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W.P.No.33827 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 29.01.2024

ORDER PRONOUNCED ON: 15.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.33827 of 2018

and

WMP.No.39296 of 2018

Indian Overseas Bank
Central office,
II Floor, 763, Anna Salai,
Chennai, 600002.

Rep. by its Assistant General Manager.

...Petitioner

Vs.

1. The Asst. Labour Commissioner(Central),
Ministry of Labour and Employment,
4, Haddows Road,
Sastri Bhawan,
Chennai 600 006.

2. All India Overseas Bank OBC Staff Welfare Association,
No.6,West Avenue Road,
Kodambakkam,
Chennai 600024.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India



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praying to issue Writ of Mandamus, forbearing the 1st respondent from proceedings with the conciliation in the file No.M7 /03 / 2018-B3 dated 13.11.2018 based on the petition of the 2nd respondent date nil October 2017.

For Petitioner : Mr.P.Raghunathan
for T & S Gopalan & Co.
For Respondents : Mr.J.Madanagopal Rao, SCGSC
for R1
Mr.A.Arulmozhi
for R2

ORDER

Writ petition is filed for a writ of mandamus forbearing the 1st respondent from proceeding with the conciliation in file No.M.7 /03 / 2018-B3 based on the petition of the 2nd respondent dated nil October 2017.

2. The short issue raised in the writ petition is whether the respondent association has the locus to espouse the cause of the workman who was imposed a punishment of lowering his basic pay to lower stage in the scale of pay by one stage for a period of one year and with warning for certain acts of misconducts committed by him. The 2nd respondent raised the dispute before the 1st respondent challenging the order of the petitioner imposing the aforesaid punishment on the individual workman. The



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petitioner filed its reply before the 1st respondent on 05.04.2018, requesting

the 1st respondent to verify whether the 2nd respondent had the locus to raise the dispute in terms of the provisions of the Industrial Disputes Act and further, whether before raising the dispute by the 2nd respondent appropriate proceedings had been initiated. It was contended that after receipt of the reply, the 1st respondent did not call for any meeting for nearly 5 months and thereafter in September 2018, the petitioner received a notice calling upon it to attend the conciliation with regard to the dispute. As the 1st respondent did not reply to the petitioner's earlier reply questioning the locus of the 2nd respondent, the petitioner sent another reply on 26.09.2018 pointing out that his query was not answered. The 1st respondent inspite of the aforesaid replies continued with the conciliation proceedings and therefore the petitioner filed the above writ petition challenging the continuation of the conciliation proceedings by the 1st respondent.

3. The 2nd respondent in the counter stated that the petitioner had suppressed the fact that earlier in I.D.No.82 of 2013, before the Central Government Industrial Tribunal-Cum-Labour Court, Chennai, the same



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arguments were raised by the petitioner, against the same Association and the CGIT vide the Award dated 27.02.2015 held that the 2nd respondent had locustandi to raise the dispute in respect of the employees. The respondent therefore stated that the petitioner could not take any contrary stand, as the petitioner did not prefer any appeal against the said Award and the same attained finality.

4. The learned counsel for the petitioner submitted that 2nd respondent had no locus to raise the dispute, as it was not a Trade Union defined under Section 2(qq) of the Industrial Disputes Act. The learned counsel relied on the Judgment of the Hon'ble Supreme Court reported in 2016(11)SCC 731 in support of his case.

5. The learned counsel for the 2nd respondent on the other hand relying on the Award passed in I.D.No.82 of 2013 and also the Judgment of the Hon'ble Supreme Court reported in AIR 1970 SC 777 submitted that a group of workmen could raise dispute and hence the respondent had locus to raise the dispute.



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6. I have heard both the learned counsels and I have perused the materials placed on record.

7. The facts are undisputed and the same are as narrated above. The question of law raised is regarding the competency of the 2nd respondent to raise the dispute espousing the cause of one of its members. Section 2(qq) of the I.D. Act defines Trade Union and the same reads as follows.

