

RESERVED ON : 27.01.2015
DELIVERED ON : 06.02.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06-02-2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.7332 of 2014
and M.P.Nos.1 and 2 of 2014

Pondicherry Agro Service and Industries
Corporation Limited, rep by Managing Director,
Agro House, Thattanchavadi,
Pondicherry - 605 009

... Petitioner

vs

1. Union Territory of India,
Government of Pondicherry,
Pondicherry
2. The Secretary to Government,
Agriculture and Forest,
Government of Pondicherry,
Pondicherry
3. The Secretary to Government,
Labour Department,
Government of Pondicherry,
Pondicherry
4. The Labour Commissioner,
Labour Department,
Pondicherry
5. The Labour Officer (Conciliation),
Government of Pondicherry,
Pondicherry
6. Pondicherry Agro Service & Industries
Corporation Employees & Workers
Association, rep by its President,
S. Gandhi, Door No.26, Palla Street,
1st street, Murungapakkam,
Puducherry - 605 004

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this court to issue a Writ of Certiorari to call for the records of Notification G.O.Rt.No.7/AIL/LAB/J/2014 dated 03.02.2014 on the file of the third respondent and to quash the same.

For petitioner :Mr.Abudu Kumar Rajarathinam for
Mr.S. Ashok Kumar

For respondents: Mr.A. Tamilvanan GA(Pondy)
1 to 5

For 6th respondent: Mr.M. Gnanasekar

ORDER

The above writ petition has been filed to issue a Writ of Certiorari to call for the records of Notification G.O.Rt.No.7/AIL/LAB/J/2014 dated 03.02.2014 on the file of the third respondent and to quash the same.

2. The brief case of the petitioner is as follows:

(i) According to the petitioner, the petitioner Corporation has 372 employees and 261 Full Time Casual Labourers on its own to carry out regular and permanent works in its Office, Depots and Sales outlets. Other than this, as per the time-to-time requirements of manpower for implementing certain Schemes undertaken by the Petitioner Corporation, it will engage temporary labourers (unskilled workers) at daily rated or vouchers payment basis till completion of such Schemes.

(ii) According to the petitioner, all the employees of the Petitioner Corporation are governed exclusively by the Pondicherry Agro Service and Industries Corporation Limited (Staff Service) Rules 1988 (hereinafter called as PASIC (Staff Service) Rules 1988.

(iii) Due to the withdrawal of Government Schemes from the petitioner Corporation, the overall turnover had come down, resulting in reduction of gross profits. According to the petitioner Corporation, it is in severe financial crisis and the Corporation also sought financial assistance from the Government.

(iv) At this juncture, the 6th respondent is deliberately indulging in objectionable activities, constantly criticising the policy and action of the Petitioner Corporation in an illegal and discourteous manner and interfering in every decision of the Management and acting against the smooth and congenial atmosphere of the Petitioner Corporation.

(v) On 5.8.2013, the 6th respondent had given a representation before the 5th respondent, the Labour Officer, alleging that the Petitioner Corporation has indulged in unfair labour practice and the disciplinary action taken by the Management is illegal and sought the 5th respondent to invoke the provision of the Industrial Dispute Act.

(vi) As per Sec.13-B of PASIC (Conduct) Rules 1988, the petitioner Corporation is exempted from the provisions of The Industrial Employment (Standing Orders) Act, 1946.

(vii) In these circumstances, the petitioner Company raised an issue of maintainability of the representation before the 5th respondent as a preliminary issue and filed its explanation dated 11.11.2013. However, the 5th respondent sent a failure report dated 13.12.2013 to the third respondent. Based on the failure report, the 3rd respondent had passed an impugned Notification dated 3.2.2014, referring the dispute to the fourth respondent for adjudication.

