



W.P.No.9033 of 2004

W.P.No.9033 of 2004

D.BHARATHA CHAKRAVARTHY, J.

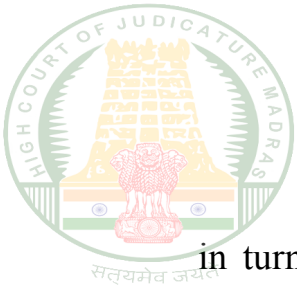
This matter is listed under the caption 'for being mentioned' expressing a difficulty.

2. The learned Counsel for the management submits that it would be convenient for them to hand over all the cheques to the learned Counsel for the workmen and the amounts, in turn, are disbursed only through cheques. Therefore, the same can be handed over by the learned Counsel to the workmen and they can obtain receipt from the concerned workmen and reach it to the learned Counsel for the management. Therefore, they seek modification with reference to clause - 8(v) of the order.

3. The learned Counsel for the workmen agrees for such a course.

4. In view thereof, the following sentence shall be added to clause - 8(v):-

"In the event of the management being unable to trace out the addresses of the workmen etc., they can also draw cheques in the name of the workmen and hand it over to the learned Counsel for the workmen, who,



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in turn, can distribute the cheques to the concerned workmen and obtain receipts and furnish it to the learned Counsel for the management."

5. As a matter of fact, after inclusion of such a sentence, today, in open Court, the cheques have also been handed over to the learned Counsel for the workmen.

28.03.2025

grs



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 08.01.2025

Orders pronounced on : **29.01.2025**

CORAM :

THE HON'BLE MR.JUSTICE D. BHARATHA CHAKRAVARTHY

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The President,
FAIR Thozhilalargal Sangam,
42, Cuddalore Salai,
Bharathi Mill Thittu,
Mudaliarpet,
Pondicherry - 4.

.. Petitioner

Versus

1. The General Manager,
M/s.Fine Automative & Industrial,
Radiators Pvt. Ltd.,
Sedarapet,
Pondicherry - 605 111.

2. The Presiding Officer,
Labour Court,
Pondicherry.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus after calling for the award in I.D.No.6 of 1999, dated 11.02.2003 passed by the second respondent, quash the same and direct the first respondent to reinstate the workers listed in the annexure to the reference, dated 05.02.1999 in G.O.Rt.No.26/99/Lab/L.



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For Petitioner : Mr.V.Ajay Khose

For Respondents : Mr.S.Jayaraman, for R1

: R2 - Labour Court

ORDER

A. The Writ Petition:

This Writ Petition is filed by the FAIR Thozhilalargal Sangam, a Trade Union, challenging the award of the Labour Court, Puducherry, dated 11.02.2003 made in I.D.No.6 of 1999. By the said award, the Labour Court answered the reference rejecting the claim of the workmen and answering the points in favour of the management.

B. The Reference:

2. By G.O.Rt.No.26/99/Lab/L, dated 05.02.1999, the following was referred for adjudication by the Government of Puducherry:

1. Whether the non-employment of the workmen listed in Annexure-II by the management of M/s.Fine Automotive and Industrial Radiators (P) Limited, Pondicherry is justified? If so, to what relief they are entitled?

2. To compute the relief, if any awarded in terms of money, if can be



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so computed.

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ANNEXURE - II

LIST OF WORKMEN TERMINATED

Sl.No.	Name of the workmen	Designation
1	P.Sathiyamani	Operator
2	B.Seshachalam	Fitter
3	P.Chakkaravarthi	Assembler

LIST OF TEMPORARILY TERMINATED WORKERS

4	M.Viswanathan	Fitter
5	T.M.Ezhumalai	Assembler
6	Veerabathiran	Radiator Tester
7	M.Anbalagan	Fitter
8	S.Murugan	Welder
9	P.Kumar	Dipping Operator
10	P.Murugan	Tester
11	K.Balakrishnan	Welder

LIST OF ORALLY TERMINATED WORKERS

12	K.Balu	Electrician
13	M.Subramani	Fitter
14	T.Prabunathan	Helper
15	S.Raman	Helper
16	E.Velan	Helper
17	V.Murugan	Helper
18	A.Baskar	Helper
19	V.Pathi	Fitter
20	U.Thirumal	Fitter
21	S.Veeramani	Fitter
22	P.Nagamuthu	Fitter
23	F.Savuriappan	Welder



