

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.1886 of 2013

CMC Hospital Employees Union,
Regd. No.29/NAT,
rep. by its Secretary,
No.6, Walaja Street,
Vellore.

... Petitioner

vs.

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

2. The Management,
Christian Medical College,
Vellore, Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, after calling for the records in G.O.(D) No.482, dated 25.08.2010 of the 1st Respondent and quash the same and consequently direct the 1st Respondent to refer the dispute for adjudication under I.D. Act before any adjudicating body formed under I.D. Act, 1947.

For Petitioner : Mr.S.T.Varadarajulu

For 1st Respondent : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For 2nd Respondent : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam
Associates

O R D E R

Challenging the Government Order in G.O.(D) No.482, dated 25.08.2010 passed by the 1st Respondent and for a consequential direction to the 1st Respondent to refer the dispute for adjudication before any adjudicating body under the Industrial Disputes Act, 1947, the Petitioner/ Union is before this Court by way of the present Writ Petition.

2. According to the Petitioner/Union, the 2nd Respondent/Management held discussions and negotiations with them as well as other Unions to arrive at a settlement in payment of wages. As the issues were not resolved by the Management, the Petitioner/Union raised a dispute before the Labour officer, Vellore for conciliation on 15.04.2007 vide Na.Ka.No.414 of 2007. After failure of conciliation, failure report was submitted by the Labour Officer on 08.04.2008 and it was sent to the Government on 18.02.2009. The 1st Respondent through G.O.(D) No.480, dated 24.08.2010 referred the three issues found in the Failure Report and declined the other three issues through G.O.(D) No.482, dated 24.08.2010. The referred matter was taken on file by the Industrial Tribunal in I.D.No.23 of 2010 and it is still pending before the Tribunal for adjudication. Challenging G.O.(D) No.482, dated 24.08.2010, which declined to refer the other three issues, the Petitioner/Union is before this Court, seeking to set aside the order of the 1st Respondent.

3. Learned counsel for the Petitioner/Union contended that the Government cannot decide the dispute between two parties and in case of failure, the dispute needs to be referred for adjudication. According to him, the Government cannot usurp the powers of adjudication that have been given to the Presiding officer of the respective Labour Court/Industrial Tribunal.

4. In response, Mr.Sanjay Mohan, learned counsel appearing for the 2nd Respondent/Management submitted that the issue which needs to be considered is as to whether, after cessation of employer-employee relationship, any dispute could be raised by the Employees' Union for employees, who are no longer in service.

5. Today, learned counsel for the Petitioner submitted that Issue No.2 is confined to those employees, who are on the rolls as on the date of dispute and those who have retired from service from 14.04.2007, i.e. from the date of raising the dispute. He filed a Memo dated 06.08.2019 giving up two issues viz. Issue Nos.1 and 3 and requested that Issue No.2 may be referred for adjudication, as it pertains to pensionary benefits of the employees. For better understanding Issue No.2 of the said Memo is extracted hereunder:

Demand	Issues Declined	Issue to Refer
To enhance pension to the pensioners	The employer informed that the demand of the Union that they did not raise pension to the pensioners for many years was rectified.	The Petitioner is willing to confine with this issue for the employees who retired from the date of dispute raised by the petitioner Union.

6. The Apex Court has held that the Government cannot decide the lis between private parties. Hence, the Government is bound to refer the matter to the Industrial Tribunal. Whether the Employees' Union is competent to raise the dispute or not, has to be considered by the Labour Court, when the dispute is taken up for adjudication.

7. In view of the above, this Court, without rendering a decision on merits on the disputed facts, directs the 1st Respondent/Government to refer the dispute pertaining to Issue No.2, as to whether the workmen are entitled to enhanced pensionary benefits than what is provided by the Management from 14.04.2007, to the Industrial Tribunal, leaving it open to the parties to raise factual/legal issues available to them.

8. Once the matter is referred for adjudication, the Tribunal shall not adjourn the dispute beyond seven working days at any point of time, till finality is reached.

This Writ Petition is disposed of with the above direction and observation. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

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

+1 cc to M/s.S.T.Varadarajulu, Advocate Sr.No. 70429

+1 cc to M/s.S.Ramasubramaniam Associates, Sr.No. 70441

+1 cc to The Government Pleader Sr.No. 71233

AKM/10.12.19/3P-5C /

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