

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.26553 of 2015
and
MP.Nos.1 and 2 of 2015

Railway Employees Cooperative
Staff Union, rep.by its Secretary
R.C.Cyril Thiyyagaraj

... Petitioner

Vs

1. The State of Tamil Nadu, rep.by
Secretary, Department of Labour
and Employment, Fort.St.George,
Chennai-9.
2. The Commissioner of Labour,
Labour and Employment Department,
DMS Compound, Chennai-6.
3. The Labour Officer-I, III Floor,
Kuralagam, Chennai-108.
4. The Chief Executive, Railway Employees
Cooperative Credit Society Limited,
Ashok Vihar Complex, Old Zoo Road,
Chennai-3.

... Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorarified Mandamus to
call for the records and quash the memorandum C3/46968/2014
dated 16.4.2015 issued by the second respondent - Labour
Commissioner read with letter dated 24.4.2015 issued by the
third respondent - Labour Officer-I and consequently direct the
third respondent to submit a failure report to the first
respondent - State Government for the purpose of referring the
dispute No.B/778/14 read with R.C.No.99/15 for adjudication.

For Petitioner : Ms.D.Nagasaila

For Respondents 1 to 3 : Mr.S.Diwakar,
Additional Government Pleader

For Respondent-4 : Mr.R.Muthukumarasamy, SC for
Mr.A.Jenasenan

ORDER

The petitioner is the Railway Employees Cooperative Staff Union, which is a registered trade union and the challenge in this writ petition has been made to two orders, one passed by the Commissioner of Labour dated 16.4.2015 and the other being the consequential order dated 24.4.2015, passed by the Labour Officer. The petitioner also seeks a further direction to the third respondent, who is the Labour Officer, to submit a failure report to the first respondent - State Government for the purpose of referring the dispute.

2. Though elaborate submissions were made by the learned counsel appearing for the parties, this Court is of the view that the dispute in the writ petition lies in a narrow compass.

3. Essentially by virtue of the impugned orders, the disputes, which were raised by the petitioner union before the Labour Officer, have been kept in abeyance and it was directed by the Commissioner to the Labour Officer not to entertain any industrial disputes till the disposal of the cases before this Court as well as the Honourable Supreme Court. The case pending before the Honourable Supreme Court is S.L.P.No.35834 of 2013, which is directed against the judgment in W.A.No.314 of 2010 on the file of this Court dated 13.11.2013. This writ appeal filed by the fourth respondent herein was allowed and it was held among other things that the appropriate Government in so far as the petitioner society is concerned, is the State Government.

4. It is admitted by the learned counsel on either side that as on date, there is no interim order granting any stay of the judgment of the Honourable Division Bench dated 13.11.2013 and the said judgment holds the field as on date. The other writ petitions, which have been referred to in the impugned order dated 24.4.2015 being 37 in number, have been filed by

individual workmen challenging the orders of transfer. It is stated that those writ petitions have been finally argued and orders have been reserved and the matters are pending at this stage.

5. The contention raised by the petitioner union is that the Commissioner of Labour and the Labour Officer cannot keep the disputes in cold storage for the reasons assigned in the impugned orders.

6. In fact, the impugned order dated 16.4.2015 is a communication from the Commissioner of Labour to the Labour Officer and it is an internal communication, which the petitioner was able to secure under the Right to Information Act. A short prelude will be required before this Court goes into the rival contentions of both parties.

7. The petitioner union raised a dispute before the Labour Court (Central) on 29.10.2012 raising a charter of demands. The matter was set down for conciliation and the Conciliation Officer submitted a failure report on 29.4.2014. Though there were several demands, the Central Government, by order dated 3.7.2014, thought fit to refer only one of the demands pertaining to restoration of medical treatment facility in Railway Hospital arising out of change of by-laws of the society and to decide as to whether it is legally justified.

8. Thereafter, the petitioner union raised a dispute under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) before the Assistant Commissioner of Labour i.e. the State Authority raising a charter of demands, which also included the demands, which were referred by the Central Government for adjudication to the Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred to as the CGIT). In the dispute raised before the State Authority, the Labour Officer issued notices to the parties and the management also filed their counter on 9.9.2014. Apart from the factual allegations, it was contended by the management that already, the Central Government has referred the matter for adjudication and it is seized of by the CGIT and that therefore, the dispute raised before the State Labour Officer is to be rejected as not maintainable. This submission found favour with the Labour Officer, who, by order dated 15.9.2014, closed the reference.

