



W.P.No.2051 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 19.12.2024

Orders pronounced on : **28.01.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2051 of 2008
and M.P.No.1 of 2008

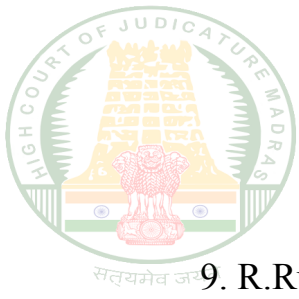
The Management,
Shri Anandakumar Mills Limited,
Saravanampatti Post,
Coimbatore - 35.
Represented by its General Manager

.. Petitioner

Versus

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. A.R.Kaliappan
3. R.Shanmugasundaram
4. A.Pannerselvam
5. V.Selvaraj
6. V.A.Sundaramurthy
7. V.Gunasekaran
8. K.Venkidasamy



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9. R.Ruckmani
10. P.Velmurugam

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records connected with C.P.No.145 of 2005, C.P.No.146 of 2005, C.P.No.147 of 2005, C.P.No.148 of 2005, C.P.No.149 of 2005, C.P.No.150 of 2005, C.P.No.151 of 2005, C.P.No.152 of 2005 to 153 of 2005 on the file of the 1st respondent, The Presiding Officer, Labour Court at Coimbatore and quash common order made therein, dated 24.11.06.

For Petitioner : Mr.S.Shivathanu Mohan
and M/s.N.Swathy,
for M/s.S.Ramasubramaniam and
Associates

For Respondents : R1 - Labour Court

: Mr.S.Mukunth, Senior Counsel,
Asst. by Mr.N.Krishna Kumar,
for M/s.Sarvabhauman Associates,
for RR-2 to 10

ORDER

This Writ petition is filed challenging the common order, dated

24.11.2006 passed by the Labour Court, Coimbatore in C.P.Nos.145 to 153



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of 2005. By the said order, the Computation Petitions, filed by the nine
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workmen, who are arrayed as respondent Nos.2 to 10 herein, were partly allowed. A sum of Rs.97,925/- each to the petitioners in C.P.Nos.145, 146, 147, 150 and 152 of 2005, a sum of Rs.96,050/- to the petitioner in C.P.No.153 of 2005 and a sum of Rs.99,816.25 ps each to the petitioners in C.P.Nos.148, 149 and 151 of 2005 were ordered to be paid.

2. The claim of the workmen before the Labour Court is that they are the employees of the mill. There were 190 permanent employees, 152 badlis and 26 apprentices in the management mill, which is a Group - D mill. On 17.05.1996, the management entered into a settlement under Section 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), in which, it agreed to accord permanency to the badlis and apprentices who had put in 45 months of continuous service. However, the settlement was not implemented. Therefore, the trade union raised a dispute. A failure report was submitted on 06.06.2003.



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3. Under the circumstances, the management, with an ulterior motive, failed to pay electricity charges and attempted to stop the operation of the mill. Again, a fresh dispute was raised before the Assistant Commissioner of Labour and even though workers agreed to increase the productivity by 100%, the management refused to operate the mill and intended to engage coolies. On 06.07.2003, the management also declared a lockout without following the provisions of the law. Thereupon, the Assistant Commissioner of Labour sent a report on 09.01.2004 informing all these facts. The Government referred the dispute to the Industrial Tribunal for adjudication. The earlier dispute was also referred for adjudication as per G.O.D.No.1195, dated 16.09.2004. The same was pending in I.D.No.444 of 2004.

4. In the meanwhile, the management obtained resignation letters from some of the employees and paid compensation to them. The workmen,

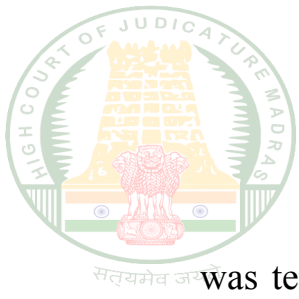


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involved in the present case, did not accept the demands of the management and did not resign their job. While so, on 07.01.2005, the management issued a notice to the workman Nos.2 to 10 that from 06.07.2003, they were discharged from service. The workmen sent a reply on 21.01.2005 refuting the allegations. When the dispute raised is already pending before the Court, the order of dismissing the workmen on 07.01.2005 with effect from 06.07.2003 is illegal. The management ought to have obtained permission to dismiss the workmen from service. Therefore, the order of dismissal of the workmen is illegal and thus, the workmen are entitled to salary and other benefits for the period from 06.07.2003 to 31.01.2005. Therefore, the Claim Petitions were filed.