3. The brief case of the 5th respondent is as follows:

(i) According to the 5th respondent, the 6th respondent made a representation dated 5.8.2013, raising an industrial dispute against the petitioner Management over the unfair labour practice, non payment of wages for 16 months, transfer and suspension of union office bearers by an act of victimization and motivation etc.,

(ii) However, the 5th respondent has stated that conciliation proceedings were held on different dates and the Management, while denying the allegations made by the Union representatives, has stated that they had not adopted any unfair labour practice and they had not acted against the legal provisions of the Act.

(iii) Further the petitioner Corporation has stated before the 5th respondent that the Management follows the PASIC Staff Service Rules, 1988 for their employees and that the said Rules governed and defined the condition of service including pay and allowances, conduct, control and appeal etc. The Management also stated that the Management have framed Rules based on the Rules followed by Government of Puducherry.

(iv) According to the 5th respondent, at the time of conciliation, the Union alleged that the Management had not paid their wages since July 2011 to till date to 369 regular employees and 256 daily rated employees and the management transferred and suspended the union office bearers during the pendency of conciliation proceedings.

(v) Since both the parties firmly stood on their own stand, it was not possible to bring any amicable settlement and therefore the dispute ended in failure and the failure report of conciliation dated 7.1.2014 was forwarded to The Secretary to Government (Labour), Puducherry and the impugned Government Order in G.O.Rt.No.7/AIL/LAB/J/2014 was issued on 3.2.2014, referring the Industrial Dispute to Labour Court, Puducherry.

(vi) Further, the mere fact that there is a service code dealing with some of the aspects of the employer-employee relationship between the Government and its employee does not amount by necessary implication to the exclusion of the provisions of the Act to Government Departments. All that is necessary for a valid reference under section 10(1) of the Act is that the Government is of the opinion that an industrial dispute exists or is apprehended at the time of making the reference.

(vii) The petitioner Management has not filed any application seeking for exemption from the provisions of the Industrial Employment (Standing Orders) Act, 1946.

In these circumstances, the fifth respondent prays for dismissal of the writ petition.

4. Heard Mr.Abudukumar Rajarathinam, learned counsel appearing for the petitioner, Mr.A. Tamilvanan, learned Government Advocate for respondents 1 to 5 and Mr.M. Gnanasekar, learned counsel for the 6th respondent.

5. Mr.Abudukumar Rajarathinam, learned counsel appearing for the petitioner submitted that as per Appendix-II of PASIC (Staff Service) Rules, 1988, the remedy available to the employee is to file an appeal against a punishment order within a period of three months. Therefore, according to the learned counsel, the industrial dispute raised by the sixth respondent Union is not maintainable. In support of his contention, the learned counsel relied on a decision reported in 1984 (1) SCC 147 (U.P State Electricity Board and another vs Labour Court (I) U.P Kanpur and another), wherein the Apex Court has held as follows:

The only point argued before this Court by Mr S. Markandeya, learned counsel for the appellants and Mr Hari Swarup, learned Senior Counsel appearing for the second respondent was as to the binding nature of the regulations framed by the Electricity Board under Section 79-C of the Electricity (Supply) Act, 1948 fixing age of retirement as 58 years in regard to workmen like the second respondent who were originally employees of the

Kanpur Electricity Supply Corporation Limited. By Order dated October 3, 1978 of the General Manager of the U.P. State Electricity Board in the department of Kanpur Electricity Supply Administration eleven employees including the second respondent were retired on attaining the age of superannuation with effect from March 31, 1979 on the basis that according to the Board's records they were completing 58 years on that date. There is no dispute that the Board has framed regulations under Section 79-C of the Electricity (Supply) Act, 1948 fixing the age of retirement of employees like the second respondent at 58 years and that the regulations have been notified under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946. Mr Hari Swarup admitted before us that the regulations have statutory force. The Member Secretary of the U.P. State Electricity Board had informed the Government employees whose services had been lent to the Board on deputation that their salary, allowances and other conditions of service shall be governed by regulations made by the Board under Section 79-C of the Electricity (Supply) Act, 1948 from time to time. It is not disputed that the second respondent had thereafter exercised his option to serve in the U.P. State Electricity Board. The second respondent is, therefore, bound by the regulation by which the age of retirement has been fixed in regard to employees like him at 58 years. A similar question arose before a Division Bench of the Allahabad High Court in *Bhai Lal v. Superintending Engineer, Allahabad*¹ where it has been held as follows:

