

CMP.No.8205 of 2019

in

W.A.No.969 of 2019

T.S.SIVAGNANAM,J,
AND
V.BHAVANI SUBBAROYAN,J,

(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard Mr.S.Kumaraswamy, for Mr.K.M.Ramesh, learned counsel for the appellant and Mr.M.L.Joseph for M/s.Chennai Law Associates for first respondent and Mr.R.P.Prathap Singh, learned Government Advocate for R.2 to R.4.

2. This petition has been filed to clarify our judgement dated 22.03.2019 to the effect that Section 10(1) of the Industrial Disputes Act, 1947 reference and orders under Section 10-B are to be passed simultaneously and on the same date both the parties i.e., the employees union and the Management should not be heard by the Government for passing orders under Section 10-B of the Act. In our judgement, in paragraph 19, we had issued the following directions:

"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 judgment;

ii. Upon such an order of reference being passed by the Government, the first respondent – Labour Union shall file a fresh application under Section 10(B) of the Act along with (i) the representations already filed dated 31.12.2018 and 14.1.2019; (ii) a copy of the order passed in W.P. No.4580 of 2019 dated 06.3.2019 and (iii) a copy of this judgment, within a period of one week from the date, on which, the order of reference is passed by the State Government;

iii. Upon receipt of the said application under Section 10(B) of the Act, the Secretary to Government of Tamil Nadu, Labour and Employment Department is directed to entertain the application filed under Section 10(B) of the Act, issue notice to the appellant – Management and hear the representatives of both the first respondent – Labour Union and the appellant – Management, consider their respective submissions and the documents that they may place and pass a speaking order on merits and in accordance with law within a period of three weeks from the date, on which, the first date of hearing is fixed by the Secretary to Government of Tamil Nadu, Labour and Employment Department or any other officer, who has been authorized in law to exercise such power;

iv. 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;

v. *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 under Section 10(B) of the Act in terms of the above directions; and*

vi. *In the light of this judgment, which we have rendered in this appeal, the observations contained in the impugned order casting aspersions on the appellant – Management shall stand eschewed."*

No costs. Consequently, the connected CMP is closed."

3. After hearing the learned counsel for the parties and also taking note of the judgement of the Hon'ble Division Bench in W.A.No.777 of 2007 batch dated 10.12.2007, we deem it appropriate that directions contained in paragraph 19 have to be modified on the following terms:

"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.”

4. Registry is directed to issue fresh certified copy of the order by substituting paragraph 19 as above instead of paragraph 9 in our judgement dated 22.03.2019.

5. Accordingly, the civil miscellaneous petition stands disposed of. The above order has been passed with the consensus of the learned counsel appearing on either side.

mrm

(T.S.S.J.) (V.B.S.J.)
02.04.2019

T.S.SIVAGNANAM,J,
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