IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1324 of 2006

The Management of Futura
Polyesters Ltd.,
(Formerly known as)
Indian Organic Chemicals Ltd.,
Manali, Chennai-600 068. ... Appellant/Petitioner

vs.

1. The Presiding Officer,
I Additional Labour Court,
Chennai-104.

2. A.Manokaran
No.3/15, Valarmathi Nagar,
Kolathur, Chennai -99.

... Respondents/Respondents

Appeal under Clause 15 of the Letters Patent against the Order of the learned single Judge, dated 10.10.2006, made in WP No.22221 of 2006, filed unde Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to order dated 23/06/2006 passed in I.A.No. 73 of 2006 in I.D.No. 465 of 2004 on the file of I Additional Labour Court, Chennai, and quash the same.

For Appellant : Mr.A.L.Somayaji,
Senior Counsel for Mr.J.James

Mr.A.Manokaran - R-2, Party-in-Person.

J U D G M E N T

(Judgment of the Court, delivered by P.SATHASVIAM, J.)

Aggrieved by the order of the learned single Judge, dated 10.10.2006, made in Writ Petition No.22221 of 2006, the Management of Futura Polyesters Limited, formerly known as Indian Organic Chemicals Limited, Manali, Chennai-68, has filed the above Appeal.

2. Brief facts are narrated here-under,

According to the petitioner/appellant, the second respondent - A.Manoharan, when he was working as Plant Operator in their Manufacturing Plant, unauthorisedly and continuously absented himself from work from 09.02.2004 on the ground of Psychosomatic illness. When he appeared on 21.02.2004 to join duty, he was advised to go to Medical Board to check his medical fitness, but he declined. Thereupon, he was discharged from service by an order dated 08.09.2004 with retrospective effect. Even before the workman/2nd respondent was discharged from service, he raised a dispute before the Conciliation Officer, Kuralagam. The Conciliation Officer had sent a 'failure report' on 24.08.2004, which was received by the workman on 02.09.2004. Thereafter, by order dated 08.09.2004, he was discharged from service with effect from 09.02.2004.

The second respondent filed a Petition before the first respondent/Labour Court, Chennai, complaining his removal, and the same was taken on its file as regular Industrial Dispute in I.D. No.465 of 2004 under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as I.D. Act). Thereupon, the second respondent filed an Application in I.A. No.73 of 2006 in I.D. No.465 of 2004, stating that, in fact, he only filed a complaint under Section 33A of the ID Act for his non-employment, whereas, the office of the Labour Court, without his consent, had taken it on file as an Industrial Dispute in I.D. No.465 of 2004 under Section 2A(2) of the I.D. Act, therefore, the Court should convert the same as a complaint under Section 33A of the I.D. Act. The I Additional Labour Court allowed the Application by holding that, in the absence of the management establishing that the order of discharge, dated 08.09.2004, was effected only after the "failure report" of the Conciliation Officer reached the Government, as contemplated under Section 20(2)(b) of the I.D. Act, only the complaint under Section 33A is maintainable and not a dispute under Section 2A(2) of the I.D. Act. Questioning the same, the petitioner/management filed W.P. No.22221 of 2006.

The second respondent filed a counter affidavit in the Writ Petition, reiterating what he has stated in the I.A. before the Labour Court.

The learned single Judge, by order dated 10.10.2006, after finding that the right of a workman under Section 33(2) of the I.D. Act has been violated, and holding that the Labour Court is perfectly right in

converting the Application under Section 2A as that of a Petition under Section 33A of the I.D. Act, dismissed the Writ Petition. Questioning the same, the Management has filed the above Appeal.

3. Heard Mr.AL.Somayaji, learned Senior Counsel appearing for the appellant/Management, and Mr.A.Manoharan – R.2, Party-in-Person.

4. In view of the narration of facts in the earlier part of our Judgment, there is no need to refer all the factual details once again.

5. The workman filed a petition under Section 33A of the I.D. Act before the first respondent/Labour Court, alleging that the Management has violated the provisions under Section 33 of the ID Act. The Management filed a counter statement, stating that the workman was not terminated from service and his name still finds place in their muster roll, therefore, the workman cannot raise a dispute under Section 2A of the Act and the petition is not maintainable. When the said petition was pending before the Labour Court, the Workman, after coming to know that though he filed a complaint under Section-33A, the Office of the Labour Court numbered the same as an Industrial Dispute in I.D. No.465 of 2004, filed I.A. No.73 of 2006 to treat the petition filed by him as a complaint under Section-33A and to grant immediate relief to him. Hereagain, the main grievance of the workman was that when conciliation proceeding was pending with the Conciliation Officer, the Management hurriedly terminated him, in such circumstances, his Application has to be considered only under Section 33A. The first respondent/Labour Court, considering the fact that, on the date when the service of the workman was terminated, that is, on 08.09.2004, the proceeding before the Conciliation officer was pending since the report had not reached the Government, accepted the stand taken by the workman and, after finding that there is a clear violation of Section 33 of the I.D. Act, allowed the I.A. filed by the Workman for the conversion of his Petition as a complaint.

