

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.8917 of 2019

The Ranipet Grieves Employees's Union,
(Regd.No.624/NAI)
Represented by tis General Secretary,
New No.7/128, Old No.6/343, BHEL Anna Nagar
Seekarajapuram Post,
Ranipet - 632 515,
Vellore District. Petitioner

vs

The Additional Commissioner of Labour,
The Authority under Section of
Industrial Employment (Standing Order)
Act, 1946,
Teynampet,
Chennai - 600 006. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records form the respondent, Additional Labour Commissioner relating to the impugned communication No.R.C.B/172/2019 dated 08.02.2019 and quash the same and direct the respondent, Additional Labour Commissioner to take on its file the petition for modification submitted by the petitioner Union for modification Clause 14(iv).

For Petitioner : Mr.R.Rajaram

For Respondent : Mr.D.Suryanarayanan,
Additional Government Pleader

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O R D E R

This writ petition is filed challenging the order of the respondent dated 08.02.2019, wherein and whereby, the petitioner was informed to place the demand of the Union before the Management and if it is not accepted by the Management, a dispute has to be raised under section 2(K) of the Industrial Dispute Act before the concerned Conciliation Officer.

2. Learned counsel for the petitioner submitted that the petition filed under Section 10(2) of the Industrial Employment (Standing Order) Act, 1946, for modification of Clause 14(4) of the Certified Standing Order is maintainable only before the respondent and therefore, the respondent is not justified in passing the impugned order directing the petitioner to approach the Management. In support of his contention, learned counsel invited this Court's attention to Section 10(2) of the said Act which reads as follows:

Subject to the provisions of sub-section(1), an employer or workman (or a trade union or other representative body of the workmen) may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen, or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.

3. Learned Additional Government Pleader, on the other hand, contended that the respondent has not passed any adverse order against the petitioner and on the other hand, they were directed to approach the Management only. However, the learned Additional Government Pleader is not disputing the statutory position that for modifying the Standing Orders, either the employer or the workman has to apply only to the Certifying Officer alone under section 10(2) of the said Act.

4. Heard both sides and perused the materials placed before this Court.

5. The petitioner is the employees' Union. Greaves Cotton Limited LEU-II is the Management. The petitioner presented a petition under Section 10(2) of the said Act before the respondent on 05.12.2018 seeking for modification of Clause 14 (IV) of the Certified Standing Order. The Management has been arrayed as the respondent in the said application. However, the respondent did not entertain the application and passed the impugned communication dated 08.02.2019 as stated supra.

6. According to the respondent, the petitioner has to approach the Management first and if the Management refuses, then the petitioner has to raise the Industrial Dispute. Perusal of the relevant provision, namely Section 10 of the Industrial Employment (Standing Order) Act, 1946, would show that it deals with duration and modification of Standing orders and sub clause 2 of the said provision specifically contemplates that either an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified.

Thus, it is evident from the above statutory position that application seeking for modification of the Standing Order would only lie before the Certifying Officer namely, the respondent herein as contemplated under Section 10 sub-clause (2) of the said Act. However, the respondent, instead of entertaining the application has chosen to return the same based on the reason stated supra which in my considered view is not justifiable. Needless to say that the merits of the claim made by the petitioner in their application seeking for modification of the Standing order is to be considered and decided only after hearing the Management.

7. Accordingly, the Writ Petition is allowed and the impugned proceedings is set aside. Consequently, the matter is remitted back to the respondent for considering the application filed by the petitioner under Section 10(2) dated 05.12.2018 on merits and in accordance with law after giving due opportunity of hearing to the Petitioner and the Management. Such exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsi

To

The Additional Commissioner of Labour,
The Authority under Section of
Industrial Employment (Standing Order)
Act, 1946, Teynampet,
Chennai - 600 006.

+1cc to Mr.R.Rajaram, Advocate SR.106195
+1cc to the Government Pleader SR.106295

W.P.No.8917 of 2019

LN(CO)

CB(29/01/2020)

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