



W.P.No.1729 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2023

PRONOUNCED ON: 30.04.2024

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.1729 of 2014

The Workmen,
rep. by the General Secretary,
Axles India Workers' Union,
3, Kambar Street, Gandhi Nagar,
Sriperumbudur- 602 105

..Petitioner

VS.

1.The Presiding Officer,
Industrial Tribunal, Tamil Nadu,
High Court Buildings,Chennai-600 104

2.The Management,
Axles India Limited.,
Singaperumal Koil Road,
Sriperumbudur-602 104,
Kancheepuram District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records and papers from the files of the first respondent Tribunal in I.D.Nos.11, 22 of 2005 and I.D.No.13 of 2008 and quash the common Award made therein dated 29.11.2011 insofar as the first respondent Tribunal has rejected the claims made in the above Industrial Disputes raised by the petitioner Union.



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For Petitioner : Mr.K.M.Ramesh, Sr.counsel
for Ms.S.Apunu

For Respondents : Mr.Anand Gopalan for R.2
: R.1 Tribunal

ORDER

This Writ Petition is filed seeking for quashment of common order passed by the first respondent Labour Court in I.D.Nos.11, 22 of 2005 and I.D.No.13 of 2008 dated 29.11.2011.

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

The petitioner is Axles India Workers' Union represented by its General Secretary, which represents the workmen employed in the second respondent Management in its factory at Sriperumbudur and Gummidipoondi, and it commands membership of about 100 workmen in Sriperumbudur and 23 workmen in Gummidipoondi. The total membership in the union is about 166 which includes casual and company apprentices as well.



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3. Initially there used to be cordial relationship between the workmen and second respondent Management. The second respondent management announced voluntary retirement scheme, however, the workmen did not opt for the said scheme. On account of which, the workmen were transferred to far off places. The second respondent has surreptitiously altered the existing service conditions by fixing the norms to its new product called R.A.109 for which the petitioner Union protested. The second respondent Management has issued show cause notices to 16 workmen for not giving production under R.A.109 job and declared “lock-out” for 16 workmen.

4. The workmen has raised Industrial Dispute which was ended in favour of workmen. The management has challenged the same before the High Court which is still pending. As per the bye-laws of the petitioner Union's the enrolment will only be for the permanent employees. In the year 2003, the second respondent Management has encouraged a minority group of workmen to join I.N.T.U.C. Union and granted its recognition to the said Union. The second respondent Management has entered into a settlement with the I.N.T.U.C. Union u/s 18(1) of the Industrial Disputes Act, 1947 dated 30.09.2003 even though



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the said Union is a minority Union. The second respondent Management has insisted the members of the petitioner Union due to production as per settlement under Section 18(1) of the Industrial Disputes Act, 1947 . However, the members of the petitioner Union are not bound by the settlement agreement under Section 18(1) of the Industrial Dispute Act, 1947 made with I.N.T.U.C. Union.

5. The members of the petitioner Union have refused to abide by the settlement arrived at under Section 18(1) of the Industrial Disputes Act, 1947 with I.N.T.U.C. Union, thereby, the second respondent started deducting the pro-rata wages from the wages of the members of the petitioner Union.

6. The petitioner Union raised an Industrial Dispute challenging the settlement with I.N.T.U.C. Union dated 30.09.2003. During the pendency of the adjudication of the Industrial Dispute, the second respondent altered the shift timing and weekly off by issuing a notice dated 07.11.2003 under Section 9(A) of the Industrial Disputes Act, 1947. The conciliation proceedings failed, thereby, the Government has issued G.O.(D) No.1371 dated 02.11.2004 referring the issue to the



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Labour Court for adjudication and the same was numbered as I.D.No.11 of 2005.

7. The second respondent Management has issued another notice dated 21.07.2004 changing the daily shift timings. Another Industrial Dispute is raised by the petitioner Union and on failure of conciliation proceedings, the Government by way of G.O.(D).No.1070, Labour & Employment Department dated 27.07.2005 has referred the matter to the Tribunal for adjudication and the same is numbered as I.D.No.22 of 2005.

