

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 07.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.No.16485 of 2015
& MP.Nos.1& 2 of 2015

Central Organisation of Tamil Nadu,
Electricity Employees(COTEE),
No.27, Mosque Street,
Chepauk, Chennai-600 005.

.. Petitioner

Versus

1.State of Tamil Nadu,
Rep.by its Secretary to Government,
Department of Labour and Employment,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Industrial Tribunal,
II Floor, City Civil Court Building,
Madras High Court Campus,
High Court, Chennai-104.

3.The Chairman Cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai-600 002.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records of the first respondent's G.O. (D) No.306 dated 12.07.2013 and quash the same and consequently direct the first respondent to refer the industrial dispute to the second respondent for adjudication under section 10(1) of the Industrial Disputes Act, 1947 within a particular period as fixed by this Hon'ble Court and the second respondent Tribunal to dispose of the same within a stipulated period as fixed by this Hon'ble Court from the date of reference.

For Petitioner : Mr.V.Govardhanan for
M/s.Row and Reddy

For R1 : Mr.R.Rajeswaran, Special G.P.

ORDER

Heard Mr.V.Govardhananan, learned counsel appearing for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader, who accepts notice on behalf of the first respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner is the Trade Union registered under the provisions of the Trade Union Act. The members of the petitioner Union are the employees of the respondent Board. The writ petition has been filed challenging the Government Order in G.O. (D) No.306, Labour and Employment Department dated 12.07.2013, in and by which the first respondent had refused to refer the dispute raised by the petitioner Union for adjudication before the Labour Court. The petitioner Union took up the cause of the employees who are engaged in the Generation Plants of the respondent Board and sought for regularisation of the contract workmen and for payment of proper wages.

3. It is the case of the petitioner Union that the Hydro Generation Circles continue to engage the labourers as contract labourers on daily wages. At this stage, the petitioner Union had filed a petition in WP.No.4003 of 2001 seeking regularisation of 349 contract labourers for absorption. All of them were workmen of the Hydro Power Stations selected in B.P.(FB) No.22 dated 14.05.1999 with effective from 01.05.1999 with all attended benefits. Pursuant there to, the Board decided to absorb 295 contract laborers with effect from 05.08.2005 as Helpers. The petitioner's case is that all the 849 contract workers were absorbed as Supernumerary Helpers/Helpers as on 14.05.1999. Ultimately, the writ petition was disposed of by an order dated 25.08.2008 leaving it open to the individual members of the petitioner Organisation to approach the appropriate forum in the manner known to law, to seek the necessary reliefs, with regard to the seniority in their appointments and the dates of their absorption in service on a regular basis.

Pursuant there to, the petitioner Union raised a dispute before the Assistant Commissioner of Labour, seeking absorption of the contract laborers with effect from 01.05.1999 as per B.P.(FB) No.22 dated 14.05.1999. However, the respondent Board did not agree to settle the issue before the Assistant Commissioner of Labour/Conciliation Officer, who submitted his failure report on 21.01.2013. However, the first respondent by the impugned order has rejected to refer the dispute for adjudication stating certain reasons. This order has been challenged in the writ petition.

4. Heard the learned counsel for the parties and perused the materials placed on record. The short issue which falls for consideration in this writ petition is as to whether the impugned

order is sustainable in law.

5. In various decisions rendered by the Hon'ble Supreme Court, the manner in which the Government should consider the issue as to whether the matter should be refused to be referred for adjudication is considered. Useful reference could be made to the decision of the Hon'ble Supreme Court in the case of Serva Shramik Sangh Vs Indian Oil Corporation Limited and Others-reported in (2009) 11 Supreme Court Cases 609. In that decision, the Hon'ble Supreme Court has pointed out that the writ of mandamus would be issued to the appropriate Government to reconsider the refusal to make a reference, where (i) the refusal is on irrelevant, irrational or extraneous grounds, (ii) the refusal is a result of the appropriate Government examining the merits of the dispute and prejudging/adjudicating/determining the dispute, (iii) the refusal is mala fide or dishonest or actuated by malice, (iv) the refusal ignores the material available in the Failure Report of the Conciliation Officer or is not supported by any reason.

6. Thus, if the impugned order falls under any one of the four categories mentioned by the Hon'ble Supreme Court as referred above, the impugned order has to be necessarily held to be bad in law.

7. On the perusal of the observations made in the annexure to the impugned order, it is clear that the first respondent has prejudged or adjudicated the very dispute, on the ground that a settled issue is sought to be re-opened. The Government at the time of considering whether the matter is to be referred for adjudication, cannot decide the issues and adjudicate the claims or prejudice the matter. In the instant case, this is what has been done by the first respondent, which has been prohibited by the decision referred supra. Therefore, this Court has no hesitation to say that the impugned order calls for interference.

8. Accordingly, the writ petition is allowed. The impugned order is quashed and the matter is remitted back to the first respondent for fresh consideration by taking note of the law laid down by the Hon'ble Supreme Court referred above and fresh orders shall be passed in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

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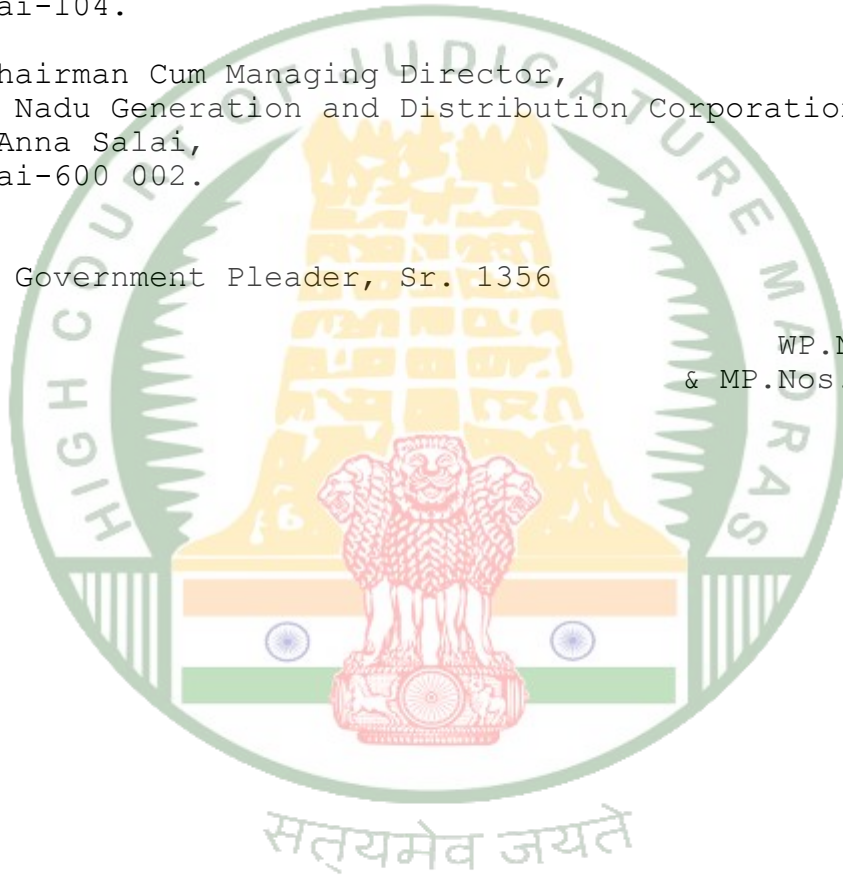
To

1. The Secretary to Government,
Department of Labour and Employment,
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1 cc to Government Pleader, Sr. 1356

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