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Court : Chennai

Decided On : Dec-08-2003

Reported in : (2004)IILLJ611Mad

Judge : R. Balasubramanian, J.

Acts : [Industrial Disputes Act, 1947](#)

Appeal No. : W.P. No. 35295/2003 and W.P.M.P. No. 42903/2003

Appellant : Ravishankar R. and ors.

Respondent : Management of G.E. Power Controls India (P) Ltd.

Advocate for Def. : A.L. Somayaji and ;Gupta and ;Ravi, Adv.

Advocate for Pet/Ap. : V. Prakash, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R. Balasubramanian, J.

1. Admit. Mr. V. Prakash, learned counsel appears for the petitioners. Gupta and Ravi had taken notice even when the case was listed for admission. Elaborate arguments were advanced for the petitioners by Mr. V. Prakash and for the respondents by Mr. A.L. Somayaji, learned senior counsel.

2. The relief prayed for in the writ petition is for a declaration that the respondents are not entitled to conduct the departmental enquiry against the petitioners pursuant to the charge memos issued against them, without paying subsistence allowance and for a further direction not to proceed with the domestic enquiry during the period of 'lock-out'. The factory is under 'lock out' from August 29, 2003 admits no doubt. The wage agreement between the petitioners' association and the management also expired on August 4, 2002 and a charter of demands is also pending, is not in dispute. Whether the 'lock-out' is justified or not is also pending before the authority constituted under the Industrial Disputes Act. There are twenty petitioners and they are workmen in the respondent company. Mr. V. Prakash, learned counsel appearing for the petitioners would contend that the enquiry now pending and proceeded with against the petitioners, is opposed to principles of natural justice. It must be so held in the backdrop of the factory being under 'lock out'. The petitioners have not been placed under suspension. If that to happen, then the employer is under a legal obligation to pay subsistence allowance. Since the factory is under lock out, the need to place the petitioner under suspension does not arise at all. However, the employer has chosen to proceed departmentally against the petitioners at a time when the factory is under 'lock out'. During 'lock out' wages will not be paid and the payment of the same would depend upon the outcome of the decision of the authority, before whom the issue whether 'lock out' is justified or not is pending. The workmen are suffering and starving for want of wages. From the manner in which the employer has pushed through the enquiry itself shows that the employer is acting in undue haste, which can be termed as 'unfair labour practice'. Therefore the entire proceedings must be brought to a halt. Mr. A.L. Somayaji, learned senior counsel appearing for the respondents would state that when charge memos were attempted to be served, the workmen refused to receive and therefore it was published in the paper informing each and every workman about the date of domestic enquiry. It is no doubt true that none of the workmen have been placed under suspension as there

was no occasion for the same, since during the relevant period the factory is under 'lock out'. But none the less, the manner in which they have conducted themselves in not responding to the domestic enquiry notices, no ground is made out to show any indulgence at this stage to any of the workmen. According to the learned senior counsel, witnesses to the charges have already been examined in the domestic enquiry and the enquiry officer had submitted his findings to the employer. What remains to be done thereafter is well known and no indulgence whatsoever should be granted to the petitioners. The place of domestic enquiry is in Hosur Town itself, where each one of the petitioners is having their abode and therefore none of the petitioners are put to any inconvenience in attending the enquiry.

3. I applied my mind to the arguments advanced. A tabular statement containing the respective dates of all first hearings and the adjourned hearings for each and every workman is produced before this Court by Mr. V. Prakash, learned counsel appearing for the petitioners. The adjourned hearing dates in respect of four workmen is also found reflected therein. No objection, whatsoever, had been taken by the learned senior counsel for the respondents regarding the correctness of the dates mentioned in the tabular statement. It is seen from the tabular statement that the first hearing for a few individuals was fixed between October 20, 2003 to October 23, 2003. In respect of other individuals, the first hearing stands fixed between November 18, 2003 and November 22, 2003. For four among the workmen, the enquiry initially fixed, stood adjourned to November 20, 2003 (two workmen), November 22, 2003 and November 21, 2003. Admittedly, the factory is under 'lock out' from August 29, 2003. The Hon'ble Supreme Court of India in the judgment in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. : (1999)ILLJ 1094 SC (brought to my notice by Mr. V. Prakash) held that non payment of subsistence allowance during suspension period would vitiate the entire proceedings itself. But however, in this case, the management had not suspended any of the workmen. The reasons are not far off, to see,' since the factory is under 'lock out'. During lock out' wages need not be paid and payment of wages would depend upon the final decision on the 'lock out' announced by the factory.