6. Mr.A.L.Somayaji, learned Senior Counsel appearing for the appellant, vehemently contended that inasmuch the Conciliation Officer has submitted his report, which was received by the Management on 02.09.2004, and the order of termination was passed well after the same on 08.09.2004, the Labour Court committed an error in converting the petition as prayed for; and that the learned single Judge also, without taking note of the same, erroneously confirmed the said order of the Labour Court. He further contended that the Labour Court is not justified in deciding the issue viz., violation of Section 33, before going into the merits of the case without scrutinising the facts.

7. Mr.A.Manokaran/workman, appearing Party-in-Person, defended the order of the Labour Court and that of the learned single Judge.

8. It is seen from the materials placed in respect of the petition filed before the Conciliation Officer that, after finding that

the Conciliation was not successful, he submitted a 'failure report' dated 24.08.2004. It is not in dispute that the Management and the Workman received the failure report on 02.09.2004. The termination order was passed by the Management on 08.09.2004. The question is as to when the Government received the failure report in terms of Section-20(2)(b). The relevant provision reads as follows:-

> " 20. Commencement and conclusion of proceedings. —(1)
>
> (2) A conciliation proceeding shall be deemed to have concluded -
>
> (a) .....
>
> (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 published under Section 17, as the case may be; or
>
> …… "

It is clear that when no settlement is arrived, the conciliation proceedings shall be deemed to have concluded only when the report of the conciliation officer is received by the Government or the report of the Board is published under Section-17. Though the management and the workman received the Failure Report on 02.09.2004 and the termination order was issued by the Management on 08.09.2004, there is no information as to when the Government received the Failure Report in terms of Section 20(2)(b). In such circumstances, as rightly observed by the Labour Court, it cannot be concluded that the proceedings before the Conciliation Officer came to an end. As observed in AIR 1958 SC page 88, for the proceedings to conclude, it is necessary that the Report should actually reach the Government. In other words, unless the report actually reaches the Government, the proceeding before the Conciliation Officer shall not be deemed to have concluded. In the absence of such relevant information, we are of the view that the proceeding before the Assistant Commissioner (Labour) is to be considered as not concluded and deemed to have been pending.

9. It is useful to refer to Section-33 of the Act,

> " 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 workman concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(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.
……"

We have already observed that since there is no information about the receipt of the report of the Conciliation Officer by the appropriate Government in terms of Section 20(2)(b), it cannot be concluded that the conciliation proceeding came to an end at the hands of the Conciliation Officer, in such circumstances, in view of Section-33 referred to above, the Management is not permitted to terminate the workman. In view of the above interpretation, it follows that prima facie there is violation of the proviso to Section 33(2) of the Act by the Management in passing the termination order without making an Application for approval to the authority concerned.

10. It is clear that if there is any violation of Section-33 of

the Act by the Management, the Workman is free to make a complaint in writing to adjudicate as to whether the conditions of service has been changed. The workman/second respondent herein has asserted at more than one place that though he filed a complaint under Section 33A of the Act, the office of the Labour Court numbered it as a regular Industrial Dispute which necessitated him to file I.A. No.73 of 2006 for converting the petition as complaint under Section-33A.

11. The particulars furnished clearly show that the termination order was passed prior to the disposal of the proceeding before the Conciliation Officer. As said earlier, though the Conciliation Officer submitted his Report, in the absence of proof to substantiate/confirm the receipt of the report by the appropriate Government in terms of Section 20 (2)(b), the action taken by the Management, viz., terminating the service of the workman on 08.09.2004, amounts to violation of Section-33 of the Act. All these relevant aspects have been correctly appreciated and decided by the labour court, which decision was rightly confirmed by the learned Judge. Inasmuch as the decision of the Labour Court is only a prima facie conclusion for the disposal of I.A. No.73 of 2006, we are unable to accept the contention of the management that the Labour Court had gone into the merits and pre-concluded the issue.

In these circumstances, we do not find any error or valid ground for interfering with the well considered order of the learned single Judge. Consequently, Writ Appeal fails and the same is dismissed. No costs.

JI.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer,
I Additional Labour Court,
Chennai-104.

2. The S.O. V.R. Section,
High Court, Madras.

+ One cc to Mr. A. Manokaran, SR 64512
BS (co)
sg 22/12/06

W.A. No.1324/2006.
22.12.2006.