

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 6TH DAY OF JANUARY 2017/16TH POUSHA, 1938

WP(C) .No. 12923 of 2014 (M)

PETITIONER(S) :

1. DAKSHIN RAILWAY EMPLOYEES UNION (DREU)
REG.NO.3068/SOUTHERN RAILWAY /PALAKKAD DIVISIONAL
COMMITTEE COM: ANANDAN NAMBIAR BHAVAN,
ATHANIPARAMBU, PALAKKAD 678 002,
THROUGH ITS DIVISIONAL SECRETARY, MATHEW SYRIAC P.,
S/O.P.M.SYRIAC & STATION MASTER,
PALLIPURAM RAILWAY STATION,PALAKKAD DISTRICT,
PERMANENT ADDRESS: PARAMBIL HOUSE, BAVADI P.O.,
PUZHAMUDI, KALPETTA, WAYANAD DISTRICT,PIN - 673 121.
2. K.MEHBOOB ALI, AGED 58 YEARS,
S/O.V.MOHAMMED KHASIM, DIVISIONAL PRESIDENT,
DREU, PALAKKAD DIVISIONAL PRESIDENT, DREU,
PALAKKAD DIVISIONAL COMMITTEE & SR. TECHNICIAN,
OFFICE OF THE SR.SE/C&W/SR/PALAKKAD,
RESIDING AT RAILWAY QUARTERS, 359-A,
RAILWAY COLONY, RAILWAY HOSPITAL LINE,
PALAKKAD 678 009.
3. M.K.SURESH, AGED 44 YEARS,
S/O.M.K.KANDAN, OFFICE SUPERINTENDENT GR.11,
OFFICE OF THE DIVISIONAL ELECTRICAL ENGINEER/
SOUTHERN RAILWAY/PALAKKAD PERMANENT ADDRESS :
MANIYANTHARAYIL HOUSE, PANANGAD P.O.,
ERNAKULAM DISTRICT,PIN 682 506.

BY ADVS.SRI.T.C.GOVINDA SWAMY
SMT.KALA T.GOPI
SMT.T.N.SREEKALA

RESPONDENT(S) :

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
OF INDIA MINISTRY OF RAILWAYS,
RAIL BHAVAN, NEW DELHI - 110 001.

msv/

WP(C).No. 12923 of 2014 (M)

2. THE GENERAL MANAGER,
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE,
PARK TOWN P.O., CHENNAI - 600 003.
3. THE CHIEF PERSONNEL OFFICER,
SOUTHERN RAILWAY, HEAD QUARTERS OFFICE,
PARK TOWN P.O., CHENNAI - 600 003.
4. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, PALAKKAD DIVISION,
PALAKKAD - 678 002.

BY ADV. SRI.C.S.DIAS,SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-01-2017, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

msv/

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 TRUE COPY OF CHAPTER 25 AND CHAPTER 26 OF THE INDIAN RAILWAY ESTABLISHMENT MANUAL VOL.II.
- P2 TRUE COPY OF FINAL RESULTS OF THE SECRET BALLOT ELECTIONS 2013 OF SOUTHERN RAILWAY AS DOWNLOADED FROM THE WEB SITE OF THE RESPONDENT RAILWAYS.
- P3 TRUE COPY OF ORDER BEARING NO.P(L) 694/P/SBC/VOL.II DTD.3.5.2013, ISSUED ON BEHALF OF THE 2ND RESPONDENT GENERAL MANAGER.
- P4 TRUE COPY OF THE REPRESENTATION BEARING NO.DREU/PGT/2013/REFERENDUM 2013 DTD.21.8.2013, ADDRESSED TO THE 4TH RESPONDENT.

RESPONDENT(S) ' EXHIBITS

- EXT.R3(1): TRUE COPY OF FINAL MODALITIES FOR SECRET BALLOT ELECTION FOR RECOGNITION OF UNIONS/FEDERATIONS OF INDIAN RAILWAY, WITH LETTER NO.SBEC/UNION ELEC. 2012/MODALITIES/1 ISSUED BY MINISTRY OF RAILWAYS.
- EXT.R3(2): TRUE COPY OF LETTER NO.P(L) 694/P/SBC/VOL.II ISSUED BY THE 3RD RESPONDENT DECLARING THE RESULTS OF THE ELECTION.
- EXT.R1(c): TRUE COPY OF ORDER OF HON'BLE SUPREME COURT DTD.6.12.2016.

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.12923/2014

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Dated this the 6<sup>th</sup> day of January, 2017

## J U D G M E N T

The short issue in this writ petition is regarding constitution of staff council as mandated under Chapter 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act") to take measures for securing good relation between railway and railway employees. The staff council, in fact, is referred as works committee in the ID Act. The Indian Railway Establishment Manual ("railway manual" for short) refers constitution of staff council in Chapter XXVI. It also deals with powers, composition and eligibility for election etc. for constituting staff council. In this writ petition, an unrecognized railway union seeks the following prayers:

"i. Declare that the respondent Railways are bound to allow the petitioner Union to participate in the meetings of the Periodical

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Negotiating Machinery and also in the meetings held under the "Participation of Railway Employees in Management" (PREM) scheme held at the Palakkad Divisional level from time to time and declare further that the denial of the said opportunity is arbitrary and unconstitutional;

ii. Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents, particularly the 4<sup>th</sup> respondent, to allow the petitioner Union to take up the cause of its members at the periodical Negotiating Machinery meetings and also at the level of the meetings of the Participation of Railway Employees in Management scheme followed by the respondent railway administration and direct further that the petitioner Union is entitled to all the facilities for this purpose, as applicable to the only other recognized Union at Palakkad Division;

iii. Award costs of and incidental to this petition;

Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. As seen from the counter affidavit filed by the respondents, there are no staff council members even though permanent negotiating machinery (PNM) and participation of railway employees in Management (PREM) take place at Palakkad division. However, the petitioner's union was not invited to represent workmen in the permanent negotiating machinery for the obvious reason that the petitioner's union did not obtain maximum votes for recognition. It appears that the union by name Southern Railway Mazdoor Union (SRMU) secured 43.65% of votes to represent the workmen in the permanent negotiating machinery.

3. In this writ petition, the petitioner raised two contentions:

- i. the railway must constitute a staff council and;
- ii. the petitioner-union must be invited for a staff council meeting or in the meeting of

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permanent negotiating machinery at the divisional level.

As far as the first question is concerned, this court is of the view that the railway is bound to constitute a staff council. Going by the provisions laid down in the railway manual, permanent negotiating machinery is separate. Staff council is referred in Section 1 of Chapter XXVI of the railway manual and negotiating machinery is referred in Section 2 therein. Therefore, this court is of the view that in terms of the provisions of the ID Act, the railway is bound to constitute a staff council. In regard to the second prayer, participation of the petitioner in the negotiating machinery, the petitioner-union is not a recognized union and therefore cannot claim for participation in the permanent negotiating machinery. The composition of staff council is specifically laid down in Ext.P1. If the petitioner is eligible, the petitioner can also stake claim for participation in election of staff council. So long as the staff council is not constituted,

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the petitioner cannot demand participation unless staff council is constituted vide Chapter XXVI of the railway manual. I am not entering into a finding whether the petitioner is entitled to take part in the staff council or not. It is a matter to be decided when staff council is constituted. Therefore, in view of the fact that the obligation to constitute the staff council is a statutory duty, this court is of the view that the railway shall constitute staff council within a period of six months. The question regarding petitioner's eligibility to participate in staff council is left open. The petitioner's prayer to include them in the permanent negotiating machinery is rejected.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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