4. Had there not been a 'lock out' two courses would have been open to the management namely, to place the workmen under suspension; pay subsistence allowance and then proceed with the domestic enquiry or in the alternative not to place any workman under suspension; pay wages and then proceed with the enquiry. Therefore, I have no doubt at all that the timing of the present action by the management against these workmen had given it an undue advantage over the workmen. In other words, there is no need at this stage to place any workman under suspension with a consequential payment of subsistence allowance. The management is also not under a legal duty to pay wages at this time. It is no doubt true, that the judgment of the Supreme Court referred to above deals with the case of non payment of subsistence allowance during the time of enquiry. But the very basic principle on which, the above judgment had come to be given is that the workmen cannot be put under a disadvantage and yet asked to face the domestic enquiry. A workman, earning no wages during 'lock out' is definitely worse off than a workman, under suspension, without being paid subsistence allowance. A workman, during 'lock out' would be running hither and thither and from pillar to post to keep the family wheel moving. Hardships, which a workman suffers during such stages must be experienced to be believed. It is incapable of being measured by any yardstick. It is a real human problem which should stir the Court's conscience.

5. If the plight of the workmen is viewed in that angle, then there cannot be any doubt at all that the employer is having an upper hand vis-a-vis the workmen, having a specific advantage at this stage and not being under any legal obligation to protect the interest of the workmen, to allow him to continue with the domestic enquiry would be offending the principles of natural justice. The employer, in my opinion, cannot take advantage of the 'lock out' to deny the workmen, the wages and yet proceed during the period of 'lock out' against the workmen in a domestic enquiry. Entry 5(f) of V Schedule of Industrial Disputes Act would take in itself the conduct of domestic enquiry in utter disregard to the principles of natural justice or in undue haste as an unfair labour practice. Less said the better. As already noted, the workmen are in a tremendous disadvantage as on date to face the domestic enquiry. It really does not matter, in my considered opinion that the place where the domestic enquiry is indicated to be done is within the same town where the

workers live and it is not far off from their residence, would be no answer when the principles of natural justice is interfered with. The Court's approach should be pragmatic to a situation like this and it cannot be a silent spectator. It may be true that the workers have also not done any credit to themselves by not even making a demand on the employer for payment of any allowance. But that by itself would not eliminate them from putting forward their claim at this stage. The fact that the domestic enquiry had reached the fag end is not a ready answer to deny justice to the workmen in distress. For almost three months, the factory is under 'lock out'. As already stated, if it is not a 'lock out' the workmen would have been placed under suspension, which means they would have earned 50 per cent of their wages as subsistence allowance during the period of suspension. But that has not happened in this case. When the workmen are not under suspension, the sum to be paid to them cannot be treated, strictly speaking, as subsistence allowance. The sum to be paid cannot be treated as wages also, since admittedly the factory is under 'lock out'. Then what would be the solution? In my opinion, an ad hoc payment commensurate to the situation would be a justifiable remedy to be given to each of the petitioners.

6. Taking into account that the factory is under 'lock out' from August 29, 2003, I am of the opinion, that an ad hoc payment to each workman equivalent to one month wages last drawn shall be an adequate remedy to the petitioners before they can be asked to participate in the domestic enquiry. Accordingly, the following order is passed:

The writ petition is allowed. The domestic enquiry held against each of the petitioners stands terminated on the following conditions:

(a) the employer shall pay to each of the petitioners an ad hoc sum equivalent to one month wages last drawn on or before December 22, 2003;

(b) along with the payment, a charge memo shall be served on each of the petitioners;

(c) on receipt of such charge memo, each of the petitioners shall have time till December 31, 2003 to submit their explanation;

(d) if not satisfied with the explanation, the employer is at liberty to proceed with the enquiry;

(e) in that event, examination and cross examination of witnesses on both sides shall be commenced and completed on or before January 31, 2004.

Mr. V. Prakash, learned counsel appearing for the petitioners assures this Court that his clients would abide by the time schedule fixed by this Court as referred to above. It is made clear that in the event of the workmen not responding to the time schedule referred to above, the domestic enquiry proceedings quashed by this Court would stand revived for continuance from the stage it was quashed to reach its logical end.'

7. Consequently, the connected W.P.M.P. is also closed. No costs.

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