



W.P.Nos.25939 of 2021 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 04.03.2024
ORDER PRONOUNCED ON : 03.06.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.Nos.25939, 25943, 25944, 25945, 25948
and 25949 of 2021
and
W.M.P.Nos.27410, 27412 & 27415 of 2021

W.P.No.25939 of 2021

The Management,
Sanmina SCI India Private Limited,
OZ-1, SIPCOT Hi-Tech SEZ,
Oragadam, Sriperumbudur Taluk,
Kancheepuram District – 602 105.
Rep. by its HR Director & Authorised Signatory,
R.Kumar.

...Petitioner

Vs.

S.Loganathan

...Respondent

Prayer in W.P.No.25939 of 2021: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari and quash the order dated 27.10.2021 passed in A.P.No.15 of 2019 by the Presiding Officer, Industrial Tribunal, Chennai.

For Petitioner in all W.P.Nos. : Mr.C.Manohar Gupta
For Respondent in all W.P.Nos. : Mr.S.Kumarasamy



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ORDER

The Management of Sanmina SCI India Pvt. Ltd. has filed the above writ petitions challenging the impugned orders passed in I.A's. 3, 4 & 5 of 2021 and A.P.No's.15, 16 & 17 of 2019.

2. The petitioner company is a wholly owned subsidiary of Sanmina SCI incorporated, USA. The petitioner company has a factory at SIPCOT Hi-Tech Special Economic Zone, Oragadam, Sriperumbudur Taluk, Kancheepuram District. The petitioner company manufactures critical equipments which are used in Medical, Telecommunication, defense, Multi-Media etc. which are life saving safety equipments. The respondents were employed in the petitioner factory at Oragadam. As the respondents were absent from work spot without prior permission and indulged in threatening and assaulting the co-workers, a charge memo was issued to them on 23.04.2018 and a reply was filed on 12.05.2018. Since the explanation to the charge memo was found to be unsatisfactory a domestic enquiry was conducted wherein ample opportunity was provided to the respondents to cross examine the petitioner's witnesses. On conclusion of enquiry, the enquiry officer submitted his report on 08.11.2018, holding



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that the charges against the respondents were proved. Along with the second show cause notice dated 02.01.2019, the enquiry officer's report was furnished to the respondents, calling for their explanation on the proposed punishment. The explanation was found unacceptable and as the charges proved were grievous in nature, the punishment of dismissal from service vide order dated 21.02.2019 was imposed on the respondents. As there was a dispute pending in I.D.No.16 of 2013, the petitioner filed an approval petition under Section 33(2)(b) of the I.D. Act. The approval petitions were numbered as A.P.No's. 15 to 17 of 2019. During the pendency of the Approval Petitions, the respondents filed I.A.'s. 3 to 5 of 2021 raising preliminary objections on the maintainability of the Approval Petitions. The Labour Court took up the I.A.'s for consideration and vide impugned orders dated 27.10.2021 allowed the same. The Labour Court as a consequence of the order's passed in the I.A.s dismissed the Approval Petitions. Aggrieved by the orders passed in the aforesaid I.A's. and the Approval Petitions, the petitioner has filed the above writ petitions.

3. The learned counsel for the petitioner submitted that the acts of misconduct for which the respondents were dismissed from services were



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not connected with the terms of reference made in I.D.16 of 2013 and therefore the petitioner was justified in seeking approval for the dismissal of the respondents under Section 33(2)(b). The learned counsel submitted that when more than one dispute was pending, it was not necessary to file application in each dispute. The learned counsel submitted that the Labour Court failed to note that the respondents had a remedy of lodging a complaint under Section 33-A before the conciliation officer, which they failed to avail. The learned counsel further submitted that the issuance of the suspension order to the employees pending disciplinary proceedings was not an industrial dispute and therefore there was no violation of the provisions of Section 33 of the I.D. Act. The learned counsel lastly submitted that the Labour Court abdicated its duty in allowing the I.A's thus depriving the petitioner of an opportunity to justify the dismissal order passed by it on merits.

