

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2017
CORAM
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
W.P.No.46473 of 2002

Tamil Nadu Civil Supplies Corporation
Employees Union (Regn.No.325/CPT)
No.12, (Old No.42), Thambusamy Road,
Kilpauk, Chennai 600 010.
rep. By its General Secretary
M.Pechimuthu

...Petitioner

-Vs-

The Management of
Tamil Nadu Civil Supplies
Corporation Ltd.,
No.12, (Old No.42), Thambusamy Road,
Kilpauk, Chennai 600 010.
rep. By its Chairman and Managing Director

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring that the respondent Corporation is not entitled to disband any posts or reduce the strength of workers in any department or occupation, without adhering to the requirement of Section 9-A of the Industrial Disputes Act.

For Petitioner : Mr.V.Prakash

For Respondent : Mr.M.Elumalai, GA

सत्यमेव जयते
O R D E R

The prayer sought for in this writ petition is for a writ of Declaration, declaring that the respondent Corporation is not entitled to disband any posts or reduce the strength of workers in any department or occupation, without adhering to the requirement of Section 9-A of the Industrial Disputes Act.

2. I have heard Mr.V.Prakash, learned Senior Counsel appearing for the petitioner and Mr.M.Elumalai, learned Government Advocate appearing for the respondent Corporation.

3. Learned Senior Counsel appearing for the petitioner would submit that when Section 9-A of the Industrial Disputes

Act requires that no employer who can change the conditions of service applicable to any workman in respect of any matter, specified in the Fourth Schedule, shall not effect the change, without giving, to the workman who is likely to be affected by such change, a notice, in the prescribed manner, with 21 days time.

4. When such provision of the Industrial Disputes Act mandates that 21 days notice as a pre-requisite for any proposed change, as has been enumerated in Schedule IV of the said Act, the respondent organization cannot make any change in violation of the said Section 9-A of the Industrial Disputes Act.

5. Learned Senior counsel would further submit that, since some proposal were about to be made by the respondent Corporation at that time, i.e., in the year 2002, by making or effecting some change in the position of workman, the officials of the respondent organization, without complying the mandatory requirement under Section 9-A of the Industrial Disputes Act, has acted, it necessitated for the petitioner trade Union to approach this court, by filing the writ petition with the aforesaid prayer.

6. I have heard the learned Government Advocate appearing for the respondent Corporation, who appeared on the directions issued by this Court to take notice and get along with the case on behalf of the respondent Corporation.

7. I have perused Section 9-A of the Industrial Disputes Act which reads thus:

"9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,— (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or (b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change— (a) where the change is effected in pursuance of any 2 [settlement or award]; or (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment

Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

8. In relation to Section 9-A of the Industrial Disputes Act certain items have been provided in IVth schedule which reads thus:

"Conditions of service for change of which notice is to be given:

1.Wages, including the period and mode of payment;

2.Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;

3.Compensatory and other allowances;

4.Hours of work and rest intervals;

5.Leave with wages and holidays;

6.Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;

7.Classification by grades;

8.Withdrawal of any customary concession or privilege or change in usage;

9.Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;

10.Rationalization, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11.Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, '[not occasioned by circumstances over which the employer has no control]'. "

9. By relying upon Schedule IV, the learned Senior Counsel would submit that as per item No.11, of the said schedule, if the management has a proposal to increase or reduce any number of persons employed or to be employed in any occupation or process or department or shift, such proposal shall be effected only after putting the likely to be affected workmen in service by a notice of 21 days, as contemplated under Section 9-A of the Industrial Disputes Act and only in that context, if any proposal is made by the respective management without complying with the said mandatory requirement, the same can be declared to be an illegal act. As has been rightly pointed out by the

learned Senior Counsel appearing for the petitioner, though the said provision under Section 9-A of the Industrial Disputes Act is already in the statute in which, the said provision is available for the employer to act upon as per their proposal to reduce or change any service conditions of the employees however after giving notice to the likely to be affected employees. That legal position since has given statutory protection to the employees, this Court feels that no separate declaratory relief under Article 226 of the Constitution is required to be given for the petitioner alone, for the simple reason that legal position, that too, by way of mandatory requirement as contemplated under any statute of Parliament, need not be once again reiterated by a declaratory relief by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10. Nevertheless, this Court wants to remind the respondents for the strict adherence of Section 9-A of the Industrial Disputes Act whenever such proposal as contemplated under Section 9(A) is mooted by the respondent Corporation.

11. With the above observation, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(ccc)

//True Copy//

Sub Assistant Registrar

smi
To

The Management of
Tamil Nadu Civil Supplies
Corporation Ltd.,
No.12, (Old No.42), Thambusamy Road,
Kilpauk, Chennai 600 010.

+1cc to Government Pleader SR.No.90841

KAN(CO)
sm:13.2.2018

W.P.No.46473 of 2002