

In the High Court of Judicature at Madras
Dated : 22.3.2019
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.969 of 2019 & CMP.No.7267 of 2019

The Management of Pricol Limited,
Coimbatore-20 rep.by its Chief
People Officer Mr.R.Malar Vannan

...Appellant/4th Respondent
Vs

1.Kovai Mavatta Pricol Thozhilalar
Otrumai Sangam, rep.by its
General Secretary, Coimbatore-20.

2.Government of Tamil Nadu, rep.
By its Secretary, Labour and
Employment Department, Fort.St.
George, Chennai-9.

3.The Commissioner of Labour,
Labour Welfare Building,
DMS Compound, Chennai-6.

4.The Deputy Commissioner of Labour,
Conciliation III, Dr.Balasundaram
Road, Coimbatore-18. ...Respondents/ Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 06.3.2019 passed in W.P.No.4580 of 2019.

Prayer in W.P.No.4580 of 2019:

Writ Petition filed under Article 226 of the Constitution
of India praying for issuance of Writ of Mandamus, to Direct the
1st and 2nd respondent to issue Government orders under Section
10(1) and 10 B of the industrial Disputes Act 1947 on the
petitioners letters dated 31/12/2018 and 14/01/2019 to them and
on the industrial dispute raised by the petitioner before the
3rd respondent on 24/01/2019 within a time frame.

For Appellant : Mr.AR.L.Sundaresan, SC for
Mr.M.L.Joseph for
M/s.Chennai Law Associates
For Respondent-1 : Mr.S.Kumarasamy for
Mr.K.M.Ramesh
For Respondents 2 to 4 : Mr.R.P.Prathap Singh, GA

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of Mr.M.L.Joseph for M/s.Chennai Law Associates, learned counsel on record for the appellant, Mr.S.Kumarasamy, learned counsel appearing on behalf of Mr.K.M.Ramesh, learned counsel accepting notice for the first respondent and Mr.R.P.Prathap Singh, learned Government Advocate accepting notice for respondents 2 to 4.

2. This appeal by the Management of M/s.Pricol Limited is directed against the order dated 06.3.2019 in W.P.No.4580 of 2019 filed by the first respondent herein- Labour Union.

3. In the said writ petition, the first respondent - Labour Union sought for the issuance of a Writ of Mandamus to direct respondents 2 and 3 herein to issue Government Orders under Sections 10(1) and 10(B) of the Industrial Disputes Act, 1947 on the representations given by the Labour Union dated 31.12.2018 and 14.1.2019 and on the industrial dispute raised by them before the fourth respondent herein within a time frame.

4. The learned Single Judge allowed the said writ petition by the impugned order, in which, the relevant portions read thus :

"24. The 4th respondent/Management is directed to treat 294 workmen as employees of their Coimbatore Unit as before. The parties shall be bound by further orders to be passed by the Government in regard to the dispute raised by the petitioner/Union.

25. Accordingly, the Writ Petition is allowed and the Conciliation Officer is directed to complete the process of conciliation and on completion of such conciliation, in case of failure, first and second respondents are directed to refer the dispute for adjudication under Section 10(1) and also pass appropriate orders under Section 10(B) of the Industrial Disputes Act. The direction of this Court shall be complied with by the Conciliation Officer

within a period of 8 weeks from the date of receipt of a copy of this order and in case of reference of dispute for adjudication, first and second respondents are directed to pass final orders within a period of 4 weeks from the date when the matter is placed for conciliation of reference by the authority."

5. The appellant - management appears to be not very much aggrieved by order passed by the learned Single Judge directing respondents 2 and 3 herein to refer the dispute for adjudication under Section 10(1) of the Act. Likewise, the Management cannot have any serious objection in respect of the direction issued to respondents 2 and 3 herein to pass appropriate orders under Section 10(B) of the Act. However, the Management is very much aggrieved by the observations and directions issued by the learned Single Judge and more particularly in paragraph 24 of the impugned order apart from certain other observations in the body of the impugned order. The objection of the Management appears to be with regard to the directions issued by the learned Single Judge to treat the 294 workmen as employees of the appellant's Coimbatore Unit as before.

