



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM
THE HON'BLE DR.JUSTICE S.VIMALA
W.P.No.26504 of 2018

Vinayaga Mission Medical College and Hospital
Non-Teaching Staff Union, rep.by its Secretary
No.23/D, Perumal Koil Street, Varichikudi
Karaikal.

... Petitioner

-Vs-

1. Government of Puducherry
rep.by its Secretary, Labour and Employment
Department, Secretariat, Puducherry.
2. The Labour Officer
Kamarajar Complex, Karaikkal.
3. The Management
Vinayaga Mission Medical College and Hospital
rep.by its Dean, Keezhakasakudi, Kottucherry (P.O)
Karaikkal 609 609, U.T. Of Pondicherry

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent, quash the order of the second respondent dated 05.07.2018 bearing Endtt.No.364/LO/KKL/2017 and the order of the 2nd respondent dated 30.08.2018 bearing Ref.No.669(LO(C)/KKL/2018/270 as illegal, arbitrary and contrary to law and consequently direct the 2nd respondent to conciliate the dispute raised by the petitioner dated 12.06.2018 regarding compassionate appointment and if no settlement is arrived at, submit failure report and in turn the 1st respondent to refer the dispute for adjudication before competet industrial adjudicator.

ORDER

The petitioner is a registered trade union. The employees working under third respondent management are members of the petitioner union.

2. One K.Senthilnathan, who was working as an Assistant under the third respondent, who was also a member of the petitioner union, died on 24.5.2017. His wife sought for appointment on compassionate grounds. The third respondent did



not consider the same. Therefore, the petitioner union raised an industrial dispute before the second respondent and requested to conciliate the same, but the second respondent has chosen to return the petitions and the details are as follows.

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(i) The labour officer Karaikkal returned the petition filed by the petitioner on the ground that the petition does not come under the purview of Section 2(k) of the Industrial Disputes Act. This endorsement is dated 05.07.2018.

(ii) By the proceedings dated 30.08.2018, the labour officer Karaikkal passed an order stating that the petition filed under the Industrial Disputes Act could not be taken up for consideration on account of the following two reasons.

(a) The relief claimed is not coming under the purview of Section 2(k) of the Industrial Disputes Act, 1947

(b) The petitioner union was advised to submit the settlement arrived at between the union and the management with regard to compassionate appointment under 2(p) or 18 (1) of the Industrial Disputes Act and the union has not submitted the same.

Assailing the two orders, the writ petition has been filed.

3. Learned counsel for the petitioner would submit that the the second respondent is not the adjudicatory authority and there is no jurisdiction vested with the second respondent to refuse to conciliate the dispute and therefore there must be a direction to the second respondent to conciliate the dispute and if no settlement is arrived at, submit failure report and in turn the first respondent must be directed to refer the dispute for adjudication before the competent industrial adjudicator.

4. In order to appreciate the contentions raised, it is necessary to refer to Section 2(k) of the Industrial Disputes Act.

"(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

From the above definition of 'industrial dispute' it is clear that even a dispute between an employer and his workmen which is connected with the non-employment of any person can be an industrial dispute. The beneficiary of the claim need not be a workmen of the employer at the time of raising the dispute. A



dispute can be raised by the workmen of the employer even in respect of the non employment of any person who is not his workmen at the material time.

5. With reference to the question of law, the learned counsel for the petitioner relies upon the following decisions.

5.1. In the judgment in Kays Construction Company (Pvt.) Ltd. Vs. Its workmen reported in AIR 1959 208, the Hon'ble Supreme Court has pointed out that it is well settled that a dispute which validly gives rise to a reference under the Industrial Disputes Act need not necessarily to a dispute directly between an employer and his workmen and that the definition of the expression 'industrial dispute' is wide enough to cover a dispute raised by the employer's workmen in regard to the non-employment of others who may not be his workmen at material time.

5.2. In Ganesh Kumar (vs) Union of India and Another reported in 2007(95) DRJ 642, when the Government declined the request for reference (on the issue of compassionate appointment), the High Court of Delhi held that there is no jurisdiction to go into the merits of the dispute and directed the Government to refer the dispute to the tribunal / court. The relevant portion is extracted below.

"8. What flows from the above mentioned cases is that, while exercising power under Section 10(1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function, the government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the powers conferred on it by Section 10 of the Act. In the present case, the act of the appropriate government in rejecting the claim of the petitioner workman and declining to refer the dispute for adjudication amounts to going into the merits of the matter, and the same is not within the powers of the appropriate government. To decide on the issue as to whether the appointment of the petitioner workman on compassionate grounds would be in accordance with the Government rules laid down in this regard or not, certainly amounts to going into the merits of the matter, which is beyond the powers of the respondent No. 1. under Section 10 of the Act."

5.3. In Municipal Employees Union (vs) Secretary (Labour), Government of National Capital Territory of Delhi and another reported in 1999(3) LLN 1040, it was held as follows.



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"(a) The scheme of compassionate appointment, which is circulated by the Government of India, Ministry of Personnel and Training circulated vide office memorandum, dated 30 June 1987, is admittedly applicable to MCD also. As per this scheme, near relative of the deceased should also be considered for compassionate appointment. Sri Badley Ram is admittedly real brother of the deceased Sansar Pal and, therefore, would be treated as near relative. The petitioner has also produced copy of the communication, dated 3 August 1988, as Annexure D to the writ petition as per which various facilities are extended to daily-wagers / muster-roll employees and one of the facility extended to these categories of employees is "appointment of dependent of worker died in harness". Therefore, even if Sri Sansar Pal was daily-wager worker under the scheme of compassionate appointment, his dependent and near relative Sri Badley Ram could be considered for appointment. The ground of rejection mentioned in the impugned order dated 11 July 1995 is, therefore untenable.

(b) Order dated 11 July 1995 warrants to be set aside also on the ground that by declining to make reference on the aforesaid ground the 'appropriate Government' has really taken upon itself adjudicatory function which is not within the jurisdiction of respondent 1. Whether Sri Badley Ram is entitled to the appointment on compassionate ground or not is a matter to be examined by the Labour / Industrial Tribunal and the Government may refuse to make reference tantamount to adjudication the appropriate Government has no jurisdiction to refuse to make reference on such grounds as function of the appropriate Government is an administrative function and not judicial or quasi judicial function. Whether Sri Badley Ram is covered by the scheme of appointment on compassionate grounds and entitled for appointment on the basis of the said scheme or not is for the Labour Court to decide. "

6. This writ petition is disposed of at the admission stage itself without notice to respondents, as the disposal is purely based on question of law. The third respondent, is not even a necessary party to the writ petition. In any event, when the matter is taken up by the conciliation officer all the respondents would have an opportunity to put forth their case on merits.



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7. Therefore, the orders passed by the second respondent are set aside. This writ petition is disposed of with the direction to the second respondent to effect conciliation between the both the parties and if the matter is not settled, to send a failure report and on receipt of the failure report, it is open to the Government to pass appropriate orders.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kst

To

1. Government of Puducherry
rep.by its Secretary, Labour and
Employment Department,
Secretariat, Puducherry.
2. The Labour Officer
Kamarajar Complex,
Karaikkal.

W.P.No.26504 of 2018

ak(CO)

rrs 15/11/2018