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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.3612 of 2016
and W.MP.Nos.2977 and 22558 of 2016

Avtec Thozilalargal Munnetra Sangam
Regn No.217/DRP,
Rep. by its General Secretary,
Poonapalli Village,
Mathagondapalli Post,
Hosur - 635 114. Petitioner

vs.

1. The Government of Tamil Nadu
Rep. by its Secretary,
Department of Labour and Employment,
Fort. St. George,
Chennai - 600 009.
2. The Management of Avtec Limited,
Poonapalli Village,
Mathagondapalli Post,
Hosur - 635 114. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, calling for the records of the first respondent in connection with Government Order, G.O.Ms.(D).No.463, dated 04.09.2015 and quash the same and direct the first respondent to refer the dispute declined to be referred for adjudication.

For petitioner : Mr.V.Prakash, Senior counsel
for Mr.K.Sudalaikannu

For respondents: Mr.M.Elumalai, Govt. Advocate for R1
Mr.Sanjay Mohan
for M/s. S.Ramasubramanian and
Associates for R2

ORDER

This writ petition has been filed by Avtec Thozhilalargal Munnetra Sangam represented by its General Secretary, seeking a writ of certiorarified mandamus calling for the records of the first respondent in connection with G.O.Ms.(D).No.463, Labour and Employment (C) Department, dated 04.09.2015 and quash the same and further direct the first respondent to refer the dispute declined to be referred for adjudication.

2. Mr.V.Prakash, learned Senior counsel appearing for the petitioner Sangam would submit that the second respondent has established a Factory at Poonapalli village in Hosur for manufacturing Automatic transmissions for heavy earth moving equipments and also Gears / Transmissions for automobiles and trucks. The petitioner Union is the only Union formed in the second respondent Factory and subsequently entered into settlements that is renewed from time to time on various issues. When there are 144 permanent workers and all of them are members of the petitioner Union, the second respondent has installed machineries and is also employing 200 more workers designating them as "trainees", "staff" etc. But after some time, the second respondent Management decided to remove some of the machineries used for making transmission in Heavy earth moving equipments to other divisions. As a result, the members of the petitioner Union are facing precarious situation to face retrenchment and loss of job. When the petitioner Union has come to know that the second respondent Union / Management is taking steps to remove some of the machines and also the fact that shifting of the machines are going to render some of the members jobless, they raised Industrial Disputes. However, the request to refer the dispute has been refused by the first respondent in the impugned order. Therefore, they are constrained to come to this Court challenging the same.

3. The learned Senior counsel would further submit that it is a settled legal position that the Government cannot adjudicate the dispute, as the power to adjudicate the dispute vests with the judicial forum and hence, the refusal of the first respondent to refer the dispute is totally misconceived and therefore, the same is liable to be set aside.

4. A detailed counter affidavit has been filed. Mr.Sanjay Mohan, learned counsel appearing for the second respondent would submit that although the second respondent is using 55 latest machines, employing about 137 employees, due to administrative reasons they have decided to shift only 4 machineries. However, the shifting of those 4 machines is not going to cause any prejudice to the petitioner Union. The reason is that when two machines, namely CNC Lathe- Morki Seiki make and VMC-Vertical

Machining Center - Makino make were shifted from Unit I to Unit III earlier in December 2013, no workman of Unit I was affected, salary, benefits etc were also not affected.

5. Merely by the reason of shifting the following 4 machinery, namely, (1) Hobbing Machine - Leibherr make, (2) Gear Grinding Machine - Hofler make (3) Grinding Machine - PMT make and (4) LFS Shaping - Liebherr make, no workman is going to face any threat of losing their job, since the second respondent has established before this Court that shifting of any machinery from second respondent Factory is not going to affect any one of the workmen.

6. It is pertinent to extract the stand taken by the second respondent Union in paragraph 20, which reads thus :

"It is further submitted that the allegations / assumptions of the union regarding shifting of machineries is not well founded for the following reasons :

No workman will be affected merely and only on account of shifting of said machinery namely:

1. Hobbing Machine - Liebherr make
2. Gear Grinding Machine - Hofler make
3. Grinding Machine - PMT make and
4. LFS Shaping - Liebherr make.

When the 2 machines namely CNC Lathe-Morki Seiki make and VMC-Vertical Machining Center - Makino make were shifted from Unit I to Unit III earlier in December 2013, no workman of Unit I was affected; salary, benefits etc, were not affected.

Similarly merely by reason of shifting the above stated machines now, their salary / earnings will not be affected.

Workmen currently working in these machines in Unit number I will be effectively engaged in other machines.

The above submission is without prejudice to the right of the management to lay off in accordance with the application that is pending under the provisions of Industrial Disputes Act before the Principal Secretary, Labour & Employment, Secretariat, Govt. of Tamil Nadu."

7. In view of the stand taken by the second respondent / Management in paragraph 20 extracted as above, this Court finds no Industrial Disputes to be adjudicated upon and accordingly, this order disposes of both the Industrial Dispute and the writ petition.

With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsvn
To

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

+lcc to M/S.K.Sudalaikannu, Advocate sr.450
+lcc to M/S.S.Ramasubramaniam, Advocate Sr.379
+lcc to the Government Pleader Sr.804

सत्यमेव जयते

W.P.No.3612 of 2016

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