5. The Claim Petitions were resisted by the management. The operation of the mill was stopped only because of an increase in the cost of raw materials, whereby, the management was not able to sell the yarn even for the market prices. Therefore, on 06.07.2003, the operation of the mill

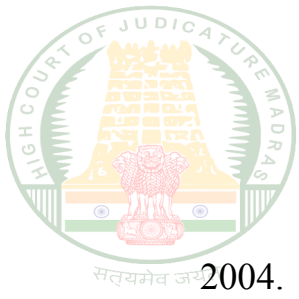


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was temporarily suspended. It was informed to the workers that they will not be entitled to salary and the lay-off salary for the suspension period. The management only suspended the operation of the mill and did not close down the mill. The dispute raised by the Labour Union is pending in I.D.No.444 of 2004. The Computation Petitions are not maintainable as they do not have any pre-existing rights. Out of 365 workers, 352 workers have settled their claim under the Section 18(1) settlement. It is open for the workman Nos.2 to 10 to settle their claim or if they agree to abide by the new conditions of the new management, they can continue the employment.

6. On the said pleadings, the Labour Court proceeded with the enquiry. On behalf of the workmen, one *A.R.Kaliappan* was examined as *W.W.1* and *Exs.W-1* to *W-12* were marked. No oral evidence was let in on behalf of the management. However, *Exs.M-1* to *M-3* were marked. The Labour Court found that the issue relating to the lay-off of the workmen was already referred to the Labour Court and was pending in I.D.No.444 of



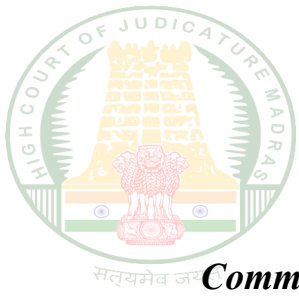
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2004. There is no dispute that the present workmen are also concerned in the said dispute. Therefore, the management ought to have complied with Section 33(2)(b) of the Act and by relying upon the judgment reported in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and Ors.***¹, the Labour Court held that there is a violation of Section 33(2)(b) of the Act. Thereafter, while denying the bonus and Earned Leave etc., computed the wages payable to the workmen and granted the order. Aggrieved by which, the management is before this Court.

7. *Mr.S.Shivathanu Mohan*, learned Counsel for the management would submit that firstly, when the workmen were terminated by the management without questioning the non-employment, they cannot straightaway apply Section 33C(2) of the Act. In support of his proposition, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Bombay Chemical Industries Vs. Deputy Labour***

¹ (2002) 1 LLN 639



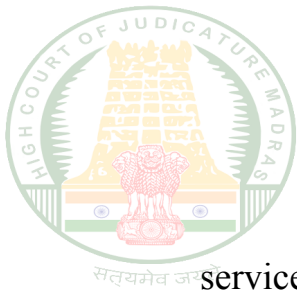
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Commissioner and Anr.², more specifically, relying upon paragraph No.8,
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whereunder, it was held that the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of the workmen in an application under Section 33C(2) of the Act.

8. The learned Counsel would submit that even though the Industrial Dispute in I.D.No.444 of 2004 was pending, by taking this Court through Section 33 of the Act, would submit that under Section 33(1) of the Act, prior permission is needed if the action is directly connected with the dispute. If it is unconnected with the dispute, approval is envisaged under Section 33(2) of the Act. Both under Sections 33(1) and 33(2) of the Act, it is only held that if any condition of service is to be altered, then, the prior permission or the approval, as the case may be, is necessary. Similarly, if only the workmen are discharged or dismissed from the service on account of misconduct, Sections 33(1)(b) and 2(b) can be invoked. Whether it is only a termination simpliciter, it is neither a discharge or dismissal of

² (2022) 5 SCC 629



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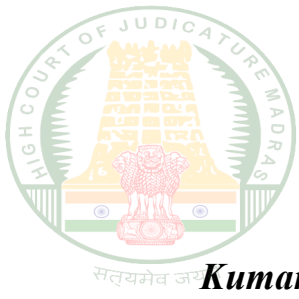
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service on account of misconduct nor it is any alteration of any condition of service. In that case, Section 33 of the Act is not attracted. The learned Counsel would rely upon the judgment of the High Court of Rajasthan (Jaipur Bench) in ***Babu Lal Vaishnav Vs. Industrial Tribunal and Ors.***³, more fully, relying upon paragraph Nos.15 to 17 of the said judgment.