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24	O.M.Ezhumalai	Helper
25	S.Vinayagam	Fitter
26	R.Jayamurthi	Fitter
27	A.Kannivel	Fitter
28	M.Govindaraj	Helper
29	S.Danasu	Core Assembler
30	V.Kasinathan	Welder
31	K.Ashok Kumar	Electrician
32	S.Peter Francis	Helper
33	J.Jagadeesan	Tester
34	M.Gnanasekar	Helper
35	T.Ezhumalai	Helper
36	N.Parthiban	Helper
37	N.Arumugasamy	Helper
38	P.Janardhanan	Dipping Operator
39	U.Pandurangan	Helper
40	M.Senthil	Helper

C. The case of the workmen:

3. The case of the workmen before the Labour Court was that the respondent management resorted to unfair labour practices on sensing that the workers are forming trade union. On 08.12.1996, they formed the trade union called FAIR THOZHILALARGAL SANGAM affiliated to CITU. Thereupon, on 30.12.1996, the said trade union's Vice President *Sathiamani*, Secretary - *Jayabal*, Joint Secretary - *Seshachalam*, Executive Member - *Chakkaravarthy* who are all workers of the respondent

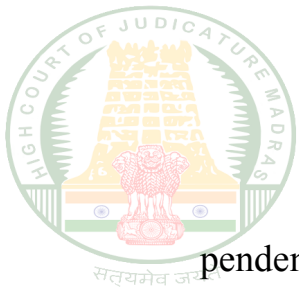


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management were terminated from service. On 31.12.1996, one other Executive Member of the petitioner's trade union *Iyyappan* was also terminated from service. Those terminations were illegal and without adhering to the principles of natural justice and carried out purely for the purpose of wrecking vengeance for they having formed trade union.

3.1. Before, the Labour Officer (Conciliation), a dispute was raised relating to such termination. On the intervention of the Superintendent of Police (South) and due to workers unity, the respondent management came for discussion and ultimately, agreed to take them back and to give employment. Subsequently, on 10.01.1997, those five workers started functioning under the respondent management. However, the respondent management once again resorted to unfair labour practices and orally terminated the employees *Sathiamani*, *Jayabal*, *Seshachalam*, *Chakkaravarthy*, *Iyyappan*, *Subramani*, *Balu* and *Selvaraj*.

3.2. On 27.01.1997, they expressed their grievances by sending letters to the management. Thereupon, by virtue of the letter, dated 08.02.97, the respondent management informed *Sathiamani*, *Jayabal*, *Seshachalam*, *Chakkaravarthy*, *Iyyappan* about their terminations. Even during the



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pendency before the Labour Officer (Conciliation), the respondent resorted to such termination. Various workers were also terminated from service subsequently. The respondent also engaged new workers in the place of terminated employees.

3.3. The respondent management also resorted to Domestic Enquiry in respect of few officials by appointing one *K.Babu*, who is an Advocate for the respondent management and who also participated in the conciliation proceedings before the Labour Officer (Conciliation). Such an act is against the principles of natural justice.

3.4. The respondent management also resorted to lodging false complaints with the police as against the workers and also with the help of henchmen threatened the workers. Some of the employees were arrested under those false complaints. But the Sub Divisional Judicial Magistrate Court, Pondicherry dismissed all those false cases. As such, the petitioner prayed for reinstatement of those workers.

D. The case of the management:

4. The management filed a detailed counter and resisted the claim.



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According to the management, the reference made by the Government is not maintainable in law. The dispute was raised by the CITU union by sending a telegram, dated 31.12.1996 relating to non-employment of five workmen namely *Chakkaravarthy, Jayabal, Seshachalam, Iyyappan* and *Sathiyamani* and conciliation proceedings were initiated before the Labour Officer (Conciliation) who issued the letter, dated 08.01.1997. However, the said letter was received subsequently by the management. The management also understood that Fair Thozhilalargal Sangam (CITU) raised the dispute relating to four workmen. The respondent management was not aware of such trade union relating to its factory. In the respondent factory, the workers had only workers Welfare Union. The petitioner's trade union is not competent to raise this Industrial Dispute, as Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act) is not applicable, but only Section 2-k is applicable. Under certain unavoidable extreme circumstances, which were very dangerous to the very existence of the factory and to the lives of the senior officials therein, the respondent forced to dismiss 5 workmen on 30.12.1996.

4.1. By sending a telegram, dated 21.12.1996, the CITU union initiated conciliation proceedings. Subsequently, those workmen were

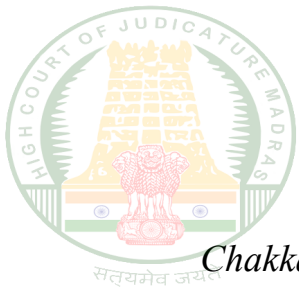


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taken back into service and they resumed service from 10.1.1997. As such, the conciliation proceedings initiated by sending the telegram by CITU union become infructuous. Those workmen, despite taken into the factory, resorted to a slow down tactics and thereby caused huge loss in production and instigated the other workers to follow suit. They resorted to unlawful and violent activities. Those workers voluntarily stayed away from work w.e.f. 24.01.1997. Having no other go, the respondent management dismissed those workers from service.