8. The petitioner Union has raised another Industrial Dispute when the second respondent Management has failed to pay the salaries to the members. The Government has issued G.O.(D).No.38, Labour & Employment Department dated 03.01.2008 and the same was referred as I.D.No.13 of 2008. All the three Industrial Disputes are inter connected thereby they were taken up by way of joint trial. The second respondent has played unfair trade practices and victimised the members of the petitioner Union. After full-fledged enquiry, all the three petitions were dismissed by way of common impugned award dated 29.11.2011.



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Aggrieved by the same, the present Writ Petition has been filed.

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9. The learned counsel for the petitioner has submitted that the second respondent Management is playing unfair trade practices of encouraging the members to form parallel Union affiliating I.N.T.U.C., recognising the said Union even though it is having less number of members than the petitioner Union. Not properly appreciating the evidence recorded by the Labour Court, the change of shift timings, change of shifts, altering the holidays, non payment of salaries are all unfair trade practices. Many of the members of the parallel Union of I.N.T.U.C. are only apprentices.

10. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the material available on record.

11. The Labour Court has framed the following three issues:

(1) Whether the issuance of 9A notice dated 07.11.2003 by the management in connection with change of shift



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timings and days would amount to victimization and unfair labour practice, when an industrial dispute has been raised by the workmen objecting the 18(1) settlement dated 03.09.2003 between the management and workers of I.N.T.U.C Union are pending before conciliation officer and Government and consequently the 9A notice has to be declared as null and void and to be revoked. Whether the demand is justified?

- (2) *Whether the issuance of Notice dated 21.07.2004 by the management in fixing change in timings of daily work and change in number of shifts in a day are justified?*
- (3) *Whether the demand of pay for the period from 27.07.2004 to the date of joining of the workmen of the petitioner's Union consequent to the direction of our Hon'ble High Court in W.A.No.3780/2004 dated 03.11.2004 is justified?*



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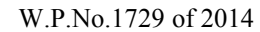
12. The first grievance of the petitioner Union is that issuance of notice under 9(A) dated 07.11.2003 and changing the shift timings and the days which amounts to victimisation and unfair labour practices. It is the submission of the petitioner Union that when the workmen have not opted for voluntary retirement scheme, during 2001, 16 workers went on individual Lock-outs and were dismissed on false charge. During the pendency of the said dispute, the Management had issued notice under 9(A) of the Industrial Disputes Act changing the shifts from 5 days / 2 shifts to 6 days / 3 shifts. The petitioner Union has raised an Industrial Dispute and in the Writ Appeal the petitioner gave an undertaking to adopt 6 days / 3 shifts pattern without prejudice to the decision. As per the the letter dated 29.01.2002 the petitioner Union has relinquished settlement under Section 18(1) of the Industrial Dispute Act, dated 01.09.1999. However, petitioner Union has not submitted any charter revision of wages. 9(A) notice was given even though it was not required and the said 9(A) notice was not accepted by workers Union, in respect of change of shift and holidays are concerned.



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13. In so far as issuance of 11(A) notice is concerned law is very much settled. It is sufficient in case if it is proved before the Court that the Management has followed the procedure in change of shift and holidays. The second respondent Management has narrated the number of events including the production details, commitment for delivery of the production, concerns of the share holders etc., to show that in order to increase the production two shifts are modified to three shifts and holidays were altered. It appears to this Court that the reasons explained by the Management are sufficient to hold that there was necessity for changing the shift and holidays. In fact, the second respondent Management need not explain in detail as to why change of shift has become necessary. The second respondent Management has also explained as to how balance is being managed in the shift period and also the service of the total number of hours in a week. The second respondent has relied upon a decision reported in (1989)1 MLJ 425, ***Gordon Woodroffe Employees Union, Rep. vs The State Of Tamil Nadu***, for a proposition that there is no prohibition in altering the condition of service by following the procedure.



16. The second respondent Management has entered with agreement under Section 18(1) of the Industrial Dispute Act, with the other Union affiliated to INTUC. According to the petitioner Union, the Management cannot enter into any agreement with the other Union and



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basing on which the members of the petitioner Union cannot be compelled upon to accept the said settlement. It is further case of the petitioner union that, the Union affiliated to INTUC is only minority having less number of workers, whereas the petitioner Union is having more number of the member.

