

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.14913 to 14918 of 2016

W.P.No.14913 to 14918 of 2016

Workmen of Dynamatic Technologies
(JKM Auto)Limited
Through United Labour Federation
Regn.No.2657/CNI
Rep by its General Secretary
Mr.D.Christopher
No.149 Thambu Chetty Street, IV Floor
C.J.Complex, Chennai-600 001.Petitioner in all Wps.

VS

- 1 The Government of Tamil nadu
Rep by its secretary Dept of Labour and
Employment Fort St George Chennai 600 009
- 2 The Management of Dynamatic
Technologies Limited (JKM AUTO) F67 & F68
SIPCOT Industrial park Irugattukottai
Sriperumbudur Kancheepuram District 602 117
...Respondents 1 & 2 in all Wps.
- 3 JKM Ferro Tech Limited
No.K4, SIPCOT Industrial Complex, Phase -2
Gummidipoondi
Chennai-601 201 ...Respondent No 3 in WP 14916/2016

Prayer in W.P.14913 of 2016

Writ petition filed under article 226 of the constitution of India, to issue a writ of Mandamus directing the 1st respondent to refer the disputes declined to be referred under G.O.(D) No.370 dated 23.07.2015.

Prayer in W.P.14914 of 2016

Writ petition filed under article 226 of the constitution of India, to issue a writ of mandamus directing the 1st respondent

to referred under G.O.(D).No.354 dated 20.07.2015

W.P.14915 of 2016

Writ petition filed under article 226 of the Constitution of India, to issue a writ of mandamus directing the 1st respondent to refer the disputes declined to be referred under G.O.(D).No.585 dated 11.11.2013

W.P.14916 of 2016

Writ petition filed under article 226 of the constitution of India, to issue a writ of mandamus directing the 1st respondent to refer the disputes declined to be referred under G.O(D).608 dated 23.12.2014

W.P.14917 of 2016

Writ petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the 1st respondent to refer the disputes declined to be referred under G.O.(D) 619 dated 09.11.2015

W.P.14918 of 2016

Writ petition filed under article 226 of the Constitution of India, to issue a writ of mandamus directing the 1st respondent to refer the disputes declined to be referred under G.O.(D)267 dated 30.06.2014

For Petitioner
in all W.Ps : Mr.V.Prakash,
Senior Counsel for Mr.K.Sudalaikannu

For Respondents
in all W.Ps : Mr.R.A.S.Senthilvel,
Additional Government Pleader for R1
Mr.K.R.Hariharan, & J.Dinesh, for R2

COMMON ORDER

Considering the commonality of the issues involved in all these writ petitions, they have been taken up and disposed off by a common order.

2.In all these cases, the writ petitioner has raised several disputes. The Conciliation Officer sent his failure reports to the first Respondent. The first respondent through the orders impugned declined to refer the dispute on the premise that some of them can be adjudicated in view of the availability of

separate enactments, the demands are not specific and some other demands are not required to be referred on facts.

3.This court need not reiterate the scope of Section 10 (1) r/w 12 (5) of the Industrial Disputes Act, 1947. The first respondent is not expected to embark upon the exercise which would touch upon the adjudication process.

4.Considering the said issue, the Apex Court in M/s.Shaw Wallace & Co. Ltd., Vs. State of Tamil Nadu represented by the Commissioner and Secretary, Labour Dept. and others reported in 1987 1 LLJ 177, has held as follows:

"Direction given in Section 10(1) read with Section 12 (5) has to be exercised in such a manner that it would not exceed the limits prescribed for the sphere of reference and enter into the territory of adjudication. What the Government is expected to decide before making a reference is whether on a prima facie examination of the facts of the case there is a dispute which requires a trial or adjudication by a tribunal or a Court. Government cannot take the function of adjudication. If the claim is patently frivolous or if the admitted facts are so glaringly against workmen not warranting trial or adjudication by tribunal or court, then the Government would be justified in refusing to make a reference. If the claim is stale and belated it need not be referred for adjudication. Where a reference would not be conducive to industrial peace in the region or would have an adverse impact on the general relation of employer and employee the Government would be justified in such cases to refuse to make reference.

On an analysis of the various decisions of the Supreme Court and the other cases, the following principles emerged:-

(1) The Government would normally refer the dispute for adjudication.