4.2. As such, the subsequent action taken by the management is not in any way connected with the conciliation proceedings initiated by sending the said telegram, dated 31.12.1996 by the respondent management. The number of workmen terminated from service were not furnished by the trade union. In the nature of the reference, the terminated workmen were categorised under three caption 1) List of workmen terminated, 2) List of temporarily terminated workers and 3) List of orally terminated workers. The management had no intention to resort to unfair labour practices and it had never tried to victimise the workers who resorted to form any union.

4.3. The five workmen viz., *Jayabal*, *Sathyamani*, *Seshachalam*,



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Chakkaravarthy and *Iyyappan* were dismissed on 08.02.1997 without conducting any enquiry, but, by reserving the respondent's right to adduce evidence during trial and proved its case before the Labour Court. The other four workmen *Subramani*, *Selvaraj*, *Srinivasan* and *Balu* were charge sheeted further for several various misconducts and and they were not terminated. But they abstained from duty from 24.01.1997. Some workmen were also suspended for their misconducts and they were charge sheeted and proper Domestic Enquiry was conducted as against those each individual worker. In fact, the workers viz., *Prabunathan*, *S.Raman*, *Velan*, *Murugan*, *Gananasekar*, *Elumalai*, *Parthiban*, *Arumugasamy*, *Pandurangan* and *Senthi* were all employed by the respondent management on temporary basis for certain specific work including washing and cleaning of radiators and they have not also completed 240 days of service. Those workers stayed away from works by themselves. The management advised them to resume work and to that effect a notice was displayed at the main gate on 07.04.1997 and 08.04.1997 but of no veil. The management also issued separate letters to each such individuals to their residential addresses calling upon them to resume their work but they did not turn up. Thereupon only, the respondent terminated them from service and even then, the management was ready to pay retrenchment compensation, notice



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pay, etc. The worker *Prabunathan* settled the matter with the management and got his dues on 02.06.1999. The Domestic Enquiry was challenged by the petitioner and it is untenable. The respondent management did not give any false complaint, even in the Domestic Enquiry, the acts as against respondent perpetrated by the workmen were established. The Sub-Divisional Judicial Magistrate in the Criminal case in S.T.R.No.270 of 1998 imposed appropriate fine on the workmen pleading guilty for the offence. The respondent management in the counter would detail the specific acts allegedly perpetrated by the workmen (5 workmen) *Chakkaravarthy*, *Subramani*, *Jayabal*, *Seshachalam*, and *Sathiamani* who indulged in threatening activities. They abused the superiors. They also instigated the other workers to resort violence. They instigated the other workers to create a block so as to prevent the egress and ingress to the Company relating to the company goods and materials. Hence, the respondent management filed a suit in O.S.No.10 of 1997 and obtained permanent injunction so as to restrain the workmen from indulging in violent activities at or around the company premises before the District Munsif at Pondicherry and expressed their desire to come to compromise by stating that they will not indulge in violence and disturb the work. However, they refused to give such a undertaking. Those workers stayed away from work from 24.01.1997. The



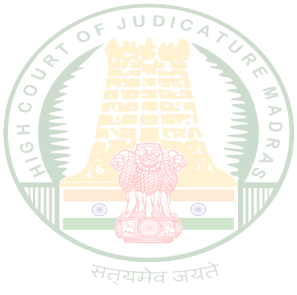
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workers go slow activities and violent activities disturbed the factory.

Hence, the respondent management was constrained to dismiss them from service by issuing letter, dated 08.02.1997 and by way of precaution, one month notice pay and retrenchment compensation were also sent to those five workmen along with the order of dismissal.

4.4. The worker *Jayabal* and *Iyyappan* got their duties and settled the matter before the Deputy Labour Commissioner, Pondicherry. The other three workmen *Sathiamani*, *Seshachalam* and *Chakkaravarthy* were arrested on 16.04.1997 by Police for their violent activities. The other four workmen *Balu*, *Subramani*, *Srinivasan* and *Selvaraj* were also charge sheeted for their abusing and using filthy language and for having assaulted their superior officers. The workers *Balu* and *Subramani* did not appear before the Enquiry Officer in the Domestic Enquiry and they were ultimately terminated from service.

4.5. The workers *Srinivasan* and *Selvaraj* participated in the enquiry proceedings and they admitted their guilt and left the job from the Company. The workmen *Balu* and *Subramani* were arrested on 16.04.1997 by the Police for their violent activities.