9. Thereafter, the petitioner union filed a memo before the CGIT on 16.9.2014 by placing reliance upon the decision of the Honourable Supreme Court in Bharat Cooperative Bank (Mumbai) Ltd. Vs. Cooperative Bank Employees Union [reported in 2007 (4) SCC 685] and the decision of the Honourable Division Bench of this Court in W.A.No.314 of 2010 dated 13.11.2013 and contended that the CGIT may close the dispute in the light of the above submission. In other words, it was contended that in terms of the decisions referred to above, the appropriate Government in respect of Multi-State Cooperative Society being the State Government, the petitioner union seeks to prosecute the matter before the State Authority.

10. The CGIT heard the petitioner union as well as the management and by order dated 17.9.2014, closed the dispute based on the memo filed by the petitioner union. Thereafter, the petitioner submitted a representation dated 15.10.2014 to the Commissioner of Labour requesting him to reopen the industrial dispute, which was closed by the Labour Officer by order dated 15.9.2014. Apart from that, another representation was given on 3.11.2014 to the Labour Officer, in which, the Labour Officer issued notice to the management. During the relevant point of time, another dispute was raised by the petitioner on 14.11.2014 raising as many as 19 demands. Thereafter, one more dispute was raised on 30.12.2014 stating that transfers are made illegally and that it is used as a weapon to victimize the employees. In that, the management filed their written statement on 21.1.2015, to which, the petitioner filed a rejoinder on 27.1.2015.

11. Thereafter, another dispute was raised by the petitioner on 27.2.2015 raising several demands, for which, the Labour Officer issued a notice dated 10.3.2015 to the management for the parties to appear on 17.3.2015. This conciliation was adjourned to 23.4.2015. At that stage, the impugned order dated 24.4.2015 was passed by the Labour Officer placing reliance on the order passed by the Commissioner of Labour dated 16.4.2015.

12. Ms.D.Nagasaila, the learned counsel for the petitioner, after referring to the decision in 2007 (4) SCC 685 (cited supra) and the decision in W.A.No. 314 of 2010 dated 13.11.2013, submitted that the "appropriate Government" being the State Government, the petitioner is entitled to pursue the dispute before the State Authority and that therefore, the directive issued by the Commissioner of Labour and the consequential proceedings of the Labour Officer are illegal.

13. Further, by referring to the duties of the Conciliation Officer as defined in Section 12 of the Act, the learned counsel for the petitioner submitted that the duty of the officer is to promote conciliation and what the officer has done is to put the matter in cold storage and that in terms of Sub-Section (6) of Section 12, the reference should have been concluded within a period of fourteen days. It is further submitted that the basis on which, the impugned orders were passed, is totally erroneous, since the Labour Officer has not terminated the conciliation proceedings in accordance with Section 20(2) of the Act and none of the parameters as contemplated under Sub-Section (2) of Section 20 of the Act are attracted in the instant case. According to the learned counsel, it is not a closure of the dispute in accordance with law and therefore, the petitioner is entitled to request the Labour Officer to commence conciliation.

14. Referring to the decision of the Supreme Court in Andheri Marol Kurla Bus Service Vs. State of Bombay [reported in 1959 II LLJ 236], it is further submitted by the learned counsel for the petitioner that the termination of conciliation would occur only after the failure report has been received by the Government. To impress upon this Court as regards the duties of the Conciliation Officer, reliance was placed on the decision of the Bombay High Court in All India Bombay Tyres Vs. C.D.Dingare and Others [reported in (1993) II LLJ 346 (Bombay)].

15. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the fourth respondent submits that the impugned proceedings clearly state that the Labour Officer has no authority to reopen the industrial dispute and that therefore, the Commissioner of Labour has sought for details and issued the direction to the Labour Officer to keep the matter in abeyance and not to entertain any other dispute, since the matter is pending before the Honourable Supreme Court and the orders of transfer, which were challenged in the batch of cases, are also pending consideration.

16. It is further submitted by the learned Senior Counsel that the issue involved in the decision in W.A.No.314 of 2010 dated 13.11.2013 pertains to the question as to whether the management is an "establishment" under the provisions of the Certified Standing Orders, though incidentally the Honourable Division Bench has considered the question as to which would be the appropriate Government in terms of the definition under

Section 2(a) of the Act. Further, by referring to the order passed by the Labour Officer dated 15.9.2014, it is submitted that the reference having been closed, the question of reopening the reference does not arise, as the Labour Officer has no jurisdiction.

