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W.P.Nos.35042 & 35044 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.35042 & 35044 of 2023 and
W.M.P.Nos.34997 & 34998 of 2023

The Management of
ZF Rane Automotive India Pvt. Ltd.,
Maithri,
132, Cathedral Road,
Chennai 600 086,
Rep. by its Authorised Signatory

... Petitioner in both W.Ps.

Vs.

Mr.Ayyappan ... Respondent in W.P.No.35042 of 2023

Mr.G.Vembuli ... Respondent in W.P.No.35044 of 2023

Prayer in both W.Ps: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st Additional Labour Court, Chennai in I.A.Nos.1 and 1 of 2023 in O.P.Nos.82 & 83 of 2023 and quash the order dated 04.10.2023 and hold the Industrial Dispute raised by the respondent as not maintainable.

For Petitioner : Mr.G.Anand Gopalan for
M/s.Agam Legal

For Respondents : Mr.R.P.Vijayakrishnan for
Mr.Poovendirakumar.M



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maintain a claim under Section 2A(2) of the Industrial Disputes Act, the respondents have filed O.P.Nos.82 and 83 of 2023. The respondents have also taken advantage of Section 18 of POSH Act, had filed an appeal under Section 18 of POSH Act by challenging the recommendation of the Internal Committee by raising an argument that the Internal Committee cannot straight away recommend to dismiss the respondents, but only recommend to initiate action. The petitioner Management has filed I.A.No.1 of 2023, by contending that the respondents cannot file both SOA and industrial dispute for a single cause of action and that the respondents cannot maintain two civil actions.

4. Whenever a complaint of sexual harassment in work place is reported to the Management, the rightful course open to the Management is to place it before the Internal Committee to deal with the complaint in accordance with the procedure laid down in this regard. So far as the powers of the Internal Committee or the Local Committee is concerned, that has been elaborated under Section 13 of the POSH Act.

5. Even though the complaints were dealt by the Internal



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Committee, the Internal Committee appears to have straight away made a recommendation for dismissal. No doubt, the aggrieved respondents have filed an appeal under Section 18 of the POSH Act. The scope for the Court under Section 18 of the POSH Act would be to consider whether the recommendations made by the Internal Committee is within their powers and whether the same has been exercised in the manner known to law, especially, in accordance with the procedure laid down by the Special Act.

6. If the Labour Court comes to the conclusion that the Internal Committee has exceeded its power and there are certain procedure violations, then, there is every likelihood that the Labour Court would remit the matter back to the Internal Committee with a direction to pass orders only in accordance with Section 13 by looking into the powers of Internal Committee afresh and in terms of Section 13 of POSH Act. Even in that case, the Labour Court can only set aside the recommendation for dismissal and the respondents can very well get their remedy there itself.

7. If the respondents intends to proceed with the industrial dispute



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also by claiming that they have got right to maintain the industrial dispute under Section 2A of the Industrial Disputes Act, it would complicate both the proceedings. In other words, the very act of the respondents to file an industrial dispute against the order of dismissal would itself amount to admitting the powers of Internal Committee for issuing the recommendation for dismissal. If the respondents are not convinced with the powers of Internal Committee to make recommendation for dismissal, then, the respondents have to limit their action only by way of filing an appeal under Section 18 of the POSH Act.

8. In the event of the Appeal filed by the petitioner is allowed and the matter is remitted back to Internal Committee to deal the matter afresh and if the Internal Committee makes any recommendation for action and if the Management dismissed the petitioner on such an action, then, the remedy open to the respondents would be under Section 2A of the Industrial Disputes Act. But the Labour Court has passed the impugned order on the wrong premise that the respondents are entitled to maintain both the Appeal under Section 18 of POSH Act as well as the



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industrial dispute under Section 2A of the Industrial Disputes Act. If the respondents intends to proceed with SOA, then, their act of filing Section 2A dispute would be a pre-matured one.

9. If the respondents prefer to maintain the industrial dispute, then, they have to forego their remedy lies under Section 18 of the POSH Act. Since the respondents have a better remedy under Section 18, in view of the statutory recommendation made by the Internal Committee. By challenging the limits of the powers of the Internal Committee, I think it is appropriate for the respondents to not press the pending industrial dispute filed by them with a liberty to file a fresh industrial dispute in the event of dismissal, subsequent to any of the orders passed in SOA and the order of petitioner's Management consequent to the orders passed in the SOA.

10. With these observations, these Writ Petitions are allowed and the impugned orders passed by 1st Additional Labour Court, Chennai in I.A.Nos.1,1 of 2023 in O.P.Nos.82 & 83 of 2023 dated 04.10.2023 are set



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aside and the respondents are given with liberty to proceed with either SOA filed under Section 18 of the POSH Act or the industrial dispute filed under Section 2A of the Industrial Disputes Act. If the respondents intend to not press 2A dispute with liberty to file a fresh 2A in the event of their dismissal consequent to any of the orders passed by the Court under Section 18 or any order passed by the Management consequent to any fresh recommendation made by the Internal Committee, then, the Labour Court would allow the respondents to withdraw the industrial dispute by giving them the above liberty. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

1st Additional Labour Court,
Chennai.

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W.M.P.Nos.34997 & 34998 of 2023

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