"[(qq) "trade union" means a trade union registered under the Trade Unions Act, 1926 (16 of 1926);]

Section 2(e) of the Trade Unions Act defines the registered trade union and the same reads as follows:

2(e) " registered Trade Union" means a Trade Union registered under this Act;

It is also relevant to mention here that Section 2(qq) was inserted in the I.D. Act by Act 46 of 1982 with effect from 21.08.1984. It is to be noted that by inserting Section 2(qq) of the Act, the legislature brought the definition of "Trade Union" in consonance with the definition in the Trade Unions Act. The Hon'ble Supreme Court while considering the amendment



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made to the Industrial Disputes Act, by Act 46 of 82, defining Trade Union,

reported in 2006(11)SCC 751, held as follows:

“....In our opinion, the High Court gravely erred in refusing to examine the question of locus standi on the ground that it is decided in the earlier writ petition which operates as res judicata and that the petitioners even otherwise have locus standi. Chapter III of the Trade Unions Act, 1926 sets out rights and liabilities of the registered trade unions. Under the said enactment, an unregistered trade union or a trade union whose registration has been cancelled has no manner of right whatsoever, even the rights available under the ID Act have been limited only to those trade unions which are registered under the Trade Unions Act, 1926 by insertion of clause 2(qq) in the ID Act w.e.f. 21-8-1984 defining a trade union to mean a trade union registered under the Trade Unions Act, 1926.

39. The High Court, in our opinion, miserably failed and gravely erred in holding that Respondents 1 and 2 have locus standi to question the appointment of the appellant in the light of the change of law that has been brought about by insertion of Section 2(qq) of the ID Act and having regard to the provisions of Chapter III of the Trade Unions Act, 1926.....”

8. In my view the aforesaid Judgment of the Hon'ble Supreme Court



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answers both the contentions of the learned counsel for the respondent namely, that in the earlier I.D., the locus of the 2nd respondent was upheld and also that the respondent as an association could espouse the cause of the workman. It is further pertinent to note that in the earlier I.D., the Labour Court had relied on the Judgment of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. Vs. Their Workmen reported in AIR 1960 SC 777. The said Judgment was pronounced before Section 2(qq) was inserted in the I.D. Act. In my view therefore the later Judgment reported in 2006(11) SCC 731 directly covers the issue as it was pronounced after the amendment Act 46 of 82. In this regard, a learned Judge of this Court while considering similar issue in a case reported in 2013 (3) Mad LJ 250 followed the aforesaid Judgment of the Hon'ble Supreme Court and held that the petitioner therein had no locustandi to challenge the impugned circular therein, as it was not a trade union as defined under Section 2(qq) of the I.D. Act.

9. It is no doubt true that the Hon'ble Supreme Court in the case of *Chairman, SBI and another vs. All Orissa State Bank Officers' Association and*



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others reported in 2002(5)SCC 569 held that the unrecognised trade union was not a superfluous entity and therefore it was entitled to meet and discuss with the management/employer about grievances of any individual member relating to their service conditions and to represent the individual member in domestic or departmental inquiry and in the proceedings before the Conciliation Officer or Labour Court or Industrial Tribunal. There, the issue was whether the management was justified in refusing to have discussions with unrecognised trade unions in the context of the rights of the unrecognised unions *vis-a-vis* recognised unions and on the provisions of the Orissa verification of membership and Recognition of Trade Unions Rules, 1994 and therefore the Hon'ble Supreme Court held that the unrecognised unions could espouse the cause of the workman.

10. In the case of *Food Corporation of India Staff Union vs Food Corporation of India and others* reported in 1995 Supp (1) SCC 678, the Hon'ble Supreme Court clearly held that a trade union, which took up the cause of the service conditions of its workman was first required to get itself registered under the provisions of the Trade Unions Act, 1926. It was



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held that, the registration of the trade union gave a stamp of due formation of the trade union and assured the mind of the employer that the trade union was an authenticated body. Therefore in my view after the insertion of Section 2(qq) by the Amendment Act 46 of 82 only a registered trade union can espouse the cause of its workmen. The Judgments relied on by the respondent's counsel were either pronounced before the amendment or on the basis of the State Rules and hence distinguishable. The Judgment of the Hon'ble Supreme Court in 2006 (11) SC 751 directly addresses the issue and therefore, following the said Judgment, I am of the view that the 2nd respondent has no locus to raise the dispute. As I have held that the 2nd respondent has no locus to espouse the cause of the workman, the Mandamus prayed for is granted.

In view of the above discussions, I find merit in the writ petition and the same is allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

15.03.2024



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dsn

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation:YesNo

To

The Assistant Labour Commissioner(Central),
Ministry of Labour and Employment,

4, Haddows Road,

Sastri Bhawan,

Chennai 600 006.

10/11



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N.MALA.J.

dsn

PRE-DELIVERY ORDER IN

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ORDER DELIVERED ON

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