4. The learned counsel for the respondents on the other hand submitted that the petitioner ought to have sought prior permission and not post approval as the issue of suspension of the respondents was directly connected to the dispute pending before the conciliation officer.



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The learned counsel submitted that the failure to file complaint under Section 33-A cannot be a bar and the respondents were well within their rights to question the maintainability of the approval petition. The learned counsel further submitted that the Labour Court had considered the issue in detail and had concluded that the approval petition was not maintainable and therefore this Court should not interfere with the well considered order passed by the Labour Court.

5. Both the counsels relied on several judgments in support of their respective contentions.

6. I have heard both the learned counsels and I have perused the materials placed on record.

7. As the Labour Court dismissed the approval applications on the basis of its orders in I.A's. 3 to 5 of 2021, the orders passed in the I.A's are taken up first. The result of the approval petitions is dependent on the result of the orders passed in the I.A's.



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8. The undisputed facts in a nutshell are that the respondents were employed in the petitioner company and they were suspended pending enquiry for certain acts of misconduct indulged by them as stated in the charge sheet. The Chengai Anna Maavatta Jananayaga Thozhilalar Sangam raised 2(k) dispute with regard to the suspension of the 18 workmen and other demands before the conciliation officer, the Deputy Commissioner of Labour, Conciliation-I, Sriperambudur in AA/340/2018. Meanwhile, the enquiry proceedings ended and dismissal orders were passed on 21.02.2019. There was also an industrial dispute in I.D.No.16 of 2013 pending relating to charter of demands. The petitioner filed approval petitions before the Labour Court in I.D.16 of 2013 seeking approval of the dismissal orders. The respondents filed I.A's questioning the maintainability of the approval petitions. The Labour Court on an appreciation of the submissions of the counsels for the respective parties found that the objection raised by the respondents was valid. The Labour Court found that petitioner ought to have applied for prior permission under Section 33(1)(b) as the misconducts for which the respondents were dismissed were directly connected with the 2(k) dispute raised before the conciliation officer, DCL (Conciliation) I, Sriperambudur in AA/340/2018.



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The Labour Court hence allowed the I.A's and dismissed the approval petitions. Aggrieved by the orders of the Labour Court, the petitioner has filed the above writ petitions.

9. Before considering the rival submissions of the counsels the provisions of Section 33 of the I.D Act upon which the dispute in the present case rests is extracted. Section 33 of the I.D.Act reads as follows:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. -(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.



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(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, 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."

10. Section 33(1)(b) speaks of prior permission, whereas Section 33(2)(b) speaks of post approval. The crux of the issue in the present case is whether the petitioner was bound to apply for prior permission under Section 33 (1)(b) or post approval under Section 33(2)(b). At this point, I deem it necessary to refer to the two objections originally raised by the



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respondent to the maintainability of the approval petition. The respondents two objections were, one, that I.D.16 of 2013 was not pending on the date of dismissal as a settlement dated 07.02.2017 was entered into by the petitioner with the Union and two, that the petitioner ought to have filed petition under Section 33(1)(b) of the I.D. Act as the dismissal order was directly connected with the pending industrial dispute before the conciliation officer in AA/340/2018 as on 21.02.2019 (i.e) the date of dismissal order. Initially the main ground of attack to the maintainability of the approval petition was the non-pendency of the industrial dispute in I.D.16 of 2013 because of the 12(3) settlement entered into by the petitioner. It is relevant to note here that the said objection was withdrawn vide memo dated 27.10.2021. The effect of the withdrawal of the objection was the acknowledgment of the pendency of I.D.16 of 2013.

