



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Writ Petition(MD)No.11739 of 2014

The Tamil Nadu Medical and Sales representatives Association,
Madurai East Unit,
represented by its Secretary,
No.6, Kakkathoppu Street,
Madurai 625 001.

... Petitioner

Vs.

1. The Principal Secretary to Government,
Labour and Employment © Department,
Fort St. George,
Chennai 600 009.

2. The Labour Officer,
Labour Office,
Rathinasamy Nadar Street,
Madurai,
Madurai District.

3. The Regional Manager,
M/s. ICPA Health Products Limited,
11/21, 4th Circular Road,
Jawahar Nagar,
Chennai 600 088.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the first respondent in G.O.(D).No.190, Labour and Employment (C) Department dated 06.05.2013, quash the same and consequently direct the first respondent to refer the matter for adjudication to the Labour Court, Madurai.

For Petitioner : Mr.L.Shaji Chellan
For R1 & R2 : Mrs.Srimathy
Special Government Pleader
For R3 : Mr.P.Santhana Krishnan

ORDER

The petitioner is a registered Association of the Medical and Sales Representatives. One Ganesan, a Member of the Petitioner Association was employed in the third respondent Company. He is also an Office bearer. On 27.12.2011, there was a rally at Mumbai. The said Ganesan applied for leave for three days to participate in



the said rally. Since the Management did not reject his leave application and since there was a leave available to his credit, the said Ganesan went on to attend the rally. The Management deducted three days wages from his salary. Contending that the deduction is an unfair labour practice, the Petitioner Association raised an industrial dispute under Section 2(k) of the Industrial Disputes Act. The conciliation process failed. A failure report was sent. But the first respondent declined to make reference to the Labour Court. The impugned order reads that since adequate remedy could be found in terms of the Payment of Wages Act, there was no need to make a reference. The said order is under challenge in this writ petition.

2. The learned counsel appearing for the Management as well as the learned Special Government Pleader appearing for the Government wanted this Court to sustain the impugned Government Order.

3. The submission of the learned counsel for the petitioner that the issue on hand is not mere deduction of three days wages, but commission of unfair labour practice.

4. In this case, the said Ganesan was an Office bearer of the petitioner Association. He wanted to attend a rally organised by the Association at Mumbai. He applied for leave. There was a leave available to his credit. But the Management did not grant the leave sought for. In such circumstances, according to the petitioner Association, the Management acted unfairly by deducting 3 days wages. This is the matter that should be gone into only by the Labour Court. It is not open to the Government to adjudicate the issue on hand. As already pointed out the Government appears to have been misconstrued the nature of dispute. The Government was under the impression that the issue was deduction of three days wages alone. It is not so. The authority constituted under the Payment of Wages Act cannot go into the commission of unfair labour practice by the Management.

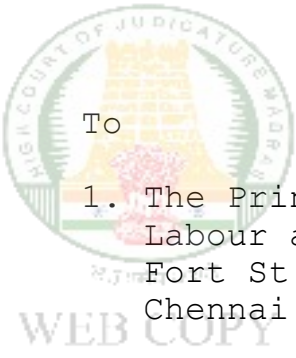
5. In this view of the matter, this Court is of the view that the impugned order deserves to be quashed. The first respondent is directed to refer the dispute raised by the petitioner for adjudication to the Labour Court, Madurai, within a period of twelve weeks from the date of receipt of a copy of this order. The cause of action arose for more than five years back. Therefore, the Labour Court, Madurai is directed to dispose of the Industrial Dispute as expeditiously as possible, after the matter is referred to for adjudication. This writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar



To

1. The Principal Secretary to Government,
Labour and Employment © Department,
Fort St. George,
Chennai 600 009.

2. The Labour Officer,
Labour Office,
Rathinasamy Nadar Street,
Madurai,
Madurai District.

3. The Presiding Officer,
Labour Court,
Madurai.

+1 cc to Mr.L.Shaji Chellan, Advocate, Sr.NO.48110

+1 cc to Mr.P.Santhana Krishnan, Advocate, Sr.No.47982

+1 cc to Spl. Government Pleader, Sr.No.48603

W.P. (MD) No.11739 of 2014
12.02.2018

AKV

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