

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.40535 of 2014

ORDER :

The petitioner-Union has filed the Writ Petition seeking implementation of Clause (iii) of G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department dt.09.12.2014, issued by 1st respondent under Section 10-B of the Industrial Disputes Act, 1947 (for short, 'the Act').

2. The 4th respondent is an Industry governed by the Industrial Disputes Act, 1947. It's management declared lockout on 04.02.2014. There was a settlement under Section 12(3) of the Act on 19.05.2014 in respect of permanent employees excluding wagon and lorry loading / unloading workers who were 267 in number.

3. There was a dispute between lorry loading and wagon loading and unloading workers of 4th respondent and its management which was referred to conciliation under the provisions of the Act, and on failure of conciliation a reference under Section 10 of the Act was made by 3rd respondent on 19.10.2013 of the following disputes to the Industrial Tribunal-cum-Labour Court, Visakahapatnam for adjudication :

“(1) Whether the claim of the 17 Batch Leaders that they are not the labour contractors and all 271 Lorry loading and wagon loading and unloading workers are not the contract labour and they are

regular workers of the company is justified ? If not to what relief the workers are entitled.

(2) Whether the demand of the 271 lorry loading and wagon loading and unloading workers to receive wages directly from the Management instead of through these 17 Batch Leaders, as against the practice followed till December, 2012 is justified? If not to what relief the workers are entitled.”

4. There was also an issue relating to payment of service tax in respect of services of loading and unloading workers.

5. On 09.12.2014, G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department, was issued by 1st respondent in exercise of powers under Section 10-B of the Act, directing the petitioner as well as 4th respondent as under :

“(i) The Management of M/s.Factor Alloys Limited, Sreeramnagar, Garividi, Vizianagaram District to reopen the factory immediately as per the agreement signed by them under Sec.12(3) of the Industrial Disputes Act, 1947 before the Joint Commissioner of Labour, Visakhapatnam on 19.05.2014.

(ii) Further, till the final adjudication of the dispute pending before the Labour Court on the reference made by the Joint Commissioner of Labour, Visakhapatnam vide his letter No.c/810/2013, dated 19.10.2013, the Service Tax shall be paid in the manner it was paid from the salaries for the month of January, 2013 without prejudice to the respective rights of the Management and the Labour Union, and

(iii) Further, till the adjudication of the dispute by the Labour Court, the management shall ensure that the service conditions of the loading and unloading workers are no less favorable than those existing as on 31.12.2012 and the workers also shall ensure normal production as on that date.

3. *The Collector and District Magistrate, Vizianagaram District shall ensure maintenance of law and order at the time of reopening of the factory and till normalcy restored.*

4. *The Commissioner of Labour, Andhra Pradesh, Hyderabad shall take necessary action accordingly.”*

6. Thereafter, the 4th respondent issued a notice dt.24.12.2014 stating that it had notified a contractor by name D. Shankarlal Sharma for carrying out loading and unloading contract works who would be responsible for execution of such works from the date of reopening of the company, and the said person was advised to permit unloading and loading workers who have been engaged on such works previously to work under him to carry out such works. The workers were also advised to submit written undertaking to the said contractor on or before 28.12.2014 to enable the management to permit them to attend to such works in the plant. The management stated that if they failed to give such undertaking, they would not be allowed to enter the factory premises.

7. The petitioner-Union contends that introduction of Sri D. Shankarlal Sharma as a contractor by the 4th respondent is violative of Clause (iii) of G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department dt.09.12.2014, since it would amount to varying the service conditions of the loading and unloading workers, which is impermissible. It is also contended that it is a matter to be decided under Section 33-A of the Act, but the Labour

Court is not deciding the said issue since there is no presiding officer posted there for the previous one year.

8. Counter-affidavit is filed by 4th respondent setting out the background to the industrial dispute and asserting that the engagement of Sri D. Shankarlal Sharma, contractor, was only to enable the contractor to facilitate compliance of service tax rules in the case of unloading and loading works. It is also stated that it is a temporary arrangement done to ensure smooth running of the industry and would have no effect or influence or change the status of the Members of the Union carrying out the loading and unloading works in the industrial dispute. The other allegations against the Union workers are also leveled.

9. The counsel for respondents does not dispute that the order under Section 10-B of the Act, passed by 1st respondent in G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department dt.09.12.2014, is binding on 4th respondent, and that 4th respondent has also not questioned the same on any ground in any Forum. He also states that 4th respondent has no objection to implement the said G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department dt.09.12.2014.

10. In my considered opinion, if this is the stand of 4th respondent, the 4th respondent cannot, simultaneously, after the issuance of G.O.Rt.No.980 Labour Employment Training & Factories (Labour)

Department dt.09.12.2014, insist that petitioner should give a written undertaking to Sri D. Shankarlal Sharma, who the respondents have engaged for execution of unloading and loading contract works in the 4th respondent, and threaten to refuse them entry if they did not give such undertaking on or before 28.12.2014. Such insistence on the part of 4th respondent would clearly violate the service conditions of the loading and unloading workers whose claim is pending adjudication before the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.77 of 2013.

11. The wording of G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department dt.09.12.2014 indicates that the directions therein are binding not only on the petitioner-Union but also on the 4th respondent-Union, and neither can do anything which would be violative of the terms contained therein.

12. Therefore, the Writ Petition is allowed; and the petitioner as well as 4th respondent are directed to strictly to abide by G.O.Rt.No.980 Labour Employment Training & Factories (Labour) Department dt.09.12.2014, pending I.D.No.77 of 2013 before the Industrial Tribunal-cum-Labour Court, Visakhapatnam, and in particular, the 4th respondent cannot insist on the loading and unloading contract workers giving an undertaking as mentioned in its notice dt.24.12.2014 and deny them entry if they did not given such undertaking.

13. Therefore, the Writ Petition is allowed as above. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-12-2016

Ndr/*

