

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WP Nos.27548 & 25272 of 2017

COMMON ORDER:

These two writ petitions raise a common question of law as to whether the action of 1st respondent in not including the names of the petitioner-workmen in the draft voters list, issued following the Code of Discipline is a statutory function, amenable to the jurisdiction of this Court, or purely a contractual one arising under a concluded Contract *viz.*, Code of Discipline.

2. Since both the writ petitions filed are on the same premise, suffice it to advert to the facts in WP No.27548 of 2017. It is asserted that the petitioners 1 to 9, 16 have been working in the 3rd respondent-TS Northern Power Distribution Company Limited and petitioners 10 to 15 have been working in the 4th respondent-TS Southern Power Distribution Company Limited as contract labour. Respondents 3 and 4 have entered into settlement dated 04-12-2016 with the Telangana Electricity Trade Unions Front (TETUF), Hyderabad, and as part of understanding, bio-datas of out sourcing personnel, RESCO casual labour including the bio-datas of the petitioners were taken for the purpose of regularisation of their

services into the 3rd and 4th respondents units. The case of the petitioners is that they have been paid the minimum wages, as fixed by the Commissioner of Labour, and provided with employee ID, on par with the regular employees. The petitioners are being paid by the respondents, through Contractors. They claim to be “workmen” within the definition of Section 2 (s) of the Industrial Disputes Act, 1947, (for short, “the Act”) as also in the light of the decision of the Supreme Court in ***STEEL AUTHORITY OF INDIA LIMITED vs. NATIONAL UNION WATER FRONT WORKERS***.¹

3. The petitioners are aggrieved due to non-inclusion of their names in the draft voters list so as to enable them to cast their vote by way of secret ballot election to determine the majority trade union. They filed these writ petitions to declare the impugned action as being arbitrary, illegal and violative of Articles 14, 16, 19 (1) (c) and 21 of the Constitution and also contrary to Section 2 (s) of the Act, and the Memo dated 26-06-1989 of the erstwhile APSEB. Petitioners also made representation on 12-07-2017 to the 1st respondent in that behalf, but to no avail, instead the 1st respondent issued

¹ (AIR 2001 SC 3527).

election schedule vide minutes of the meeting held on 01-07-2017. Hence, the writ petitions.

4. Heard the learned counsel for the petitioners, the learned Government for Labour for respondents 1 and 2 and learned standing counsel for respondents 3 and 4.

5. Learned counsel for the petitioners submits that non-inclusion of petitioners' names in the draft voters list is in violation of Code of Discipline besides contrary to Section 2 (s) of the Act and Articles 14, 16 and 21 of the Constitution. Learned counsel further contended that the erstwhile APSEB vide Memo No.DP/DM(IR)/PO.I/6099/77-83, dated 26-06-1989 permitted all casual labour and full time contingent works whose names were found in the muster rolls from a specified date, to cast their votes, but now denying the such a right to the petitioners is illegal and arbitrary. Reliance is placed on the decision of the Supreme Court in ***NORTH EASTERN RAILWAY EMPLOYEES UNION vs. III ADDL. DISTRICT JUDGE, FARUKHABAD***²

² (AIR 1988 SC 2117).

6. Learned Government Pleader for Labour for respondents 1 and 2, on the other hand, contended that inasmuch as elections are being conducted by following the Code of Discipline and any action or inaction on the part of the 1st respondent emanates by following the terms of Code of Discipline, it being non statutory in nature this writ petition filed under Article 226 of the Constitution for enforcing the same is not maintainable and the remedy of the petitioners is elsewhere. The decision in **DR. REDDY'S FORMULATIONS TECHOPS-II vs. GOVERNMENT OF TELANGANA**³ of this Court is relied on in support of his contentions.

7. Admittedly, conduct of election to the trade union to determine the majority trade union and according recognition to it is done under the clauses of Code of Discipline. Code of Discipline is a code of terms and conditions agreed to by the employer and the employees, represented by their Unions. It is observed by this Court in **MANAGEMENT OF APSRTC, HYDERABAD vs. WORKMEN OF THE APSRTC, HYDERABAD**⁴, that the Code of Discipline which provides for recognition of the Union, which represents a majority of the

³ (2015 (2) ALD 690)

⁴ 2008 (4) ALD 422

workmen in the establishment as the recognised Union with whom the management would negotiate, does not have statutory force. Set out below are some of the key paras of the said decision, read as under:-

“14. The Code of Discipline, which was ratified by the Central Employees and 'Workers' Organization at the 16th Session of the Indian Labour Conference held at Nainital in May, 1958, came into force from 01.06.1958. Part V of the Code of Discipline relates to Implementation and Evaluation Machinery and its functions and procedures, wherein the rights arising out of recognition of unions are found. Under para 13 thereof, it was agreed that the Unions, granted recognition under the Code of discipline, would enjoy the right to raise issues and enter into collective agreements with the employers on general questions concerning the terms of employment and conditions of service of workers in an establishment.

15. Appendix-I to the Code of discipline requires the management to recognise the Union in accordance with the criteria provided in Annexure-I to that Appendix, which was evolved at the 16th session of the Indian Labour Conference held in May, 1958. Under clause 4 of Annexure-1 when a union has been recognised, there should be no change in its position for a period of two years. Under clause 5 of the said Annexure, when there are several unions in an industry or establishment, the one with the largest membership should be recognised. Under clause 8, only unions which observe the Code of Discipline would be entitled to recognition. (I.T.C. Employees Association Vs. State of Karnataka, 1981 (1) LLJ 431)

16. The Code of discipline which provides for recognition of the Union, which represents a majority of the workmen in the establishment, as the recognized union with whom the management would negotiate, does not have statutory force."

