

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.06.2019

DATED: 24.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 859 of 2014

United Labour Federation
Regn.No. 2657/CNI
Represented by its Vice President
Mr.Ramachandran
C.J.Complex, IV Floor
No.149, Thambu Chetty Street,
Chennai - 600 001.

Petitioner/Appellant

Vs.

1. Government of Tamil Nadu
Represented by its Secretary
Department of Labour and Employment
Fort St. George
Chennai - 600 009.
2. Management of
M/s. Padma Packages Pvt. Ltd.,
Rep. By its Managing Director
Flat No.9, Sipcot Industrial Complex
Hosur - 635 126.

Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the Judgement and Order in W.P.No. 7572 of 2003 pronounced on 29.04.2013 whereby the learned Judge declined to interfere with the Order of the Government declining to refer to the Industrial Dispute raised by the petitioner under GOD No. 1105 dated 23.12.2002 and the order of Learned Judge is liable to be set aside.

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in respect of its proceedings leading to the issue of G.O.D.No.1105 dated 23.12.2002 and quash the same and direct the first respondent to refer the industrial dispute raised by the petitioner Union for adjudication apart from verifying whether the closure of the Units of the 2nd respondent after declaring a Lay Off is a bona fide one.

For Appellant : Mr. V.Prakash,
Senior Counsel for
Mr.K.Sudalaikannu

For R1 : **Mr.N.Srinivasan**
Additional Government Pleader

For R2 : Mr.R.Jayaprakash

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J)

The writ petitioner Union Labour Federation in W.P.No. 7572 of 2003 has filed this Writ Appeal assailing the Order of the learned Single Judge dated 29.04.2013.

2. The appellant had raised an Industrial Dispute on 24.10.2001 before the Labour Officer, Krishnagiri, against the Management of M/s. Padma Packages Private Limited., the second respondent herein, raising a new charter of demands in view of the fact that the settlement entered into between the Union and the Management had expired on 31.03.2001. They also raised another demand on 17.10.2001 before the Inspector of Factories, SIPCOT, Hosur complaining non employment and to revoke temporary illegal lock out. A similar demand had again been raised on 24.10.2001 before the very same authority complaining lay off and that the Management had not followed the mandatory requirements under the Industrial Dispute Act 1947. They had raised a further demand on 14.05.2002 before the Deputy Chief Inspector of Factories, Salem seeking wage revision and bonus and complaining lay off and lock out. A further representation had been given to the District Collector, Dharmapuri on 01.07.2002, again protesting lock out and complaining that the Management was engaging contract workers in the place of permanent workers. The first respondent, Government of Tamilnadu represented by the Secretary Department of Labour and Welfare Employment had passed G.O.(D).No. 1 of 2005 on 23.12.2002 stating that the demands of the Union need not be referred for adjudication primarily on the ground that the

Management had announced lock out and that the factory had been closed with effect from 10.01.2002 due to economic crisis. This Order of the first respondent had been questioned in the Writ Petition. The learned Single Judge by Order dated 29.04.2013 dismissed the Writ Petition with the following reason:-

"8. From the perusal of the charted demands as well as the reference are concerned even though the petitioners Union has placed 35 demands, all of them are for enhancement of salary and perks. But they have not agitated before the forum about the wrongful closure of the company. Further, they have not put forth any contention regarding the entrustment of some works to sub-units run by the sister concern. All these aspects have not been raised by way of demand before the concerned authority. The charted demands raised by the petitioner Union before the Conciliation Officer and before the forum are different in nature. Therefore, the Government has rightly rejected the request for reference on the ground that closure of the company has been made on 10.01.2002. Therefore, I am of the view that there is no need to interfere with the order passed by the first respondent. But at the same time, if the petitioner Union wants to agitate the same, it is always open to them to agitate the same before the appropriate forum and this order will not in any way prevent them to do so.

9. With the above observation, the Writ Petition is dismissed. No costs."

3. Mr.V.Prakash, learned Senior Counsel for the writ appellant was insistent in his arguments that the stand of the management that the Factory had been closed and that there was no manufacturing activity being carried out is false. The learned Senior Counsel stated that the appellant Union has sufficient proof to hold that the factory is still functioning and that the members of the Union have raised sufficient grounds in the industrial dispute which requires adjudication.

4. On the other hand, Mr.R.Jayaprakash, learned counsel for the second respondent/Management disputed the contentions and stated that the factory was actually closed and that no manufacturing activities are being carried on.

5. A perusal of the Government Order challenged in the Writ Petition reveals that during the conciliation talks, the Labour Officer had returned a finding that the Management had announced a lay off and also that the factory was closed with effect from 10.01.2002 due to economic crisis. Very unfortunately, these aspects had not been adverted to in the Order of the learned Single Judge now assailed before us.

6. There are two rival contentions, namely that the factory is functioning and that the factory is closed. Both the learned Senior counsel for the appellant and the learned counsel for the second respondent state that they have documents to prove their rival stands. Naturally, this aspect requires adjudication. We therefore hold that the Order of the learned Single Judge has to be set aside and the matter has to be remitted back to the Labour Officer, Krishnagiri, for reconsideration. The first respondent is directed to pass necessary orders in accordance with law on report received from the Labour Officer, Krishnagiri.

7. The appellant is permitted to raise a fresh Industrial Dispute on grounds permitted under the Industrial Dispute Act 1947 and the second respondent is also permitted to contest the same. Both parties are also permitted to adduce necessary evidence to substantiate their rival claims. The first respondent may pass appropriate orders after obtaining a report from the Labour Officer, Krishnagiri.

8. With the above observations, the Writ Appeal is allowed. No costs.

s/d-

Assistant Registrar (CS VI)

Dated: 26.07.2017

*** Corrected as per letter dated**

07.11.2019

sd/- Assistant Registrar (CS VI)

Dated: 18.11.2019.

True Copy

Sub-Assistant Registrar

vsg

To
1. The Secretary
Government of Tamil Nadu
Department of Labour and Employment
Fort St. George

To be substituted to
the order already
despatched on
06.09.2019

+1 CC to Govt. Pleader sr 52374.
+2 Ccs to Mr.K.Sudalaikannu, Advocate sr 50258 & 51826
+1 CC to Mr.R.Jayaprakash, Advocate sr 51601

W.A.No. 859 of 2014

RSI (CO)
SP(01/08/2019)
SP(19/11/2019)



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