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4.6. *Viswanatha*, Fitter was suspended on 28.03.1997 and he was charge sheeted and he did not participate in the enquiry and ultimately, after giving due opportunity, he was terminated from service. The worker *Elumalai*, Core Assembler was suspended from 27.07.1997 and a detailed charge sheet was issued to him for his go slow production and for having sabotaged the Company properties. He also burnt effigy of the Director of the company in front of the factory main gate in collusion with the others and ultimately, after giving due opportunity he was terminated from service.

4.7. *Veerabadran*, Tester was served with the charge sheet on 17.02.1997 for his insubordination, insulting and using abusive language as against the superiors and for threatening at the work spot. He did not appear in the enquiry proceedings and ultimately, he was terminated from service.

4.8. *Anbalagan*, Fitter was charge sheeted on 15.03.1997 for loitering inside the factory during the office hours. He was charge sheeted for having pasted posters on the inner wall of the factory and the vehicles. He also used insulting and abusive language as against his superiors. He also



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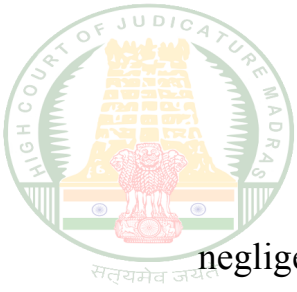
prevented the other workers from performing the works. He did not participate in the enquiry and ultimately, he was terminated from service.

4.9. *Murugan*, Welder was suspended from 01.03.1997 and detailed charge sheet was issued to him for his go slow tactics and for his sabotage of the machinery of the respondent factory and also for burning effigy of the Company's Director in front of the gate in collusion with the others and ultimately, he was terminated from service. He did not participate in the enquiry.

4.10. *B.Kumar*, Operator was suspended on 08.03.1997 and he was charge sheeted for his negligence and also for spoiling the radiator model cores and for the slow work. In the Domestic Enquiry, he did not appear and ultimately, he was terminated from service after giving due opportunity.

4.11. *Murugan*, Tester was suspended on 28.03.1997 and he was charge sheeted for go slow activities and he did not participate in the enquiry and after giving due opportunity, he was terminated from service.

4.12. *Balakrishnan*, Welder was suspended on 31.03.1997 for his



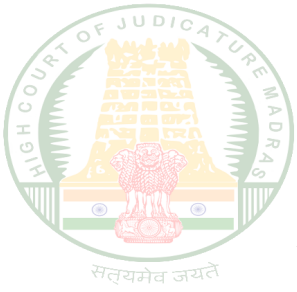
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negligence and for go slow work and subsequently, he resigned the job on personal grounds.

4.13. *Baskar*, Helper, absenting himself from the month of January, 1997. The show cause notice, dated 18.03.1997 was sent to him, but, he did not respond. He did not participate in the Domestic Enquiry and ultimately, after giving due opportunity he was terminated from service.

4.14. The following workers -

- 1) *Pathy*, Fitter
- 2) *U.Thirumal*, Fitter
- 3) *S.Veeramani*, Fitter
- 4) *Nagamuthu*, Fitter
- 5) *Sowriappan*, Velder
- 6) *Elumalai*, Helper
- 7) *S.Vinayagam*, Fitter
- 8) *Jayamurthy*, Fitter
- 9) *Kannivel*, Fitter
- 10) *Govindarajan*, Helper
- 11) *Danasu*, Core Assembler



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12) *Kasinathan*, Welder

13) *Ashok Kumar*, Electrician

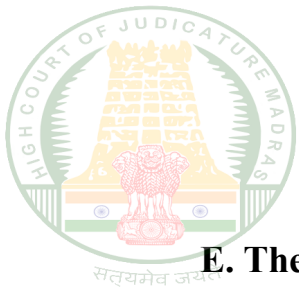
14) *Peter Francis*, Helper, were charge sheeted for various misconducts and they remained absent during the Domestic Enquiry and after giving due opportunity, they were terminated from service.

4.15. *Govindarajan* was charge sheeted for his misconduct in threatening the other workmen and during the Domestic Enquiry, he admitted his charges and he was ultimately terminated from service.

4.16. *Jagadeesan*, Tester was arrested for his violent acts, by the Police. The Domestic Enquiry was conducted as against him and he admitted his guilt and ultimately, he was terminated from the service.

4.17. *Janardhanan* admitted his charges and ultimately, he was terminated from the service.