6. The learned Senior Counsel appearing on behalf of the appellant has further pointed out that the appellant is aggrieved by the finding rendered in paragraph 10 of the impugned order, which is quoted herein below :

"After the said order was passed, on behalf of 4th respondent Management, Shri Sanjay Mohan, learned Senior Counsel mentioned the matter and submitted that the Management was inclined and willing to treat the workers under order of dismissal as the employees of their Unit at Coimbatore for all purposes and they would also be paid salary for the relevant period and the workers need not report for duty. The learned Senior Counsel also submitted that this arrangement can be put in place till the matter is taken up finally on the next adjourned date."

7. The learned Senior Counsel appearing on behalf of the appellant would submit that what was stated by the learned counsel who appeared for the appellant - Management before the learned Single Judge when the interim application was heard was to the effect that till the interim application was disposed of, the appellant - Management was willing to treat the striking workmen as their employees and would agree to pay the salary provided that they should not report for duty. The learned

counsel appeared for the appellant - Management before the learned Single Judge submitted that any concession in that regard could not operate beyond the final orders passed in the said writ petition.

8. Mr.S.Kumarasamy, learned counsel appearing for the first respondent - Labour Union submits that as of now, the members of the appellant - Management are not very much concerned about the payment of wages. But, their endeavour is to convince this Court to direct the Management to comply with the directions issued by the learned Single Judge by directing the reference of the dispute for adjudication under Section 10(1) of the Act and for passing appropriate orders under Section 10(B) of the Act.

9. The learned Senior Counsel appearing on behalf of the appellant further submits that certain expressions were used in the impugned order, which cast certain aspersions on the appellant - Management and that they were not warranted since the appellant - Management is stated to be one of the best companies in Southern India and has treated their workmen in a proper manner unlike any other employer in the State of Tamil Nadu and in the neighboring States.

10. After elaborately hearing the learned Senior Counsel appearing on behalf of the appellant - Management and the learned counsel appearing on behalf of the first respondent - Labour Union, we are of the view that any observations or aspersions on the appellant - Management made in the impugned order shall not work against them and therefore, those observations made in the impugned order against the appellant - Management casting certain aspersions on them shall stand totally eschewed.

11. Now, we will move on to the issue as to what reliefs the appellant - Management and the first respondent - Labour Union are entitled.

12. As observed earlier, the appellant - Management does not have any serious objection for the matter being referred for adjudication under Section 10(1) of the Act. Furthermore, the direction issued by the learned Single Judge was perfectly legal and valid. This is more so in the present scenario because the Conciliation Officer submitted a failure report. Therefore, we are inclined to issue a direction to the Government to refer the dispute to the Labour Court for adjudication. We are also inclined to fix a shorter date considering the large number of work force and sensitivity of the matter.

13. With regard to the direction sought for by the first respondent - Labour Union to pass an order under Section 10(B) of the Act, there should not be any difficulty for the Government to do so and both the appellant - Management and the

first respondent - Labour Union can be permitted to raise all the issues before the Government by considering the application under Section 10(B) of the Act.

14. Section 10(B) of the Act confers power to issue order regarding terms and conditions of service pending settlement of dispute. Sub-Section (1) of Section 10B of the Act states that where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under Sub-Section (1) of Section 10 and if, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment, concerning which, such reference has been made, they may, by general or special order, make provision for the following :

"(a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman;

(b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and

(c) for any incidental or supplementary matters which appears to them to be necessary or expedient for the purpose of the order."