"... Once the regulations framed under Section 79-C of the Electricity (Supply) Act, 1948 have been notified by the State Government under Section 13-B of the Industrial Employment (Standing Orders) Act, the standing orders framed by the erstwhile licensee to the extent they concerned the subject dealt with by the regulations became ineffective and inoperative and that in respect of such matter, the right of the parties would be governed only by the regulation so notified. In the circumstances even if it be a fact that the standing orders, framed by the erstwhile licensee

contained a clause specifying an age higher than 58 years, as age of superannuation for its employee, the employee would none the less, as provided in the notified regulation, be superannuated at the age of 58 years."

6. Countering the submissions made by the learned counsel for the petitioner, Mr.A. Tamilvanan, learned counsel appearing for the respondents 1 to 5 submitted that the dispute referred to the fourth respondent was with regard to payment of salary to the workmen and according to the workers, the Management had not paid the salary for 16 months, therefore, raised an industrial dispute.

7. Further, the learned counsel submitted that as per the provisions of the Industrial Dispute Act, the Petitioner Management and the sixth respondent shall come within its purview. The learned counsel submitted that the reference made by the third respondent on 3.2.2014 to the fourth respondent is just and proper and in support of his contention, the learned counsel relied on the decision reported in 2008 (4) CTC 819 (Hindustan Petroleum Corporation Ltd and another vs The Presiding Officer and others), wherein, this Court has held as follows:

"17. In the affidavit filed in support of the writ petition, in paragraph 7, a contention was raised that the impleadment of the workmen by the CGIT was erroneous and the HPCL reserved its right to challenge the said order at an appropriate stage meaning, after the Award was passed. In view of the said averment, the learned Advocate General argued that the CGIT has no power to implead any party and the dispute is only between the Trade Union and the Management and the individual workers have no right of say in collective industrial dispute. But, however, it is found from the prayer made in the present writ petition no such attack is made against the order dated 14.7.2004 made in I.A.No.69 of 2004 and the certified copy of the I.A. Order has also not been filed. Hence, they cannot be permitted to raise such an issue without proper pleadings. Even otherwise, under Section 18(3) of the I.D.Act, when an Award is binding on a party, the Tribunal has power to implead any party, who is proper and necessary to the dispute. The power of the Tribunal to implead a new party has been approved by the Supreme Court vide

its judgment in Hochtief Gammon v Industrial Tribunal, Bhubaneshwar, Orissa and Others (1964(2) LLJ 460).

18. In the present case, apprehending that the Union may not pursue the dispute, the workmen were allowed to come on record in the earlier writ petition filed before this Court. Further, the Union leader himself was chargesheeted by the HPCL (as found in Ex.W.98) for taking up the issue by the workmen herein. During the trial before CGIT, the trade Union had also remained ex-parte as found in paragraph 3 of the impugned Award.

8. The sixth respondent, in support of his contention relied on the following judgments:

(i) 1991 (1) LLJ 260 (Tamil Nadu Water Supply and Drainage Board and another vs M.D. Vijayakumar and others), wherein, a Division Bench of this Court held that

Industrial Employment (Standing Orders) Act, 1946 is a special law viz., Regulations framed under Sec.73 of the Tamil Nadu Water Supply and Drainage Board Act, 1970 and the Standing Orders Act will prevail over the Regulations framed by the Board will not be applicable to the workmen governed by the Industrial Employment (Standing Orders) Act, 1946 and the disciplinary actionis taken by the Board against its workmen based on the Regulations have to be struck down."