4.18. The claim statement is vague and in respect of each workman, there was no specific claim.



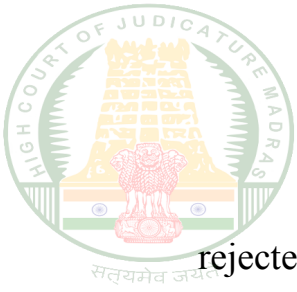
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E. The Enquiry and findings of the Labour Court:

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5. With the above pleadings, the Labour Court took up the matter for enquiry. One *Seshachalam* was examined as **P.W.1** and **Ex.A-1** to **A-46** were marked. On behalf of the respondent management, five witnesses were examined as **R.W.1** to **R.W.5** and **Ex.B-1** to **B-242** were marked.

5.1. The Labour Court first answered the preliminary issue as to the competency of the Trade Union to represent the workmen, in favour of the workmen and rejected the contention of the management that the petitioner union came into existence later and it was only CITU that issued the initial telegram. The Labour Court held that such wafer-thin differences cannot be drawn up when the workmen have joined together and presented the papers for registration when the action is being taken by the management. Though, initially, telegram was issued by CITU, later on, the registration of the petitioner union was complete and it also got affiliated to CITU. Further, when the workmen affected were members of the union, the management's technical objection was rejected. The second preliminary objection that the initial conciliation was through the telegram sent by CITU with reference to three workmen alone and that they were reinstated and therefore no separate conciliation proceedings were initiated by the petitioner union, was also

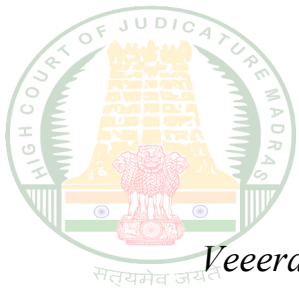


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rejected as hyper-technical and that the matters should be gone into on merits.

5.2. On merits, the Labour Court first considered whether the termination of one *Seshachalam* and others based on their misconduct is in violation of Section 33(1)(b) of the I.D Act. The Labour Court found that initially 5 workmen, namely, *Jayabal*, *Sathiyamani*, *Seshachalam*, *Chakkaravarthy* and *Iyyappan* were terminated and conciliation commenced upon the telegram sent by CITU on 31.12.1996. All the five of them were reinstated on 10.01.1997 itself and as such, the said proceedings cannot be termed to be pending. As a matter of fact, except *Seshachalam*, other 4 got the matter settled with the management. Therefore, the said conciliation cannot be deemed to be pending when again action was taken against *Seshachalam* and others for the charges levelled against them and Section 33(1)(b) was not violated. The initial conciliation relates only to the specific instance of non-employment of the 5 workmen and did not cover the later disputes relating to other workmen.

5.3. In view of the fact that 7 of the 40 workmen namely, *Chakkaravarthy*, *Sathiamany*, *Janardhanan*, *Prabunathan*, *Senthil*,



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Veerabathiran, Veeramani settled with the management and *Balakrishnan (K.Balu)*, resigned, the Labour Court further considered the issue in respect of the remaining 32 workmen.

5.4. The Labour Court considered the case of *Seshachalam*. It is the charge against them that after the termination and reinstatement of the 5 workmen, the said workman and others joined together, restored to illegal strike, violence against the management and officials, forcing the other workmen to join them, derailing the working of the industry and completely disturbing peace and refusing to settle the issue by any lawful means. Therefore, the Labour Court held that not holding a Domestic Enquiry and justifying the charges before the Labour Court as in order. Considering the evidence of *R.W.1* to *R.W.5*, it held that the non-employment is justified.

5.5. The Labour Court then considered the case of *M.Govindarajan* and held that he admitted his guilt during Domestic Enquiry.

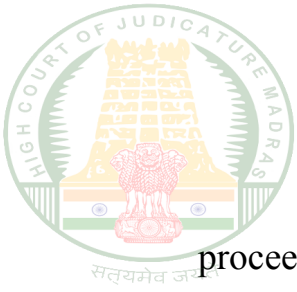
5.6. As far as 14 other workmen namely, *M.Viswanahan* (Sl.No.4 in the reference), *T.M.Elumalai* (Sl. No.5 in the reference), *M.Anbalagan*



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(Sl.No.6 in the reference), *S.Murugan* (Sl.No.7 in the reference), *S.Kumar* (Sl.No.9 in the reference), *P.Murugan* (Sl.No.10 in the reference), *P.Nagamuthu* (Sl.No.22 in the reference), *F.Savuriappan* (Sl.No.23 in the reference), *R.Jayamurthy* (Sl.No.26 in the reference), *S.Danasu* (Sl.No.29 in the reference), *V.Kasinatha* (Sl.No.30 in the reference), *K.Ashok Kumar* (Sl.No.31 in the reference), *S.Peter Francil* (Sl.No.32 in the reference), *J.Jagadeesan* (Sl.No.33 in the reference) are considered, the Labour Court considered that the Domestic Enquiry was conducted through one *K.Babu*, Advocate. The Labour Court opined that even though the said *K.Babu* appeared for the management in the conciliation, he did not represent the management with reference to the subject matter charges and therefore overruled the objection of bias. 13 of the 14 workmen remain *ex parte*. One *Jagadeesan* appeared and admitted his guilt. Even then procedure has been followed, second show cause notice was issued and then only punishments were imposed.