8. In an un-reported decision of this Court in **HMT EMPLOYEES UNION vs. HMT**, (WP No.3174 of 1967) an identical issue arose for consideration whether a writ petition is maintainable under Article 226 of the Constitution to quash a decision of the State Evaluation and Implementation Committee constituted in terms of the Code of Discipline. It was observed by this Court that Code of Discipline being a voluntary agreement between management and workers, rejected the contention of the petitioner therein that the Code of Discipline could be enforced in a proceeding filed under Article 226 of the Constitution. It was held therein as under:-

"I am unable to see how this Court exercising jurisdiction under Article 226 of the Constitution can quash a decision of the State Evaluation and Implementation Committee constituted in pursuance of the Code of Discipline which has no statutory basis but is a voluntary agreement between management and workers I do not think it is competent for me to interpret the clauses of the Code of Discipline and to give any direction concerning the recognition of rival Trade Unions. The application under Article 226 is misconceived and it is therefore dismissed."

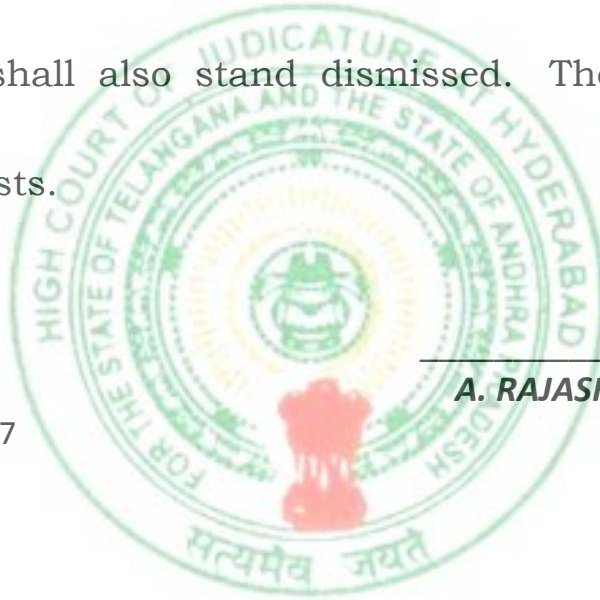
09. This Court in yet another decision rendered on the same lines in **DR. REDDY'S FORMULATIONS TECHOPS-II's** case (3 supra) having referred to the decisions in **MANAGEMENT OF APSRTC, HYDERABAD's** case (5 supra) & and un-reported decision of this Court in **HMT EMPLOYEES UNION's case** passed in WP No.3174 of 1967, dated 07-08-1968 and following the *ratio decidendi* laid down therein refused to entertain the writ petition on the ground that Code of Discipline has no statutory force and cannot be enforced in a proceeding under Article 226 of the Constitution, leaving it open to the aggrieved parties to approach civil Court. In **DR. REDDY'S FORMULATIONS TECHOPS-II's** case (3 supra), at para 36 this Court observed that the decisions in *Indian Leaf Spring Kamgar Union's case*, *Panyam Cements Employees Union's case* and *I. Srinivasa Rao's case* are *per incuriam* in the light of the decisions in *HMT Employees Union's case* and *All India Reserve Bank Employees Federation's case* as these decisions were not brought to the notice of this Court while rendering decisions in the former cases. The contention of the petitioners therein that 1st respondent is a statutory authority and hence writ petition maintainable was also repelled in the

above decision. It is sought to be contended that the writ petitions are maintainable as the very elections are being conducted pursuant to the directions passed by the learned single Judge in WP No.36486 of 1998, as modified by the Division Bench in WA No.1285 of 2006. But it is to be seen that the issue in these writ petitioners relates to question of fact emanating from the Code of Discipline which is held to be a contractual agreement between the management and the workers and the remedy lies elsewhere. I have taken similar view, in an identical matter in writ petition being WP No.19523 of 2011.

10. On an analysis of the matter, it is clear that the 1st respondent is only being a functionary to perform the functions under the Code of Discipline in the light of the decisions in **DR. REDDY'S FORMULATIONS TECHOPS-II's** case (3 supra), **MANAGEMENT OF APSRTC, HYDERABAD's** case (4 supra) & and un-reported decision of this Court in **HMT EMPLOYEES UNION's** case passed in WP No.3174 of 1967, dated 07-08-1968 which are rendered in similar facts situations, I am of the considered view that the grievance of the petitioners cannot be examined in this proceedings filed

under Article 226 of the Constitution and it is open for the petitioners to avail civil law remedy, if so advised. The writ petition is not maintainable and it is accordingly. For the reasons stated above, WP No.25272 of 2017 also stands dismissed. It is made clear that any observation made herein above is only for the purpose of conclusion of the case on hand and cannot be construed as expression of opinion on the merits of the case. Miscellaneous petitions, if any pending in these cases shall also stand dismissed. There shall be no order as to costs.

Dated: 14 -11-2017
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A. RAJASHEKER REDDY, J

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WP Nos.27548 & 25272 of 2017

COMMON ORDER:

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14-11-2017

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