11. It is not disputed that two disputes were pending before two authorities. I.D.16 of 2013 before the Labour Court and AA/340/2018 before the conciliation officer. I.D.16 of 2013 related to charter of demands of the union and the proceedings before the conciliation officer related to notice of strike relating to the suspension of 18 workmen and other



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demands. According to the petitioner's counsel as the misconduct for which the respondents were dismissed was not connected to the dispute in I.D.16 of 2013, the approval petition filed under Section 33(2)(b) was very much in order and valid. But the counsel for the respondents states that as the dispute relating to the suspension of the workman, including the respondents, was directly connected to the misconduct for which the dismissal order was passed, the permission ought to have been sought under Section 33(1)(b) and as no such permission was sought, the approval application was not maintainable. As stated above the dismissal order was passed for a misconduct which was connected with the dispute pending before the conciliation officer relating to suspension of 18 workmen and other demands. The other dispute in I.D.16 of 2013 was with reference to charter of demands. Admittedly the dismissal order is not connected with the dispute in I.D.16 of 2013. Therefore the petitioner filed the approval petition under Section 33(2)(b) in I.D. 16 of 2014. The Hon'ble Supreme Court in the Judgment reported in 2/MANU/SC/0792/2021 has discussed the scope of Section 33(1)(b) and Section 33(2)(b). The Hon'ble Supreme Court has held that if the dismissal was for a misconduct unconnected with the dispute then Section 33(2)(b) would apply, but if the



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dismissal was connected with the dispute then 33(1)(b) would be attracted.

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12. Therefore from the aforesaid Judgment of the Hon'ble Supreme Court the petitioner was well within its right to file the 33(2)(b) petition in I.D.16 of 2013 because the dismissal order was not connected to the dispute raised in the said I.D. Whiles, can the objection of the respondents that the 33(2)(b) petition was not maintainable because it was not post approval but prior approval that was necessary can be sustained? No doubt that the dismissal order was directly connected to the dispute pending in conciliation proceedings but for that reason can it be said that the application under Section 33(2)(b) in I.D.16 of 2013 was not maintainable. Before examining the objection, the contention of the petitioner that issuance of suspension order to the respondents pending disciplinary proceeding will not amount to an industrial dispute and hence there is no question of violation of Section 33 is considered. The 2(k) dispute that was pending before the conciliation officer was not only with regard to issuance of suspension order but also with reference to the strike notice relating to the suspension of 18 workmen by the petitioner and other issues. In view of the fact that the 2(k) dispute related not only to the



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suspension orders but strike notice and other issues. I am of the view that the contention of the counsel for the petitioner cannot be sustained.

13. It is submitted by the counsel for the petitioner that the respondents are not entitled to question the maintainability of the approval application in a totally unconnected dispute moreso when they had the right to question the violation of Section 33 under Section 33-A of the Act to the Conciliation Officer before whom the conciliation proceedings were pending. Section 33-A of the I.D. Act reads as follows:

“33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. -Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner, -

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or



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National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

14. Section 33-A prescribes the remedy for contravention of Section 33 of the Act. The section provides that during the pendency of the proceedings before conciliation officer, Board or arbitrator, a Labour Court or Tribunal, any employee aggrieved by such contravention can make a complaint in writing in prescribed manner, to such conciliation officer of Board, arbitrator, labour tribunal or National tribunal as the case may be.

15. The competent authority before whom the complaint can be filed is the authority before whom the dispute is pending. Therefore the respondents remedy for contravention of Section 33 of the Act with regard to the dispute pending before the conciliation officer is the conciliation officer only under Section 33-A of the Act. The respondent having failed to raise a complaint under Section 33-A, in my view, cannot be permitted to



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raise the same as an objection to the 33(2)(b) approval petition, moreso, when the dispute pending in I.D.16 of 2013 is totally unconnected with the dispute pending before the conciliation authority. When the Act provides for a specific remedy for contravention of Section 33, the parties should resort to the remedy and cannot deviate from the same. The respondents ought to have filed complaint before the Conciliation officer before whom the 2 (k) dispute was pending under Section 33-A. The Competent Authority to consider the objection is only the authority before whom the proceedings were pending. In this case it is the Conciliation Officer, before whom AA/340/2018 was pending and not the Labour Court which was seized only of I.D.No.16 of 2013 relating to charter of demands. I am fortified in my view by the Judgment of the Hon'ble Division Bench in the case of *The Management of Tata Consultancy Services Limited Vs. Selvinth Gnanesh Joshua and another* reported in 2015 (2) LW 127.

"31: In the aforesaid conspectus of the facts, the authority competent to consider the dispute in respect of provisions of Section 33 and also to grant relief in case of contravention, is the authority before whom the dispute is pending consideration...."