5.7. In respect of 6 workmen, *K.Balu*, *M.Subramani*, *U.Thirumal*, *O.M.Ezhumalai*, *S.Vinayagam*, *A.Kannivel*, one *Kareem Basha* conducted enquiry. The proceedings were found to be in order. In respect of two workmen, *Bask* and *Patti*, one *Chrisi Raj* conducted enquiry and the



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proceedings were found to be in order.

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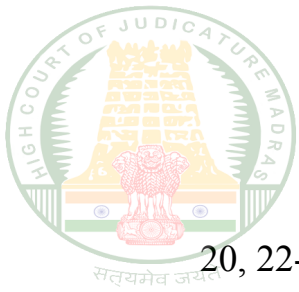
5.8. Considering the nature of charges, the Labour Court held that the management was fully justified in imposing the punishment of dismissal.

5.9. In respect of 8 workmen, namely, *Raman* (Sl.15 of reference), *E.Velan* (Sl.No.16 of the reference), *Murugan* (Sl.No.17 of the reference), *Gunasekar* (Sl.No.34 of the reference), *Elumalai* (Sl.No.35 of the reference), *Parthiban* (Sl.No.36 in the reference), *Arugumugasamy* (Sl.No.37 of the reference) and *Pandurangam* (Sl.No.39 of the reference), the Labour Court found that they were only casual workers not having put in even 240 days and hence their non-engagement is in order.

5.10. On the said findings, the claim petition was rejected. Aggrieved thereby, the present Writ Petition is filed.

F. The Part Settlement:

6. As enumerated above and also pending the Writ Petition, a total number of 14 persons have settled and this Writ Petition is considered in respect of the balance of 26 persons mentioned in Sl.Nos.2, 4, 5, 7-11, 18-



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20, 22-33, 35.

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G. The arguments and the findings:

7. Heard *Mr.V.Ajoy Khose*, the learned counsel for the workmen and *Mr.S.Jayaraman*, the learned counsel for the management.

7.1. Firstly, the findings of the Labour Court that the conciliation raised by telegram, dated 30.12.1996 is only in respect of the four workmen terminated and will not survive after the reinstatement is unsustainable. The original telegram mentions that dispute as the four workmen being terminated are the office bearers of the formed union. It further goes on the footing that due to the formation of union, they were terminated. In this back ground, though those workmen were reinstated, before the conciliation could end, action was again taken in respect of the same workmen as well as others. In this regard, it is relevant to extract the reply from the management dated 02.04.1997 and the relevant portion reads as follows:

"i) Admittedly as stated above Tvl.P.Chakravarthy, A.Jayabal, B.Seshachalam, V.Ayyappan, and R.Sathyamani, were dismissed on 30.12.96 under certain exigent situations for their various and unbearable threatening misconducts. However after prolonged talks and by the intervention of the Superintendent of Police



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(South), the afore stated workmen's dismissal orders were revoked and they resumed work from 10.01.97. Hence the present proceedings become infructuous, and as they have resumed work from 10.01.97. We have also communicated this fact to your good office by our letter dated 12.2.97.

ii) We would once again without prejudice, would like to state, that, after resuming duty, these workmen followed slow down tactic thereby causing a huge loss in production and instigated other workmen of our factory to follow their tactics and also behaved in a very indisciplined manner and involved in violent and unlawful activities as against the Company, despite the bonafide faith in them and the sympathy shown on them by the Company by giving them a chance to change their behaviour. Furthermore they voluntarily stayed away from work from 24.1.97 onwards. Hence the Company has no other go, but to dismiss them and to take disciplinary action against certain other few workmen. But this cannot form part of the present conciliation proceedings, as this is a separate cause and also because the present conciliation has become infructuous as on 10.01.97 itself, where the workmen has resumed their work."

