

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.869 of 2015
and
M.P.No.1 of 2015

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

Vs.

- 1.Union of Territory of India,
Government of Puducherry,
Puducherry.
- 2.The Secretary to Government,
Agriculture and Forest,
Government of Puducherry,
Puducherry.
- 3.The Secretary to Government,
Labour Department,
Government of Puducherry,
Puducherry.
- 4.The Labour Commissioner,
Labour Department,
Puducherry.
- 5.The Labour Officer (Conciliation),
Government of Puducherry,
Puducherry.
- 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

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 06.02.2015 made in W.P.No.7332 of 2014.

WP.NO.7332 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ Certiorari to Call for the records of Notification G.O.Rt. No.7/AIL/ LAB/ J/2014 dated 3.2.2014 on the file of the 3rd respondent and to quash the same

For Appellant : Mr.Karunakaran
for M/s.S.Ashok Kumar

For Respondents: Mr.M.Gnanasekar for R-6 (Caveator)

JUDGMENT

(Judgment of the court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 06.02.2015 passed in W.P.No.7332 of 2014.

2 The Pondicherry Agro Service and Industries Corporation Limited / the appellant as well as the writ petitioner, being the employer, has filed the writ petition, seeking writ of certiorari to call for records of the notification in G.O.Rt.No.7/AIL/LAB/J/2014, dated 3rd February, 2014 of the third respondent and to quash the same.

3 Admittedly, the sixth respondent is an association of employees and workers, working with the appellant Corporation. On the basis of the representation dated 5th August, 2013, a conciliation was initiated between the petitioner association and the appellant employer, which resulted into failure. Accordingly, a conciliation report dated 7th January, 2014, was submitted. On consideration, the Government of Puducherry issued a notification under the provisions of the Industrial Disputes Act, 1947 (for short "ID Act"), referring the dispute, arising between the management of the appellant and its union PASIC Uzhiyar Matrum Thozhilalar Sangam, for adjudication to the Labour Court. Being aggrieved, the management Corporation filed the instant writ petition.

4 The challenge to the said notification was that all employees of the appellant corporation are governed exclusively by Pondicherry Agro Service and Industries Corporation Limited (Staff service) Rules, 1988 (herein-after referred to as "Service Rules"). Thus, the service conditions of the employees is exempt from the applicability of the provisions of the Industrial Disputes Act. Reliance was placed on Section 13-B of the Industrial Employment (Standing Orders) Act, 1946. It was also the case of the petitioner /

appellant that on account of withdrawal of the Government schemes, business of the appellant Corporation had come down, resulting into reduction of gross profits. The corporation is in severe financial crunch. The members of the sixth respondent Corporation were indulging in objectionable activities and constantly criticising the policy. Thus, the impugned notification is without authority of law.

5 On the other hand, it was presented by the sixth respondent that the sixth respondent had made a representation dated 5th August, 2013, raising an industrial dispute over unfair labour practice and non-payment of wages for 16 months, transfer and suspension of union office bearers as an act of victimization and motivation. The dispute was referred to conciliation, which led to failure. The Government of Puducherry, having formed an opinion, referred the dispute to the Labour Court, as aforesaid, for adjudication of the dispute between the management and the employee. It was also contended that even if there was service rules in existence, governing the condition of service in respect of pay and allowances, conduct, control and appeal, the jurisdiction of the labour court under the provisions of the Industrial Disputes Act is not ousted. The appellant / management has not filed any application, seeking exemption from the provisions of the Industrial Employment (Standing Orders) Act, 1946.

6 The learned Single Judge, considering all aspects of the matter, held as under :

"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."

7 It is well settled that the conciliation proceedings is prescribed for the purpose of amicable settlement. In the event of its failure, the appropriate Government is competent to form its opinion and refer the matter for adjudication under Section 10 of the Industrial Disputes Act, 1947.

8 Mr. Karunakaran, learned counsel appearing for the appellant / management would submit that the provisions of Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 has been completely ignored when the appellant corporation is exempted from the application of the provisions of Industrial Employment (Standing Orders) Act, 1946. The appellant management is facing serious financial crunch and as such, there was some delay in making payment. The employees, if aggrieved by the alleged non payment of salary, should have taken recourse to the provisions of the service rules. The allegation of unfair labour practice is baseless. The appellant management has reconstituted the Committee for looking into the grievances of the employees and as such, referring the dispute to the labour court is not just and proper.

9 Mr. M. Gnanasekar, the learned counsel appearing for the sixth respondent has reiterated the submissions as advanced before the writ court, in support of the impugned order.

10 The question of applicability of the provisions of the ID Act was raised before the learned Single Judge. The learned Single Judge, considering the definition of "industry", as prescribed under Section 2(j) of the ID Act and also the "industrial dispute" as defined under Section 2(k) of the ID Act, has come to the conclusion that the dispute in respect of non payment of salary and unfair labour practice allegedly adopted by the management does not come within the ambit of the service rules.

11 We have also examined the service rules. The Service rules deals with the recruitment, promotion, discipline, control and appeal, pay and allowances, leave, PF, retiral benefits. There is

provision of appeal against the suspension, imposition of punishment, however, there is no provision in respect of the alleged unfair labour practice and also non payment of salary by the employer. In that event of the matter, the industrial dispute as raised by the sixth respondent, was rightly referred to the labour court by the Government of Puducherry. Nonetheless, on the request of the appellant, we reserve liberty to the appellant management to raise all issues including the jurisdiction of the labour court in respect of the industrial dispute raised by the sixth respondent for adjudication, if so advised under provisions of law.

12 We do not find any merit in this appeal. Accordingly, the appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.Union of Territory of India,
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Puducherry.

+1 cc to Mr.M.Gunasekar Advocate sr.36128
+1 cc to Mr.S.AshokKumar Advocate sr.35926

W.A.No.869 of 2015

aa28/07/2015