15. To invoke the said power under Section 10(B) of the Act, there should be an industrial dispute, which has been referred by the State Government to the Labour Court under Section 10(1) of the Act. Further, since the failure report has been submitted by the Conciliation Officer only three days back, we issue a direction to the State Government to refer the dispute to the Labour Court. Simultaneously, the State Government shall entertain the application under Section 10(B) of the Act, which has already been filed by the first respondent - Labour Union and after issuing notice to the appellant - Management and hearing the first respondent - Labour Union and the appellant - Management, the State Government shall pass appropriate orders in accordance with law.

16. Mr.S.Kumarasamy, learned counsel appearing on behalf of the first respondent - Labour Union submits that till the matter

is referred for adjudication before the Labour Court and till the application filed under Section 10(B) of the Act is considered and orders passed by the State, the members of the first respondent - Labour Union should not be dismissed from service.

17. We have heard the learned Senior Counsel appearing on behalf of the appellant on the above submission.

18. In our considered view, it will be highly inequitable if the members of the first respondent - Labour Union are to be dismissed from service pending orders from the Government for reference to the Labour Court and pending decision on the application under Section 10(B) of the Act. Therefore, we are inclined to grant protection to the members of the first respondent - Labour Union.

*"19. Accordingly, the writ appeal stands disposed of by modifying the direction issued in paragraph 24 of the impugned order and slightly modifying the direction issued in paragraph 25 of the impugned order in the following terms :

(i) The second respondent namely the Secretary to Government of Tamil Nadu, Labour and Employment Department, Fort.St.George, Chennai-9 is directed to refer the industrial dispute raised by the first respondent - Labour Union to the Labour Court under Section 10(1) of the Act within a period of two weeks from the date of receipt of a copy of this judgement and simultaneously within the said period, pass an order on the application filed by the first respondent/Labour union under Section 10-B of the Act dated 31.12.2018 and 14.01.2019. In the light of the judgement of the Hon'ble Division Bench of this Court in W.A.No.777 of 2007 dated 10.12.2007 which took note of the decision of the Hon'ble Supreme Court in the case of Basti Sugar Mills Company Ltd., Vs. State of U.P. [reported in (1978) II LLJ 412] there is no necessity for the Government to afford an opportunity of personal hearing either to the Management or to the Labour union while passing an order under Section 10-B of the Act.

(ii) Till orders are passed under Section 10(B) of the Act, the members maintained on the rolls of the first respondent - Labour Union shall not be dismissed from service;

(iii) It is made clear that this protection shall enure in favour of the members of the first respondent - Labour Union till orders are passed by the State Government on the application filed under Section 10(B) of the Act in terms of the above directions; and

(iv) In the light of this judgement, which we have rendered in this appeal, the observations contained in the impugned order

casting aspersions on the appellant - Management shall stand eschewed."

20. The learned counsel appearing on behalf of the first respondent - Labour Union submits that directions may be issued to the appellant - Management to pay wages, which they agreed during the pendency of the said writ petition.

21. The learned Senior Counsel appearing on behalf of the appellant submits that he has no instructions on the same and that if such an undertaking was given during the pendency of the said writ petition, he will accordingly advise his client.

22. This is recorded.

Sd/-

Assistant Registrar (CS viii)

Dated: 26/03/2019

*Substituted as per the order of this Court made herein dated 02/04/2019

Sd/-

Assistant Registrar (Cs-VIII)

Dated: 10/04/2019

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu, Labour and Employment Department, Fort. St. George, Chennai-9.

2. The Commissioner of Labour, Labour Welfare Building, DMS Compound, Chennai-6.

3. The Deputy Commissioner of Labour, Conciliation III, Dr. Balasundaram Road, Coimbatore-18.

To be substituted to the order already despatched on 28/03/2019

+1cc to Mr.K.M.Ramesh , Advocate SR.No. **31506**

+2ccs to M/s.Chennai Law Associates , Advocate SR.No. **32354**

+1 CC TO GOVERNMENT PLEADER SR.NO. 28586

WA.No.969 of 2019 &
CMP.No.7267 of 2019

A.SK(26/03/2019)
srg 10/04/2019



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