7.2. Thereafter, the conciliation proceedings were conducted in detail with reference to all the disputes and a detailed failure report was submitted on 09.02.1998. The said report was challenged by the management by way of W.P.No.11670 of 1999 on the very ground that the original conciliation stood closed by the reinstatement of the employees and the following is the finding of this Court:

"6. It was next contended by the learned counsel for the petitioner that there was a demand in respect of termination of service of four workmen and not in respect of others and therefore the conciliation, if any, and the subsequent reference to the Labour Court in this respect, is illegal and in excess of jurisdiction. In this respect it has



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to be pointed out that conciliation went on for considerable period and both parties have taken part in the conciliation proceedings besides submitting various particulars from time to time. It is true that in the beginning, termination was only in respect of few but subsequently there were other terminations which had taken place when the conciliation was going on. Both the parties furnished particulars and details of persons who have been terminated, each termination is the subject matter of reference. The list of workmen who have been terminated by the Management has been set out in the records itself. The conciliation report is also seen by both the parties. Therefore it is not right to contend that there was no demand in respect of terminations. Obviously there was demand and there were conciliation proceedings in respect of alleged illegal termination of number of workmen and as there was failure in the conciliation, the State Government, on the basis of failure report, made a reference. This court is unable to sustain both the contentions raised by Mr.Vijayakumar, learned counsel for the petitioner in this respect. There was sufficient demands in respect of termination of number of persons enumerated in Annexure II and it is not as if there was no demand at all."

7.3. Further, Section 20 of I.D Act itself is very clear as to when the conciliation proceedings conclude. The same is extracted hereunder:

"20. Commencement and conclusion of proceedings.—(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded—

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is



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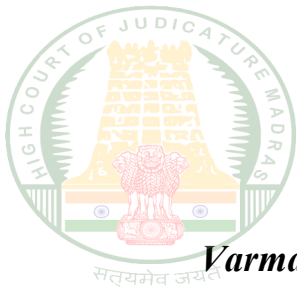
published under section 17, as the case may be; or

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under section 10 during the pendency of conciliation proceedings.

(3) Proceedings before an arbitrator under section 10A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17A."

7.4. Neither any memorandum of settlement was signed between the parties upon reinstatement nor any failure report was sent by the conciliation officer. Until such time, the conciliation is pending. Therefore, the finding of the Labour Court that no conciliation proceedings were pending when second round of action was taken is incorrect. In this case, neither any permission was taken nor any approval was obtained. Therefore, in any view of the matter, the entire proceedings violate Section 33 of the I.D Act.

7.5. The first contention of *Mr.S.Jayaraman*, the learned Counsel for management, is that at best, the grievance can only give rise to a cause of action for filing a complaint under Section 33-A. I am unable to accept the said submission. The Hon'ble Constitution Bench of the Supreme Court of India in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal*



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Varma and Ors.¹, held in paragraph Nos.13 and 14 as follows:-

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"13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs 1000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the

1 (2002) 2 SCC 244



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already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or



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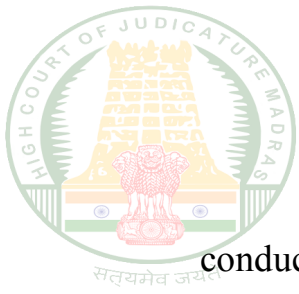


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where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

7.6. Thus, the contention of *Mr.S.Jayaraman* cannot be countenanced. He again stressed on the fact that reinstatement rendered the original conciliation proceedings infructuous. Firstly, it is not tenable in view Section 20 of the I.D Act. Secondly, it can be seen that it is factually otherwise as it was an escalation of conflict and it never got terminated or resolved. The management for the reasons best known to them first terminated four workmen and then reinstated them and then again initiated action against them. Thus, even considering with the purpose of Section 33 of the I.D Act, the findings of the Labour Court cannot be sustained. Thus, the non-employment of all these workmen are void and is in violation of Section 33 of the I.D Act.

7.7. The next question is with reference to the Domestic Enquiry



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conducted by *K.Babu*, Advocate; admittedly, he appeared for the management in the very case before the conciliation officer. There is no question of any further prejudice being shown. Naturally, the workmen stayed away from the enquiry and remained *ex parte*. Therefore, the finding of the Labour Court regarding bias of the Enquiry Officer is also unsustainable. Therefore, this Court concludes that non employment of all these 26 workmen is unjustified.

7.8. Next, the question is as to what relief can be granted to the workmen. It can be seen that the incident happened in the year 1996-1997, from which date, they are out of employment. Now, we are in the 28th year after conciliation started. Much water had flown thereafter. Many of the employees have also settled the issue with the management. Therefore, this is not a case where reinstatement into service can be ordered. I am of the view that in lieu of reinstatement, back-wages and all other claims, compensation can be awarded. Since the matter is very old, it is stated that those days, the wages were only around Rs.1,600/- per month and even lesser for majority of the workmen. Therefore, it would be unfair to go for calculation based on the then wages. By taking into account the length of service, period of litigation, the settlement amounts received by the other



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employees etc., I am of the view that the workman, *Seshachalam* be entitled for a total compensation of Rs.2,75,000/-. The other workman namely *N.Viswanathan* and 23 others except *Bhaskar* and *Ravi*, will be entitled for a sum of Rs.2,00,000/- each and *Bhaskar* and *Ravi* will be entitled Rs.1,25,000/- each.

