



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM:
THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.7822 of 2013
& M.P.No.1 of 2013

United Labour Federation
Regn. No.2657/CNI,
Rep. by its Acting General Secretary,
No.149 IV Floor, C.J.Complex, Thambuchetty Street,
Chennai 600 001 ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of Labour and Employment,
Secretariat, Fort St. George,
Chennai 600 009
2. The Management of Brakes India Limited,
Represented by its General Manager,
Pulivalam Panchayat, Valaja Taluk,
Sholingur, Vellore District.
3. The Proprietor, Shri Sarvamangala Jeganatha
Engineering Works, Krishnavaram Village,
Banavaram Via, Pulivalam, Valaja Taluk,
Sholingur, Vellore District ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent Government to refer the Industrial Dispute declined to be referred under G.O.(D) No.67, dated 21.02.2013, Department of Labour and Employment.

For Petitioner : Mr. V.Prakash, Sr. Counsel, for,
M/s. S.Kala

For Respondents : Mr. N.Srinivasan, for R-1,
M/s. Anand Gopalan, for
M/s. T.S.Gopalan & Co., for R-2,
Mr. C.K.Chandrasekhar, for R-3



O R D E R

G.O.Ms.No.67, Department of Labour and Employment, dated 21.02.2013 declining to refer the Industrial Dispute raised by the petitioner herein, is under challenge in this writ petition.

Facts in brief:-

2. The second respondent herein has a factory at Sholingur, where it manufactures break systems for vehicles. 25 workers involved in the writ petition had been working under the second respondent. At the time of their engagement, no appointment orders were issued. They were paid wages in the name of the third respondent. The nature of the work was that of unloading the scrap and bundling the same, which would be integral to the manufacturing process of the second respondent factory.

2.1. 25 workers joined the petitioner-Union and on coming to know that fact, the second respondent management terminated the services of the said workers, on 20.05.2011. In respect of the same, 25 workers raised an industrial dispute under Section 2 (A) (2) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") which is being heard in I.D.Nos.17 to 41 of 2012 on the file of the Principal Labour Court, Vellore.

2.2. It is the contention of the workers therein that the relationship of contractor and the Principal Employer between respondents 3 and 2, respectively, is not a genuine relationship, but a sham and nominal one and it is a camouflage to obscure a direct jural relationship between 25 workers and the second respondent management.

2.3. The management has taken a legal objection to the Labour Court examining the genuineness of the alleged contract between the contractor and the principal employer in a dispute raised under Section 2 (A) (2) of the Act.

2.4. The said industrial dispute, raised by the Union, ended in failure before the Conciliation Officer. Thereafter, the petitioner filed a writ petition in W.P.No.4699 of 2013 seeking orders of the Government relating to the reference of the Industrial Dispute raised by the petitioner-union. In the meantime, the Government has declined to refer the matter for adjudication. The Government, so declined, on the following two grounds: (a) it is not necessary to refer the dispute for adjudication as the workers have been terminated and the industrial disputes are pending before the Labour Court; (b) only after the validity of determination is decided, the issue of regularization will arise and therefore it is not necessary to refer the industrial dispute for adjudication. The legality of the Government Order is under challenge in this writ petition.

3. The learned counsel appearing for the petitioner submitted that the impugned Government Order is vitiated by non-application of mind and that it would amount to usurping the



function of judicial fora constituted under the Industrial Disputes Act. In other words, it is contended that the function and power of the Government with reference to the referring the Industrial Dispute is administrative in nature and that it is not open to the Government to enter into adjudication of the dispute.

3.1. At this juncture, it is necessary to consider the power of the Government under Section 10 to refuse to make reference of the dispute for adjudication and this aspect has been highlighted in the decision of this Court decided in the case of M/s. Shaw Wallace and Co. Ltd., v. State of Tamil Nad, Rep. by Commissioner and Secretary and others) reported in 1988 (1) LLJ 177 and the relevant observation reads as under:-

"32. On a final analysis, the following principles emerge :-

(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 provisions of the Act;

(c) the claim is inconsistent with any 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 considerations;

(4) The Government should act honestly and bona fide;

(5) The Government should not embark on adjudication of the dispute; and

(6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate...."

3.2. In this decision, it has been pointed out that the Government would normally refer the dispute for adjudication and that only when the claim is stale / frivolous, etc., it can refuse to refer the dispute. The Government is required to form an opinion as to whether there exists an industrial dispute or



an industrial dispute is apprehended.

4. It is the contention of the learned counsel appearing for the second respondent-Management that there is lack of nexus as that of the workmen and the employer between the petitioner and the second respondent and that the workmen are the employees of the third respondent and therefore, the Government is justified in declining to refer the dispute for adjudication.

4.1. The learned counsel appearing for the second respondent relied upon the decision reported in (2015) 4 SCC 71 (Oshiar Prasad and others v. Employees in Relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand) wherein the factual position was that the issue of legality or otherwise of the termination was not referred to the Tribunal and therefore, the issue of termination had attained finality. In other words, the issue of termination having attained finality, consequently the issue regarding regularization does not arise for consideration. The relevant observation, in paragraph 25, reads thus:-

"25. It is a settled principle of law that absorption and regularization in the service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and employer. Once it comes to an end either by efflux of time or as per the terms of the Contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination."

5. So far as this case is concerned, the issue regarding termination has been already referred to the Labour Court and it is pending consideration. Even in the pending litigation, the issue may arise as to who is competent to terminate. Whether it is the Principal Employer or it is the contractor and the issue may also be that whether they are the employees under the Management or employees under the contractor. Infact, it is stated in the affidavit of the petitioner that when these issues were raised, there were objections on the side of the Management. Therefore, it is all the more necessary that the issue should be referred by the Government for adjudication.

5.1. Yet another decision that is relied upon is the one reported in 2001 (4) SCC 469 (T.N.Civil Supplies Corporation Workers Union v. T.N.Civil Supplies Corp. Ltd., and others). In that case after the termination of the services of the employees, Trade Union sought for blanket order of injunction against relieving of workers. There was also an unchallenged finding that the establishment which terminated the services of the employees was of a seasonal character and that work was intermittent. Under that circumstances, the Division Bench held



that it was for the employees who were terminated to seek their remedies in the manner known to law. Therefore, it was a case where the employees were under the necessity to take appropriate proceedings against the order of termination. In other words, in the absence of termination being challenged, there is no relationship of employer and the employee and therefore, the question of implementing the service conditions does not arise. But, in this case, termination has been challenged and it is pending adjudication. Therefore, these two decisions would not help the case of the management.

6. In view of the foregoing discussion, the impugned Government Order is set-aside and the Government is directed to refer the dispute for adjudication within a period of four weeks from today and on reference, the dispute shall be tried along with pending I.D.Nos.17 to 41 of 2012 on the file of the Principal Labour Court, Vellore, and the Labour Court is directed to dispose of the said dispute within a period of four months from the date of reference.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

srk

To

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

+1cc to Mr.K.Sudalai Kannan, Advocate, S.R.No.67141

W.P.No.7822 of 2013
& M.P.No.1 of 2013

rrs 28/09/2018