9. *Mr.S.Shivathanu Mohan* would further rely upon the judgment of the Kerala High Court in ***Kunjan Manu and Ors. Vs. Aspinwalla and Co. Ltd., and Ors.***⁴, more specifically relying upon paragraph No.26, to contend that unless the discharge is for misconduct, Section 33(2) of the Act would not be attracted. The learned Counsel would further submit that in this case, unless the termination is punitive, it is to be deemed as termination simpliciter. Unless the foundation of termination is misconduct, it cannot be termed as punitive. The learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in the ***State of U.P and Ors. Vs. Ashok***

³ 2008 (3) ILR (Raj) 428

⁴ AIR 1963 Ker 264



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Kumar⁵. He would therefore submit that when the workmen did not raise any dispute challenging their termination, no relief would have been granted in the Computation Petitions. There was no necessity to take any prior permission or approval as Section 33 of the Act is not attracted in case of termination simpliciter.

10. Per *contra*, *Mr.S.Mukunth*, learned Senior Counsel for the workmen, would submit that in this case, identical Computation Petitions were filed in C.P.No.95 of 2019, etc., and during the execution, the management had agreed to pay the amount, and by way of a joint memo, the matters were settled. The management also settled the claim made in certain other Computation Petitions. All the calculations are made on the same facts and circumstances, and therefore, the management cannot pick and choose to contest one matter alone while complying with the same concerning others.

⁵ (2005) 13 SCC 652



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11. The learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.***,⁶ case (cited *supra*), more specifically on paragraph Nos.13 to 15, to contend that once the management, which is liable to take prior permission or approval under Section 33 of the Act, does not do the same, the order of termination is void *per se* and therefore, the workmen were right in requesting for computation of the benefits. When there was no lawful termination and the action is deemed to be void, then, there was no necessity to raise a dispute and straightaway Computation Petitions can be filed. There is a pre-existing right concerning the salary and the same was computed by the Labour Court.

12. The learned Counsel would place reliance on the judgment of the Hon'ble Supreme Court of India in ***Sri Dorairaj Spintex Vs. R.Chittibabu and Ors.***⁶, where, the Hon'ble Supreme Court of India elucidated the term 'connected with the dispute' arising in Section 33(1)(b) of the Act and the

⁶ (2021) 12 SCC 38



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learned Counsel would submit that in this case, when the earlier dispute was regarding the lockout, the present action of the management is directly connected to the dispute. The learned Counsel would also rely upon the judgment of this Court in ***Puthiya Jananayaga Thozilalar Munnai Vs. Government of Tamil Nadu and Anr.*** (W.P.No.44768 of 2016, dated 29.12.2016), more specifically relying upon paragraph No.7, to contend that when the management failed to discharge a statutory obligation, then, there is no need for the employee to knock at the Courts of Justice to get a dismissal or discharge or any order of set aside as non-compliance of the statutory provision would make the order non-est in the eye of law.

13. I have considered the rival submissions made on either side and perused the material records of the case.

14. The proposition that if the employees' services are dispensed with by way of termination simpliciter, the same would not fall either under



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Section 33(1)(a) 'alteration of conditions' or 33(1)(b) 'discharge, dismissal for misconduct' has to be accepted. The said position would not only be clear from the judgment of the High Court of Rajasthan, relied upon by the learned Counsel for the management in ***Babu Lal Vaishnav***'s case (cited *supra*), but also was categorically held so by the Hon'ble Supreme Court of India in ***Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd., and Ors.***⁷.

It is useful to reproduce paragraph No.32 of the said judgment which reads as follows:-

"32. It is, however, unexceptionable that if an employer passes an order of termination of service in exercise of his right under a contract or in accordance with the provision of the standing orders and the tribunal finds that the order is not on account of any misconduct, the question of violation of Section 33 would not arise."

15. It also held in paragraph No.24 of the same judgment, as follows:-

"24. Termination simpliciter or automatic termination of service under the conditions of service or under the standing orders is outside the scope of Section 33 of the Act. This does not mean that the employer has the last word about the termination of service of an employee and can get away with it by describing it to be a

⁷ AIR 1976 SC 2062

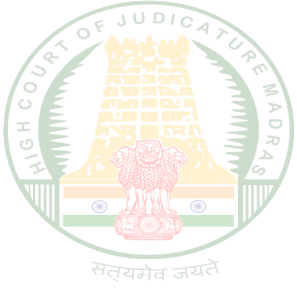


simple termination in his letter of discharge addressed to the employee. It is also not a correct proposition of law that in case of a complaint under Section 33-A the tribunal would be debarred from going into the question whether notwithstanding the form of the order, in substance, it is an action of dismissal for misconduct and not termination simpliciter."