(ii) 1981 (1) SCC 315 (Life Insurance Corporation of India vs D.J. Bahadur and Others), wherein the Apexd Court has held that

23. The ID Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of parties and the enforcement of awards and settlements. When a reference is made of a dispute under Section 10 or Section 10-A, the legal process springs into action. Under Section 16 an award is made after a regular hearing if a conciliation under Section 12 does not ripen into a settlement and a failure report is received. The award

is published under Section 17(1) and acquires finality by virtue of Section 17(2) unless under Section 17-A(1) the appropriate Government declares that the award shall not be enforceable".

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the respective counsel for the parties, it could be seen that the sixth respondent raised an industrial dispute before the fifth respondent in respect of non-payment of salary for more than 15 months and with regard to the suspension and transfer of the Union office bearers by an act of victimisation and motivation.

10. According to the sixth respondent, the Management adopted unfair labour practice against the Union workmen. Though the petitioner/Management contended that the provisions of Industrial Dispute Act does not apply to the sixth respondent and that only the PASIC Service Rules shall apply, on a perusal of the dispute raised before the fifth respondent, the Labour Officer, it is clear that the dispute is with regard to non-payment of salary and the unfair labour practice adopted by the Management.

11. As per Sec.2(j) of the Industrial Disputes Act, 1947, any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen is an "Industry". The mere fact that there is a Service Code dealing with some of the aspects of the employer-employee relationship between the Government and its employee does not amount by necessary implication to the exclusion of the provisions of the Act.

12. As per Sec.2(k) of the Industrial Disputes Act, 1947, an "Industrial Dispute" is defined as "any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. All that is necessary for a valid reference under Section 10(1) of the Act is that the Government is of the opinion that an industrial dispute exists or is apprehended at the time of making the reference.

13. As per Appendix-II of PASIC (Staff Service) Rules, 1988, the remedy available to the employee is to file an appeal against a punishment order. In the case on hand, non payment of salary and unfair Labour Practice shall not come within the purview of Appendix II of PASIC (Staff Service) Rules, 1988.

14. The judgment relied on by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case for the reason that the issue involved in that case was with regard to the age of retirement, whereas, the present dispute is with regard to non-payment of salary and unfair labour practice.

The judgment relied on by the learned counsel for the respondents squarely applies to the facts and circumstances of the present case.

15. The rights of the sixth respondent workers can be protected only under Industrial Dispute Act. When the conciliation proceedings ended in failure, the fifth respondent had rightly filed the failure report and the third respondent had correctly referred the dispute to the fourth respondent for adjudication.

16. In these circumstances, I do not find any ground to interfere with the order of reference dated 3.2.2014 made by the third respondent.

17. In the result, the writ petition is dismissed. No costs. Consequently, connected Mps are closed.

18. However, taking note of the fact that already Industrial Dispute is pending before the Labour Court in I.D.No.6 of 2014, I feel it would be appropriate to direct the Labour Court to dispose of I.D.No.6 of 2014, on merits and in accordance with law, as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

WEB COPY

To

1. Union Territory of India,
Government of Pondicherry,
Pondicherry
 2. The Secretary to Government,
Agriculture and Forest,
Government of Pondicherry,
Pondicherry
 3. The Secretary to Government,
Labour Department,
Government of Pondicherry,
Pondicherry
 4. The Labour Commissioner,
Labour Department,
Pondicherry
 5. The Labour Officer (Conciliation),
Government of Pondicherry,
Pondicherry
 6. Mr.S. Gandhi,
The President,
Pondicherry Agro Service & Industries
Corporation Employees & Workers
Association, Door No.26, Palla Street,
1st street, Murungapakkam,
Puducherry - 605 004
- + 1 cc to Mr.S. Ashokumar, Advocate Sr.6452

W.P.No.7332 of 2014

KM(CO)
Eu 13.02.15

WEB COPY