17. The learned Additional Government Pleader for respondents 1 to 3 submits that in the light of the legal issue pending before the Honourable Supreme Court and the employees have also challenged their orders of transfer by filing a batch of cases, which are pending consideration, the Commissioner of Labour rightly directed the Labour Officer not to entertain any other industrial dispute till the cases are disposed of, as the issue is subjudiced and that therefore, there is no error in the impugned orders.

18. After hearing the learned counsel for the parties, this Court is of the view that the contentions raised by the respondents deserve to be out-rightly rejected. The reasons for such conclusion are as follows : The impugned orders are contrary to the very objective, for which, the Act was enacted, as it was an Act to make provision for investigation and settlement of industrial disputes and for other purposes. The direction issued by the Commissioner of Labour works against the provisions of the Act and therefore, it has to be held to be bad in law on that ground. Furthermore, the contention of the respondents that the directive issued by the Commissioner of Labour undoubtedly binds the Labour Officer is also on misconception of facts apart from legal misconception.

19. The issue, which is now pending before the Honourable Supreme Court, arises out of the decision of the Honourable Division Bench of this Court in W.A.No.314 of 2010 dated 13.11.2013. The Honourable Division Bench of this Court decided the question as to which would be the "appropriate Government" in so far as the fourth respondent society is concerned. After taking note of the factual position and legal submissions, the Honourable Division Bench concluded that the State Government would be the "appropriate Government" in so far as the fourth respondent society is concerned. At this juncture, it will be worthwhile to refer to the operative portion of the judgment, which reads as follows :

"The short facts of the above said case would show that the trustees of a public charitable trust known as Sir Dorabji Tata

Trust established the hospital in Mumbai viz., Tata Memorial Hospital for the treatment and cure of cancer and allied Diseases. The Hospital was being maintained out of the funds of the Trust and also from the grant made available from time to time by the Central Government. The trustees of the said Trust subsequently decided to dedicate the Hospital to the nation with all its assets and thus they requested the Government of India to take over its control and management. Accordingly, an agreement was entered into between the trustees and the Central Government wherein under clause (2), the management of the Hospital was to rest in the hands of Governing Board. Subsequently, another agreement was entered into whereby the Tata Memorial Hospital and Indian Cancer Research Centre were amalgamated into an institution thereafter known as Tata Memorial Centre. Therefore, the question that arose for consideration before the Apex Court based on those facts was as to whether the Central Government or the State Government is the appropriate Government for Tata Memorial Centre. With these factual background, the Apex Court found that only the State Government is the appropriate Government. Thus, considering the above decisions of the Apex Court reported in 2007 (4) SCC 685 (Bharat Co-operative Bank (Mumbai) Ltd., Vs. Co-operative Bank Employees Union) and 2010 (8) SCC 480 (Tata Memorial Hospital Workers Union Vs. Tata Memorial Centre) we are of the view that the learned Judge has rightly come to the conclusion that the appropriate Government is only the State Government in the appellant's case as well."

20. It is not in dispute that the said judgment in the writ appeal holds the field as on date and binds respondents 1 to 3 - Authorities as well as the management as there is no stay of the judgment. Therefore, as on date, the "appropriate Government" for the fourth respondent society is the State Government. Having held so, now it has to be seen as to whether the Commissioner of Labour could have directed the Labour Officer not to entertain any dispute. As already observed, this

direction is contrary to the provisions of the Act. The direction appears to be on the ground that the Labour Officer has got no jurisdiction to reopen the proceedings.

21. Now, we will have to see as to under what circumstances, the dispute was closed by the Labour Officer by order dated 15.9.2014. When the dispute was raised by the union, the management filed their counter statement on 9.9.2014 specifically raising the point regarding the maintainability of the dispute on the ground that already, the CGIT was seized of the matter. This contention was accepted by the Labour Officer and therefore, the dispute was closed. The reason assigned by the Labour Officer in the order dated 15.9.2014 is quoted for better appreciation, which is as follows :

"எனவே? மேற்கண்ட விவரங்களின் அடிப்படையில் இத்தாவாவில் மத்திய அரசுதான் உரிய அரசாங்கம் (appropriate Government) என்பதால் இத்தாவாமிது மேல்நடவடிக்கை தொடர இயலாத நிலை உள்ளதால்? கோப்பு, எண் ஆ/534/14 மீதான மேல்நடவடிக்கை கைவிடப்படுகிறது என இதன்மூலம் தெரிவிக்கப்படுகிறது,"

22. It has to be noted that the Labour Officer closed the dispute only on the ground that the State Government is not the "appropriate Government" and not under any of the circumstances stated under Section 20(2) of the Act. Section 20 of the Act deals with commencement and conclusion of the proceedings and Sub-Section (2) would be relevant in the instant case, which reads as follows :

"20. (1)....