17. The petitioner though claimed as Union having more number of employee, factually the contention of he Management is in correct. According to the petitioner union itself, in the INTUC affiliated Union more number of employees are apprentices. Thereby, apprentices, under the fear of removal have become the members and have been following the directions given from time to time. Therefore, the question to be seen is whether the petitioner Union is having more number of employees or the INTUC. On going through the record, the petitioner Union admitted in directly that there are more number of persons in the INTUC, however majority among them are apprentices, and submitted that apprentices cannot be the members.

18. As per the by-laws of the other Union, the apprentice are also one of the cadres, thereby, they have got every right to be the



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member of any one of the Union. The petitioner Union is also not saying that apprentice being a part of negotiations is illegal. In fact on paper, the INTUC affiliated Union is having more member including the apprentices. The law does not prohibits the apprentice to become the member of Union and for exercising their vote in the Union, it is immaterial that they have come from apprentice cadre or otherwise. Therefore, the contention of the petitioner union that the apprentice cannot be regular worker and cannot be a part of the Union is hereby rejected.

19. The INTUC affiliated Union, having more number of worker than the petitioner Union is entitled to enter into settlement under Section 18(1) of the Industrial Dispute Act with the Management and when the change in the shift timings, is also the part of the settlement under Section 18(1) of the Industrial Dispute Act and it cannot be said that petitioner Union is only empowered to enter into settlement under Section 18(1) of the Industrial Dispute Act with the Management.

20. The other limb of the argument is that the settlement arrived at under Section 18(1) of the Industrial Dispute Act between the second respondent management and the other INTUC affiliated Union, thereby



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the terms of the said agreement cannot be imposed on the petitioners.

This contention is not at all convincing. Once, the Union affiliated with INTUC which has more members enters into settlement under Section 18 (1) of the Industrial Dispute Act with the Management the settlement will also bind on the members of the petitioner Union. Therefore, considering from any angle, issuance of 9(A) notice and revising the shifts and weekly holiday is permissible under law.

21. In respect of the issue of non payment of salary to the members of the petitioner Union is concerned it is case of the petitioner Union that the non payment of salary with effect from 27.07.2004 is not justified. It is the case of the second respondent Management that employees who remained absent from 27.07.2004 have staged Dharnas, raised protest in front of the company premises and not attended the work. It is not the case of the petitioner Union that even though they have worked remuneration was not paid. However, their contention is that even though they were intending to work the second respondent has not permitted them to work. This submission of the petitioner Union is negated when the workmen were examined before the the Labour Court. The evidence of the relevant witnesses as highlighted in the



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impugned order, it is clear that these workers were staging dharna in front of main gate and that they have not attended the office.

22. Some of the members of the petitioner's Union have also filed Writ Petition but same was dismissed. Aggrieved by the dismissal of the Writ Petition, Writ Appeal was filed in W.A.No.3780 of 2004 and during the pendency of which, the petitioner Union has given undertaking in writing that they will accept three shifts without prejudice to their rights in the Industrial Dispute pending for adjudication. Since then, all the members of the petitioner Union also have been attending three shifts. Therefore on considering the above, it is clear that it is not the Management which has prevented some of the members of the petitioner's Union from attending the work, but the workers themselves have opted not to work. Therefore, when the members of the Union have not worked on the basis of principle of no work and no pay, the workers of the petitioner union are not entitled for payment of wages.

23. The award passed by the Labour Court can only be intervened by this Court in case if the petitioner union makes out a case of perversity in the impugned orders of the Labour Court. In the case on



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hand as observed above, the Labour Court has passed well reasoned order taking into consideration of the evidence placed before the Court.

Therefore, it is not a fit case for interference.

24. In view of the above, the petitioner fails to make out the case and accordingly, this Writ Petition is dismissed. No costs.

30.04.2024

Index : Yes/No
Speaking order: Yes/No
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To

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2.The Management,
Axles India Limited.,
Singaperumal Koil Road,
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Kancheepuram District.



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Dr.D. NAGARJUN, J

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Pre- Delivery Order
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