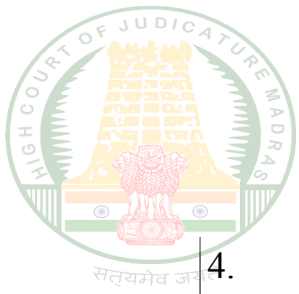
H. The Result:

8. In the result, this Writ Petition is partly allowed on the following terms:

(i) The award of the Labour Court, Puducherry, dated 11.02.2003 made in I.D.No.6 of 1999 is set aside;

(ii) The non-employment of the 26 workmen, hereinafter mentioned, is held to be unjustified and they are entitled for compensation in lieu of reinstatement with the back wages and towards all other claims. The quantum of compensation amount is also mentioned respectively against their names;

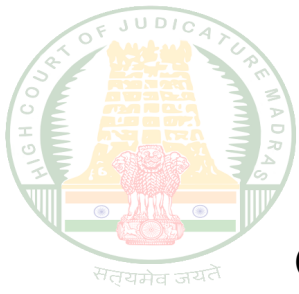
SL.No.	Name of the worker	Compensation amount
1.	B.Seshachalam	Rs.2,75,000/-
2.	N.Viswanathan	Rs.2,00,000/-
3.	S.Vinayagam	Rs.2,00,000/-



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4.	K.Ashokkumar	Rs.2,00,000/-
5.	A.Kannivel	Rs.2,00,000/-
6.	J.Jagadesan	Rs.2,00,000/-
7.	S.Dhanusu	Rs.2,00,000/-
8.	K.Balu	Rs.2,00,000/-
9.	F.Sayuriappan	Rs.2,00,000/-
10.	K.Balakrishnan	Rs.2,00,000/-
11.	V.Thirumal	Rs.2,00,000/-
12.	T.M.Elumalai	Rs.2,00,000/-
13.	R.Jayamurthy	Rs.2,00,000/-
14.	S.Murugan	Rs.2,00,000/-
15.	V.Kasinathan	Rs.2,00,000/-
16.	V.Subramani	Rs.2,00,000/-
17.	P.Nagamuthu	Rs.2,00,000/-
18.	V.Pathy	Rs.2,00,000/-
19.	O.M.Elumalai	Rs.2,00,000/-
20.	M.Govindaraj	Rs.2,00,000/-
21.	B.Kumar	Rs.2,00,000/-
22.	P.Murugan	Rs.2,00,000/-
23.	M.Anbalagan	Rs.2,00,000/-
24.	P.Peter Francis	Rs.2,00,000/-
25.	A.Baskar	Rs.1,25,000/-
26.	P.Ravi	Rs.1,25,000/-

(iii) The said compensation shall be paid within a period of 8 weeks from the date of receipt/production of a web-copy of this order without waiting for the certified copy of the order;



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(iv) If the amount is not paid within the above said time, thereafter, the amounts shall be paid with further interest at the rate of 9% per annum from today;

(v) If any workman had died, upon a letter submitted by the legal heirs along with death certificate and legal heirship certificate/deed of Court, the amount shall be paid to all of them or if they consent, to any one of them;

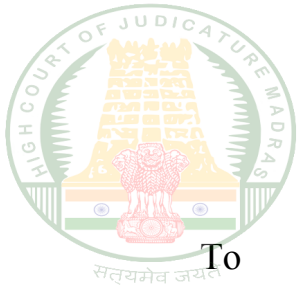
(vi) There shall be no order as to costs.

Note:

This Court places on record its appreciation to *Mr.S.Jayaraman*, a very senior member of the bar appearing for the management and *Mr.VAjoy Khose*, the learned Counsel appearing on behalf of the workmen. This matter has been pending from the year 2004 and has come up 59 times before 15 Hon'ble Judges and thus when required by this Court, both the learned counsel did their best to resolve the issue and being unable to resolve, argued the matter in detail so as to enable the court to decide the issue.

29.01.2025

Neutral Citation : yes
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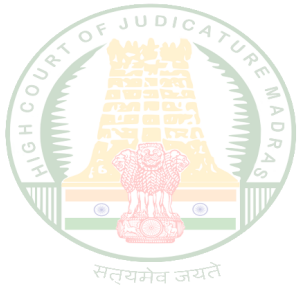


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To

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The Presiding Officer,
Labour Court,
Pondicherry.



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D.BHARATHA CHAKRAVARTHY, J.

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