Therefore, merely because the management calls the termination a termination simpliciter, the statutory obligation under Section 33 of the Act will not be automatically obliterated, but, still, the Court has to see whether the termination is a termination simpliciter or not.

16. Admittedly, the impugned order of termination is dated 07.01.2005. The relevant portion in paragraph No.2 of the said order reads as follows:-

"ஆனால் உம்மிடமிருந்தும், உம்மைப்போல் 15 - க்கும் குறைவான சில தொழிலாளர்களிடமிருந்தும், இன்று வரை எந்தத் தகவலும் இல்லை. மேலும், இனிமேலும் உம்மைப்போன்ற 15 நபர்களைக் கொண்டு, ஆலையை மீண்டும் நடத்த எந்த வாய்ப்பும் இல்லையென்று உமக்கு நன்றாகத் தெரியும். ஆகவே, உமது நன்மையைக் கருதியே, மற்ற எல்லா தொழிலாளர்களும் வேலையிலிருந்து விலகிக் கொண்டு, தங்கள் தங்கள் நன்மையைப் பாதுகாத்துக் கொண்டது போல் இருப்பதற்கு உம்மையும் ஆலை வேலையிலிருந்து விலக்கி



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விடுவது என்ற இயற்கை நியாயத்திற்கு உட்பட்டு,
உம்மை 06.07.2003 தேதியிலிருந்து, ஆலைப்
பணியிலிருந்து விலக்கப்படுகிறீர் (Discharge
Simplicitor) என்பதை அறியவும்."

17. It can be seen in the instant case that even the case of the management is that on 06.07.2003, it did not close the mill, but, indulged only in interim suspension of the operation of the mill. Therefore, the employer-employee relationship was there. However, by the order, dated 07.01.2005, when these workmen continued in service up to the said date, they were terminated from service with retrospective effect on 06.07.2003.

18. In that view of the matter, firstly, it cannot be held to be a termination simpliciter and it can only be on account of the management because when 352 workers out of 365 workers have settled their claim, these workmen alone did not settle the claim and they are perceived to be misconduct, the termination is made. Therefore, here, the foundation of the action can only be the action of the workmen in not toeing the line of the

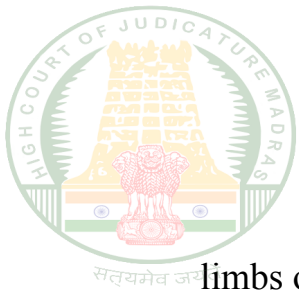


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management and settling their claim by resigning their job under Section 18(1) settlement and accordingly, the order is nothing but punitive. Once it is punitive, it attracts Section 33(1)(b) of the Act.

19. Further, it can be seen that the Industrial Dispute in I.D.No.444 of 2004 was pending from the year 2004. When, pending the Industrial Dispute, these workmen de jure continued to be in service and by the order, dated 07.01.2005, they were retrospectively terminated, then, all the conditions of service, such as payment of salary or lay-off compensation etc., which they are entitled to during the pendency of the Industrial Dispute, stood altered. Therefore, when the termination is retrospective, it cannot termed as termination simpliciter and the argument of the learned Counsel for the management that Section 33 of the Act will not attract, cannot be accepted. The impugned action in the instant case is firstly punitive and secondly alters the conditions of service when the workmen were deemed to be in service by a retrospective action of termination and therefore, both



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limbs of Section 33(1) or 33(2) of the Act stood attracted.
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20. In that view of the matter, when the order is passed without getting prior permission or approval, as per the dictum of the Hon'ble Supreme Court of India in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.***,^s case (cited *supra*), the order of termination is *void ab initio*. Therefore, when the order of termination is non-est in law, as held by this Court in ***Puthiya Jananayaga Thozilalar Munnai***'s case (cited *supra*), it was not incumbent upon the workmen to separately challenge the dismissal or discharge and to get it set aside. In the absence of any termination, then, their vested right of payment of salary to be computed under Section 33(1)(2) of the Act, cannot be disputed. Accordingly, I do not find any error whatsoever in the order passed by the Labour Court.

21. Finding no merits, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition



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is closed.
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28.01.2025

Neutral Citation : yes
grs

To

1. The Presiding Officer,
Labour Court,
Coimbatore.
2. The Section Officer,
V.R. Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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28.01.2025