

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.06.2015

Coram

The Honourable Mr.JUSTICE T.RAJA

W.P.No.16349 of 2015

Avtec Employees Progressive
Federation

Rep.by its General Secretary,
D.D.Raju

.. Petitioner

vs.

1.The Government of Tamil Nadu,
rep.by its Secretary,
Department of Labour and Employment,
Fort St.George,
Chennai-600 009

2.The Labour Officer,
Sevatha Gounder Street,
Near Columbo Store,
Krishnagiri

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the second respondent to forward the Conciliation Failure Report bearing ref.No.A/37/2015 dated 08.05.2015 to the first respondent Government and consequently direct the 1st respondent Government to pass orders with regard to the reference of the dispute under Section 10(1) of the Industrial Disputes Act, within such time as stipulated by this Court.

For Petitioner : Mr.V.Prakash,Sr.Counsel
for Mr.K.Sudalaikannu

For respondents : Mr.A.Kumar,Spl.G.P.
for R1 and R2

ORDER

This writ petition is filed by Avtec Employees' Progressive Federation, seeking issuance of a writ of mandamus directing the second respondent-the Labour Officer to forward the Conciliation Failure Report bearing Ref.No.A/37/2015, dated 08.05.2015, to the first respondent Government and consequently direct the 1st respondent Government to pass orders with regard to the reference of the dispute under Section 10(1) of the Industrial Disputes Act, within a stipulated time.

2. Learned Senior counsel appearing for the petitioner would submit that there are 141 workers employed in the factory of Avtech

Limited in Poonapalli Village, Hosur. The petitioner is the only union in the said factory. Being so, the petitioner union entered into a settlement with the Management, on 01.07.2011 and the same also got expired on 30.06.2014. The Bilateral negotiations between the Management and the petitioner Union also did not result in any fresh settlement and therefore, the petitioner Union raised an industrial dispute with the second respondent, on 22.01.2015. However, inspite of the efforts taken by the Conciliation Officer/the second respondent and the petitioner, it is stated that due to the unreasonable stand of the management, the conciliation ended in failure and consequently, the second respondent recorded the Conciliation Failure Report on 8.5.2015. However, he has wrongly sent the failure report to the Deputy Commissioner of Labour, as it should have been sent to the first respondent, as provided under Section 12(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' in short).

3. Heard Mr.A.Kumar, the learned Special Government Pleader, who takes notice on behalf of the respondents.

4. Admittedly, in the present case, there was a settlement entered into between the petitioner and the Management, on 1.07.2011, which also stood expired on 30.06.2014. Thereafter, due to various reasons, the conciliation initiated between the parties ended in failure. The second respondent also has recorded the Conciliation Failure Report on 8.5.2015. Therefore, as provided under Sections 12 (4) and (5) of the Act, the Conciliation Failure Report should have been sent to the appropriate Government, in the present case, the first respondent herein. Sections 12(4) and (5) of the Act are usefully extracted hereunder.

"Section 12. Duties of Conciliation Officers

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- (1)
- (2)
- (3)

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or

National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor."

5. A mere reading of the above provision shows that when the Conciliation Officer has recorded the Conciliation Failure Report, consequently, he is bound to send the full Report to the appropriate Government.

6. In the present case, it appears that the second respondent has recorded the Conciliation Failure Report, on 8.5.2015, and consequently, he is bound to send the Conciliation Failure Report to the first respondent/The Secretary, Government of Tamil Nadu, Department of Labour and Employment. But, it appears that the second respondent has not done so.

7. In view of the above facts and circumstances, this Court directs the second respondent to send the Conciliation Failure Report, recorded on 8.5.2015, to the first respondent, viz., the Secretary to the Government of Tamil Nadu, Department of Labour and Employment, as contemplated under Section 12(4) of the Act, within a period of 10 days from the date of receipt of a copy of this order. It is needless to mention that on receipt of the said report, it is for the first respondent to pass appropriate orders, as expeditiously as possible.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

Msk

To

1.The Secretary,
Department of Labour and Employment,
Fort St.George,
Chennai-600 009

2.The Labour Officer,
Sevatha Gounder Street,
Near Columbo Store,
Krishnagiri.

W.P.No.16349 of 2015

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