment to reopen the matter from the initial stage. For this reason, we deem it fit to put an end to this dispute by making a direction which we consider to be appropriate in the facts and circumstances of the case. We make it clear that this decision is rendered only for the purpose of avoiding prolongation of this industrial dispute and it shall not be construed as holding that a*



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direct Writ petition under Article 226 of the Constitution was maintainable in the High Court for the grant of such a relief in an original proceeding".

7.1. While following the above principles, in the case on hand also, it is transpired that the individual workman has not challenged the deduction of salary and the Union only filed the Writ petition. Therefore, this Court also in order to avoid multiplicity of proceedings and prolongation of industrial dispute inclined to dispose the Writ appeal without directing the parties to approach the industrial dispute Tribunal.

8. The learned counsel for the 1st respondent Union would contend that there is no Show Cause Notice issued by the appellant to the individual workman and thereby, the appellant management violated the principles of natural justice and not followed the procedures under relevant rules and thereby, the Writ petition is maintainable.

9. In this context, it is an admitted fact that the appellant has not issued any Show Cause Notice and they referred Clause 44 of the Standing Orders. Clause 44 of the Standing Orders is extracted as hereunder,



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"44. Deduction of Wages for stoppage of work by ten or more workmen:

If ten or more workmen, acting in concert and without giving a fortnight's notice to the Management, absent themselves from work or being present at the workspot, refuse to work without reasonable cause, a deduction of 8 days of wages, as defined under the Payment of Wages Act, shall be made from the wages of such workmen".

The Management is authorised to deduct 8 days wages, if 10 or more workmen, acting in concert and without giving a fortnight's notice to the Management, absent themselves from work or being present at the workspot, refuse to work without reasonable cause. In the case on hand, it is an admitted fact that the workmen issued a strike notice in conformity with the provisions under Section 22(1) of the Industrial Disputes Act. Therefore, the said application of Clause 44 of the Standing Orders, will not be applicable to the present facts of the case. Therefore, the contention of the appellant that notice is not necessary and they can straight away deduct wages under Clause 44 of the Standing Orders, is not an acceptable one. Once the principles of natural justice is violated and without following the rules, if any order is issued, the same can be challenged through writ petition. Therefore, in view of the above said reasons, the contention of the appellant that the Writ petition is not maintainable cannot be accepted.

10. In this context, the Writ Court in its order, elaborately discussed



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about the applicability of the Clause 44 of the Standing Orders and elaborately discussed about the strike notice as follows:-

"10. Incidentally, the strike notice was issued in conformity with the provision under Section 22(1) of the I.D. Act. It is true that the Standing Orders cannot be in derogation to the provision of the ID Act. But Clause 44 does not refer to the nature of strike or whether such a proposed strike is in violation of Section 22 or Section 24 of the ID Act. The issue is as to whether the strike is legal or illegal is a matter that requires adjudication and therefore claiming that the proposed strike is an illegal strike and thereby invoking Clause 44, is impermissible in view of the non applicability of the Clause. Thus, the proposed action of the third respondent dated 22.06.2013 and 24.06.2013, are not in conformity with Clause 44 and therefore, the petitioners are entitled to succeed".

11. Therefore, in view of the above discussion, this Court is of the opinion that the Writ Court has passed a reasoned order in accordance with law and it does not warrant interference. Therefore, this Writ appeal has no merits and deserves to be dismissed.

12. In the result, the Writ Appeal is dismissed. No costs. The connected miscellaneous petition is closed.

(J.N.B.J.) & (P.D.B.J)

12.07.2024

mjs



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Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To

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J.NISHA BANU,J
and
P.DHANABAL,J

(mjs)

Pre-delivery judgment in
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