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16. The Division Bench in the aforesaid Judgment relied on the dictum of the Hon'ble Supreme Court reported in *AIR 1962 SC 1500* and particularly para 3 therein.

17. The Labour Court relying on the Judgment in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.* reported in 2002 (2) SCC 244, held that the respondents could not be driven to take recourse under Section 33 A or to raise another dispute. In my view reliance placed on the said Judgment by the Labour Court is totally misconceived. The Judgment has to be read in the context of the facts of the case. The issue before the Hon'ble Supreme Court in the aforesaid case was,

“if approval is not granted under Section 33(2)(b) of the I.D. Act, whether the order of dismissal becomes in effective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section 33 (2)(b) would not render the order of dismissal in operative”. The Hon'ble Supreme Court while considering the aforesaid issue and in the light of the facts of the case held that “when no application is made or one made is withdrawn, there is no order of refusal of such application on merit and as such the



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order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33 A, cannot be accepted.

18. The Hon'ble Supreme Court in the context of the facts of the case observed that it was not correct to say that even though where the order of discharge or dismissal was inoperative for contravention of the mandatory conditions contained in the proviso or where the approval was refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A. The Hon'ble Supreme Court in the light of the facts of the case was of the view that the management could not dictate terms to the workmen to set aside the dismissal order by invoking Section 33-A, when the application under Section 33(2)(b) was either dismissed or withdrawn as the order of dismissal became void or inoperative. The Labour Court in my view erroneously relied on the said Judgment to hold that it was not necessary for the respondents to file complaint under Section 33-A and therefore the objection as to the maintainability of the approval application raised in the I.A's was valid, overlooking the facts and the context in which the said judgment was rendered. In the



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Judgment of the Hon'ble Supreme Court in the case of *Padma Sundara Rao (dead) and others Versus State of T.N. and others* reported in 2002 (3) SCC 533

it was held that “..Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases...” In the light of the facts of the present case the petitioner cannot be faulted for filing the 33(2)(b) application in I.D.16 of 2013, which is admittedly unconnected with the misconduct complained of and for which misconduct the respondents were dismissed on due enquiry.

19. The respondents instead of filing complaint under Section 33-A for contravention of Section 33 before the Conciliation Authority filed the I.A's, which in my considered view is not permissible. When the Act provides a specific remedy for challenging the contravention of Section 33



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and also the authorities before whom the complaint has to be filed, it is not open to the parties to deviate from the remedy provided under the Act.

The Labour Court failed to note that there were two proceedings pending, one before it and the other before the conciliation authority. The Labour Court failed to note that in a totally unconnected dispute, the issue of violation of Section 33 of the Act could not be raised. The Labour Court further committed a factual error in thinking that inspite of the assurance given by the petitioner on 30.05.2018 to the Conciliation Officer that the enquiry proceedings would be placed before him, the petitioner failed to do so. The petitioner has filed the communication dated 05.02.2019 wherein the copy of enquiry proceedings were submitted to the Labour Department. It was only thereafter (i.e.) on 21.02.2019 that the dismissal order came to be passed. It is probably because of the misappreciation of the facts that the Labour Court fell into error in passing the impugned order.

20. It is also to be noted that it is not as if the respondent is without any remedy. The respondent has a right to challenge the dismissal order by raising a dispute, if the approval petition is allowed and therefore the



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Labour Court was not justified, in shutting the doors at the threshold, by allowing the I.A's.

21. As I am of the view that the Labour Court ought not to have entertained the I.A's as there was specific remedy available to the respondents under the Act, I do not deem it necessary to discuss the other issues. On this point the writ petitions are allowed. The Labour Court is directed to decide the approval applications on merits within a period of six (6) weeks from the date of receipt of a copy of this Order.

22. In the result, the writ petitions are allowed. No costs. Consequently connected WMP.'s are closed.

03.06.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

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Industrial Tribunal,
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N.MALA,J.

dsn

PRE-DELIVERY ORDER IN
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and 25949 of 2021

ORDER DELIVERED ON
03.06.2024