

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07..01..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

W.A.No.190 of 2001 & W.P. No.11870 of 2001

W.A.No.190 of 2001

Nuclear Power Corporation,
rep. by its Station Director,
Madras Atomic Power Station,
Kalpakkam, Kanchipuram District. .. Appellant/1st Respondent

Vs.

1.Tamil Nadu Atomic Power Employees Union,
rep. by its General Secretary ,
Kalpakkam, Kanchipuram District.

2.The Assistant Labour Commissioner (C)-II,
26, Haddows Road,
Chennai-6. .. Respondents/Petitioner

W.P. No.11870 of 2001

Tamil Nadu Atomic Power
Employees Union,
rep. By its General Secretary ,
Kalpakkam, Kanchipuram District. ..Petitioner /2nd Respondent

Versus

1.Nuclear Power Corporation,
rep. by its Station Director,
Madras Atomic Power Station,
Kalpakkam, Kanchipuram District.

2.The Assistant Labour Commissioner (C)-II,
26, Haddows Road,
Chennai-6. ..Respondents

Appeal in W.A.No.190 of 2001 filed under Clause 15 of Letters Patent Act against the order dated 22.12.2000 made in W.P.No.13412 of 2000 by the learned single Judge.

For appellant in W.A.No.190/2001 & for 1st Respondent in W.P.No.11870/2001 :: Mr.N.Jothi

For 1st respondent in W.A.No.190/2001 & for Petitioner in W.P.No.11870/2001 :: Mr.Ajay Kh

COMMON JUDGMENT

(Judgment of Court was made by M.M.Sundresh

First respondent in W.A.No.190 of 2001 and .11870 of 2001 is the recognised Union r of the appellant. A notice under Secti Disputes Act was issued by the appellar e round the clock working in three shifts.

For appellant in W.A.No.190/2001 & for 1st Respondent in W.P.No.11870/2001 :: Mr.N.Jothi

COMMON JUDGMENT

The first respondent in W.A.No.190 of 2001 and the petitioner in W.P.No.11870 of 2001 is the recognised Union representing the workmen of the appellant. A notice under Section 9-A of the Industrial Disputes Act was issued by the appellant proposing to change the round the clock working in three shifts. An objection was raised by the first respondent-Union to the proposed change, followed by a strike notice. As a copy of the said notice was marked to the Conciliation Officer, he initiated conciliation proceedings by calling both the parties. Conciliation ended in failure. Consequently, by the order impugned, the appellant has refused to refer the dispute for adjudication. Challenging the said order with a consequential prayer to refer the matter for adjudication, the first respondent -Union has filed W.P. No.13412 of 2000 before this Court. The learned single Judge, after considering the entire issues raised by the parties, by an elaborate order, allowed the writ petition. Not satisfied with the decision of the learned single Judge, the present writ appeal in W.A.No.190 of 2001 has been filed.

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proposing to change the shift pattern until the industrial dispute on the said subject is resolved either by settlement or adjudication in accordance with law.

3. As both the cases are interconnected, they have been taken up together and common order is passed. For the sake of brevity, W.A.No.190 of 2001 is taken up as a lead case and the parties arrayed thereunder are referred as such.

4. The learned counsel appearing for the appellant in W.A.No.190 of 2001 and the first Respondent in W.P.No.11870 of 2001 submitted that in view of the notice issued under Section 9-A of the Industrial Disputes Act, the order passed on 26.07.2000 is perfectly valid in law. The proposed action did not involve any drastic change of service condition nor there is any reduction in payment of night shift allowance.

5. Per contra, the learned counsel appearing for the first respondent-Union in W.A.No.190 of 2001 and the petitioner in W.P. No.11870 of 2001 submitted that what was sought for before the learned single Judge was a mere reference. Admittedly, there was a dispute between the parties. The respondents are entitled to reference as a matter of right. It is only an administrative action. Therefore, the order passed by the learned single Judge does not require any interference.

6. A mere notice issued under Section 9-A of the Industrial Disputes Act would not take away the right of the first respondent-Union in seeking reference. The reference is a matter of rule unless the disputes raised is totally frivolous one on the face of it. The learned single Judge, on facts, found that the dispute raised was not frivolous. Admittedly, there is no adjudication was involved. A mere notice issued under Section 9-A of the Industrial Disputes Act cannot be termed as a decision made. The dispute raised between the parties is required to be resolved through an adjudicative forum. The entitlement of the first respondent-Union as against the justification of the appellant are matters to be decided by the Labour Court. Taking note of the above said relevant facts and applying the law governing adjudication, the learned single Judge has rightly allowed the writ petition.

7. Thus, we do not find any reason to interfere with the well merited order passed by the learned single Judge. Accordingly, the writ appeal stands dismissed leaving open all the issues on merits to be adjudicated before the appropriate authority. No costs.

8. In view of the order passed in the writ appeal No.190 of 2001, nothing survives for adjudication in W.P.No.11870 of 2001 and the same is also dismissed. No costs.

Sd/-
Assistant Registrar
Dated:21.1.15

True Copy

Sub Assistant Registrar

To

- 1.The General Secretary ,
Tamil Nadu Atomic Power Employees Union,
Kalpakkam, Kanchipuram District.
- 2.The Assistant Labour Commissioner (C) -II,
26, Haddows Road,
Chennai-6.
3. The Station Director,
Nuclear Power Corporation,
Madras Atomic Power Station,
Kalpakkam, Kanchipuram District.

+1 cc to Mr.V.Ajay Khosi, Advocate,SR.1038

+3 cc's to Mr.N.Jothi, Advocate,SR.622.

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W.P. No.11870 of 2001
& W.A.No.190 of 2001

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