(2) A conciliation proceeding shall be deemed to have concluded- (a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(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

(c) when a reference is made to a Court, Labour Court, Tribunal or National Tribunal under Section 10 during the pendency of conciliation proceedings."

23. In terms of the above provision, the conciliation proceedings shall be deemed to have been concluded only under the above three contingencies. Admittedly, the reasoning given by the Conciliation Officer in the order dated 15.9.2014 does not fall within any one of the above Clauses. Therefore, the order dated 15.9.2014 is not a conclusion of the proceedings in accordance with Section 20(2) of the Act.

24. Having held so, it has to be seen as to whether there is any other impediment. The other impediment pointed out is the dispute pending before the CGIT. This dispute also came to be closed by the order dated 17.9.2014, which was passed after hearing the management and it is evident from the order of the CGIT itself. Thus, the second impediment also goes.

25. Once it is clear that the reference has not been closed in accordance with the statutory provisions, it will be a misnomer to state that it is a case of reopening. In fact, it should be a continuation of the proceedings from the stage prior to 15.9.2014. Therefore, even if the expression used in the representations of the petitioner union to the Commissioner of Labour and the Labour Officer states 'reopen', it is in fact a request for commencement of the proceedings to be decided on merits and upon failure, the report has to be submitted to the Government. That apart, the petitioner union also raised subsequent disputes dated 14.11.2014 and 30.12.2014, for which, a written statement has been filed by the management on 21.1.2015 and a rejoinder was filed by the petitioner on 27.1.2015. Subsequently, another dispute was raised on 27.2.2015.

26. In fact, the Labour Officer, in my opinion, rightly understood the scope of the proceedings and proceeded to issue notice and fixed the date of conciliation as 17.3.2015 and 23.4.2015. But for the directive issued by the Commissioner of Labour, this Court is of the opinion that the Labour Officer would have proceeded independently in the matter and the interdict issued by the Commissioner of Labour dated 16.4.2015, as observed earlier, is as a result of misconception both on the legal as well as the factual positions. In such circumstances, the Commissioner of Labour ought not to have put fetters on the exercise of jurisdiction by the Labour Officer, who has a statutory duty, which she is bound to exercise. Furthermore, as pointed out by the Honourable Supreme Court in 1959 II LLJ 236

(cited supra), the conciliation would terminate only after the failure report is received by the appropriate Government, which has not occurred in the instant case and the attempt of the Commissioner of Labour is to thwart the entire proceedings and prevent the Labour Officer from exercising the statutory duties, which she is bound to exercise. In the light of the above discussion, it is held that the impugned proceedings do not stand to scrutiny of law.

27. Accordingly, the writ petition is allowed and the impugned orders are quashed. The Labour Officer is directed to commence the conciliation proceedings on all the issues raised by the petitioner union as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. In the event of no consensus being arrived at during the conciliation, the Labour Officer is directed to submit a failure report within a period of four weeks from the date of last conciliation. It is made clear that this Court has not adjudicated the merits of the demands raised by the petitioner union nor the defenses raised by the management on the merits of those demands. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Secretary to Government of Tamil Nadu,
Department of Labour and Employment,
Fort.St.George,
Chennai-9.
2. The Commissioner of Labour,
Labour and Employment Department,
DMS Compound, Chennai-6.

3. The Labour Officer-I, III Floor,
Kuralagam, Chennai-108.
4. The Chief Executive, Railway Employees
Cooperative Credit Society Limited,
Ashok Vihar Complex, Old Zoo Road,
Chennai-3.

+1cc to Mr.A.Jenasenan, Advocate, S.R.No.69068
+1cc to Ms.D.Nagasaila, Advocate, S.R.No.67311
+1cc to the Government Pleader, S.R.No.68292

WP.No.26553 of 2015 &
MP.Nos.1 and 2 of 2015

SVI (CO)
CA(05/01/2016)



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