

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.20131 and 20132 of 2001

Tamil Nadu Atomic Power Employees Union
(Regn No.118/CPT/70)
rep by its General Secretary
J.C.C.Office
Madras Atomic Power Station
Kalpakkam 603 102.

Petitioner in both W.Ps.

vs.

1.The Nuclear Power Corporation
rep by its Deputy General Manager (IR)
6th Floor, Belapur Bhavan
Plot No.6, Sector 11 Belapur CBD
Navi Bombay 400 614.

2.The Station Director
Madras Atomic Power Station
Nuclear Power Corporation
of India Limited, Kalpakkam 603 102.

3.The Government of India
Ministry of Labour
rep by its Secretary
Shram Mantralaya
New Delhi.

Respondents in both W.Ps.

W.P.No.20131 of 2001 filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that order No.NPC/BBPIR/3215/N-227 dated 17.03.1999 issued by the second respondent is illegal and unconstitutional

and consequently direct the 1st and 2nd respondents to continue to grant the allowances/concessions covered by its Notice dated 16.02.1999 issued under Section 9-A of the I.D.Act as was being given before 16.02.1999 until the concerned industrial dispute is settled or decided by an Award.

W.P.No.20132 of 2001 filed under Article 226 of the Constitution of India to issue a writ of mandamus, directing the 3rd respondent, Government of India, to make a Reference of the industrial dispute covered by the Conciliation Failure Report No.M.8/23/99-D3 dated 29.09.2000 of the Assistant Labour Commissioner (C)-II, Chennai, for adjudication under Sec.10 of the Industrial Disputes Act.

For petitioner	Mr.V.Govardhanan
For R1 & R2	Mr.N.Jothi
For R3	Mr.M.Sundar,CGSC

COMMON ORDER

The factual matrix of the case is as under:

The Government of India, Department of Atomic Energy, established the Kalpakkam Power Plant sometime in the late 1960's and it was called Madras Atomic Power Project [for short "MAPP"]. At that time, certain concessions like water, electricity, accommodation, etc. were provided for the staff and workmen of MAPP. Subsequently, the Nuclear Power Corporation (a Government of India Enterprise constituted sometime in the 1990's) and MAPP were metamorphed into Madras Atomic Power Station, Kalpakkam. The Nuclear Power Corporation, by order dated 17.03.1999, sought modification/withdrawal of the concessions for

the staff and the workmen. When any such modification/withdrawal is made with regard to the conditions of service of workmen, it is incumbent on the employer to issue a notice under Section 9-A of the Industrial Disputes Act, 1947 to the workmen and thereafter, get the approval of the Conciliation Officer under the Industrial Disputes Act. Therefore, in the order dated 17.03.1999, it is stated as follows:

"As regards the workmen of NPCIL (both absorbees and direct recruits), as soon as the conciliation proceedings are completed, the orders will become implementable with effect from the said date."

Challenging this portion of the order, the Union, represented by the workman, has filed W.P.No.20131 of 2001.

2. The talks before the Conciliation Officer failed and Failure Report was sent by the Conciliation Officer to the Central Government under Section 12(4) of the Industrial Disputes Act. Thereafter, the Central Government, by the impugned order dated 10.10.2001, declined to refer the dispute to the Industrial Tribunal on the following reasoning:

"The issue relating to withdrawal of project concession has already been settled by the Central Administrative Tribunal Jodhpur Bench in their judgment in OA No.84/99 and 86/99."

Challenging this order, the Union has filed W.P.No.20132 of 2001.

3. Heard Mr.V.Govardhanan, learned counsel for the petitioner, Mr.N.Jothi, learned counsel for the respondents 1 and 2 and Mr.M.Sundar, learned Central Government Standing Counsel for the third respondent in both the writ petitions.

4. The short point that falls for consideration is whether the Central Government (third respondent) was justified in declining to refer the dispute under Section 10(1)(d) of the Industrial Disputes Act to the Industrial Tribunal. It is trite that the appropriate Government cannot agitate the merits of the dispute and it has to formally refer the dispute to the Tribunal, unless the dispute has become stale.

5. In this case, the Government has refused to refer the dispute on the ground that in a similar case, the Central Administrative Tribunal, Jodhpur Bench, appears to have rejected the claim of the workmen. In the considered opinion of this Court, that cannot be a good reason to decline reference.

6. In the result, W.P.No.20132 of 2001 is allowed and the Government of India (third respondent) is directed to refer the dispute to the Central Administrative Tribunal within three months from the date of receipt of a copy of this order. No costs. It is open to both the parties to raise all the points before the Industrial Tribunal.

Coming to W.P.No.20131 of 2001, since this Court has allowed the prayer of the petitioner in W.P.No.20132 of 2001, no further order requires to be passed in this case and therefore, W.P.No.20131 of 2001 is closed. No costs.

03.02.2017

gms

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P.N.PRAKASH, J.

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