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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD).No.20969 of 2019

and

W.M.P. (MD).Nos.17569 and 17571 of 2019

T.Chelladurai

... Petitioner

Vs.

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

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

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining with the 1st respondent's proceedings in G.O(Ms)No.151, dated 31.08.2017 quash the same as illegal.

For Petitioner

:Mr.T.Kumar

For Respondents

:Mr.A.K.Baskara Pandian

Special Government Pleader

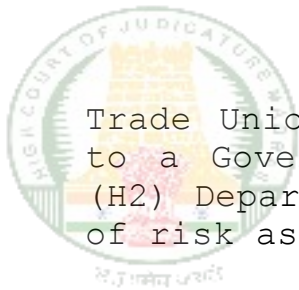
ORDER

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

Heard Mr.T.Kumar, learned counsel appearing for the petitioner and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing on behalf of the respondents.

2.By consent on either side, this writ petition is taken up for final disposal.

3.This writ petition has been filed by one <https://hservices.courtsgovindia.nic/> Mr.E.Chelladurai, who is the District President of the Tamil Nadu



Trade Union Confederation. The challenge in the writ petition is to a Government Order in G.O.(Ms).No.151, Labour and Employment (H2) Department, dated 31.08.2017, introducing computerised system of risk assessment based on online common inspection scheme.

4.It is the submission of the petitioner that the impugned Government Order stipulates online inspection system to the establishments covered by 22 Labour Welfare Legislation and there is no imminent need to replace the existing procedure where physical inspection is being done and the said procedure has been going on without any hindrance and it has been found to be beneficial to the welfare of the labourers. It is submitted that during the year 2018-2019, 3,18,223 inspections were made by the Enforcement Officers and 17,725 cases were compounded and a sum of Rs.40 lakhs was collected and the proceedings were initiated under the provisions of the Tamil Nadu Shops and Establishment Act, 1947. It is further submitted that in terms of the procedure under the Tamil Nadu Catering Establishment Act, 1958, during the year 2018-19, 45,394 inspections were made and 7,914 contraventions were found and a sum of Rs.14.02 lakhs was collected as compounding fees. The petitioner has pointed out the proceedings initiated under similar Labour Welfare Legislation to demonstrate that the physical inspection of the condition of a unit/establishment is mandatory and the same cannot be dispensed with.

5.It is the submission of the learned counsel for the petitioner that the mechanism of physical inspection is well oiled machinery and all along the Labour Welfare Legislation were being implemented by the authorities by conducting physical inspection of the establishments and now changing the procedure into online process, physical inspection has been totally done away which is against the welfare of the working force. It is further submitted that sufficient thought process has not gone into before the impugned Government Order was notified and the online applications are based on the Data given by the Management and going by the past records several discrepancies and wrong submissions were made by the Management to get away from the clutches of the Labour Welfare Legislation and if the authorities merely go by the details furnished in the online application, then the Management will conduct their affairs at their whims and fancies and the production offered to the workmen will be completely taken away. The impugned Government Order was notified in August 2017 and it appears that it has been going on since then.

6.On a reading of the impugned Government order, we find that there is no total dismantling of physical inspection and clause 15(2) of the impugned Government Order provides for a physical inspection and instructions have been given to the



Inspecting Officer and to the Supervisory Officers. Therefore, the petitioner may not be fully right in stating that the procedure of physical inspection has been totally done away with. However, considering the fact that the petitioner represents the confederation of Tamil Nadu Trade Units, they also have a role to play to ensure that the rights of the workmen are protected, especially, when there are several labour Welfare Legislation which have been enacted and in fact, the impugned Government Order covers 22 such enactments.

7. Therefore, in our view, we do not find any ground to declare the impugned Government Order as illegal and void, but however since the confederation is also one of the state-holders, they should place the reliance materials before the respondents pointing out as to how the system would be further tightened so that the erring management did not escape from the rigour of law. It is the common knowledge that in the recent part, all the applications are received on online and in several applications which are filed for recruitment to various posts, more particularly, teaching posts at Collegiate Education level, a self-assessment is called upon to make the candidates, who would be verified for its correctness. The positive aspect about self-assessment is that it is a solemn declaration made by the person concerned/applicant and if any wrong details have been furnished, then they are open to face severe penalty and many applicant will also be disqualified. Therefore, if the Management have to submit their application through online which has to be received through their official E-Mail address, there is a presumption that they have given the correct details and they cannot escape by merely stating that somebody else had uploaded the details as is normally done, when manual forms are filled up. Therefore, online applications will ensure transparency, however, the concern pointed out by the confederation can be brought to the notice of the respondents, so that if the suggestions pointed out by the confederation is found to be acceptable, then the respondents can take a prerogative action on the same and to do the needful.

8. For the above reasons, while declining to grant the relief as sought for by the writ petitioner, we give liberty to the petitioner to submit a comprehensive representation through proper channel i.e., through the second respondent clearly pointing out the errors which according to them will be based on pursuant to the impugned notification. On such receipt of such representation, the second respondent shall consider the same and submit his view to the first respondent who shall be the ultimate authority to take a decision in the matter. The first respondent shall take a decision in the matter within a period of three months from the date on which the proposed list is forwarded by the second respondent.



9. With the above observations, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)

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To

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

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

+1 CC to M/s. SPL GP (SR-90880[F] dated 01/10/2019)

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