(2) The Government may refuse to make reference if

- (a) the claim is very stale;
- (b) the claim is opposed to the provision of the Act;
- (c) the claim is inconsistent with an agreement between the parties;

- (d) the claim is patently frivolous;
 - (e) the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse;
 - (f) the person concerned is not a workman as defined by the Act;
- (3) The Government should not act on irrelevant and extraneous consideration.
 - (4) The Government should act honestly as bonafide;
 - (5) The Government should not embark an adjudication of the dispute; and
 - (6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held as punishment awarded was appropriate."

5.The learned Senior Counsel appearing for the petitioner would submit that a perusal of the orders impugned would show that the first respondent has simply accepted the stand of the Management, who is arrayed as the second respondent. Except demand No.2 which is the subject matter of W.P.No.14913 of 2016, which has been satisfied and demand No.8 which is the subject matter of W.P.No.14918 of 2016 which involves a decision made already being the subject matter of approval petition, the other demands require reference.

6.The learned counsel appearing for the second respondent would submit that the claims being patently frivolous, there involves an application of mind and therefore no interference is required. The learned counsel also made reliance on the decision of the Division Bench of this Court in O.N.G.C. Madras Port Contract Employees' Union, rep. By its Secretary Vs. The Management of Oil and Natural Gas Corporation Ltd., rep. By its Regional Director and Others made in W.A.No.3622 of 2002 dated 28.02.2005 with specific reference to Paragraph No.48 which is as follows:

"48.As observed in the decisions referred to above, even for taking an administrative decision the authority concerned must apply his mind to the relevant considerations and the relevant materials before it. In this case, the Central Government should have atleast applied its mind to the objections raised by the writ petitioner namely, that workmen concerned were not the workmen of the writ petitioner but that of the contractor and moreover the claims of the workmen

were already settled. The writ petitioner had specifically alleged that the petitioner was not the direct employer of the workers concerned at any point of time and this contention had been accepted earlier. No doubt, it is not necessary that there should be some fresh facts for changing its opinion but nevertheless it was incumbent upon the Central Government to have applied its mind to the objections of the writ petitioner that the workmen concerned were not its employees but the employees of the contract. If the employees concerned were not the employees of the writ petitioner obviously there was no dispute between them could be referred for adjudication. Also, if the claims of the workmen concerned had already been settled there was no dispute which could be referred. The learned Single Judge has only remitted the matter to the Central Government for a fresh consideration and we see nothing objectionable or illegal in this direction."

7. There is no specific finding by the first respondent that the claims are stale. Admittedly the members of the petitioner are the workmen of the second respondent. Therefore the contingency as dealt with by the Division Bench referred supra is not available in the case on hand. A prima facie examination of the facts touching upon the disputes do not conform to paragraph No.32 of the judgment of the Apex Court in M/s. Shaw Wallace & Co. Ltd. (referred supra). A perusal of the orders impugned would show that they have not been rejected on the ground on patent frivolousness. On the contrary they have been rejected on the ground that they do not require any adjudication apart from the availability of other modes.

8. It is the case of the petitioner that the decisions of the second respondent have got spiraling effect and in particular, the action qua the non-payment of due salary and the training according to the petitioner would have a serious impact. The said effect would encompass the promotion and transfer. These are all the matters for adjudication and certainly not for the first respondent to decide upon as they require assessment of facts through an adjudicatory process involving both sides. It appears that the first respondent went by the stand taken by the second respondent. This court prima facie does not find that the claims made are not amenable to the Industrial Dispute Act. Merely because some of the relief can be sought for in some other enactments, in the absence of any specific bar a reference cannot be rejected. The order passed by the first respondent does not come within the purview of the exception adumbrated in

paragraph No.32 of the judgment of the Apex Court. After all what the petitioner wants is an adjudication on merits and thus it is for it to substantiate before the Labour Court.

9.In such view of the matter, the first respondent is directed to refer the disputes except the two of them referred above, namely, Dispute Nos.2 and 8 to the jurisdictional Labour Court within a period of eight weeks from the date of receipt of a copy of this order.

10.The writ petitions are allowed accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

The Secretary,
Department of Labour and Employment
The Government of Tamil Nadu
Fort, St. George, Chennai 600 009

+1cc to Mr.Hariharan & Dinesh, Advocate, S.R.No.22895
+6cc to Mr.Sudalaikannu, Advocate,
S.R.No.22949,22948,22947,22946,22945,22950

W.P.Nos.14913 to 14918 of 2016

SS (CO)
RS (26/04/2017)

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