

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1734 of 2019
and
W.M.P. No. 1940 of 2019

Erode District General Workers Union (CITU),
Rep. by its General Secretary,
48/5 Subburayakaadu,
N.G.G.O. Colony,
Erode - 9. Petitioner

-vs-

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Labour and Employment Department,
Fort St. George,
Chennai - 600 009.
2. The Management,
IRT Perundurai Medical College and Hospital,
Sanatorium,
Perundurai,
Erode - 638 053. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records from the First Respondent pertaining to the order dated 19.12.2018 in G.O. (D) No. 706, Labour and Employment (D1) Department quash the same and consequently direct the First Respondent to refer the dispute relating to permanency and regularization of 30 workmen with time scale of pay and all other consequential benefits for adjudication to the appropriate Labour Court/Tribunal within a specified time, award costs.

For Petitioner : Mr. V. Ajoy Khose

For Respondents: Mr. D. Sathyaraj,
Additional Government Pleader (for R1)

Mrs. Kala Ramesh (for R2)

O R D E R
(through video conference)

Heard Mr. V.Ajoy Khose, Learned Counsel for the Petitioner, Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the First Respondent and Mrs. Kala Ramesh, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which is a Trade Union, seeks to espouse the cause of 33 of its members for regularization of their service in the establishment of the Second Respondent, viz., IRT Perundurai Medical College and Hospital, Erode. The request of the Petitioner for referring the said demand for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), was declined by the First Respondent, viz., Government of Tamil Nadu, on the ground that the relief for grant of permanent status to 33 persons concerned could be made under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

3. Learned Counsel for the Petitioner contends that in respect of similarly placed 67 employees in the establishment of the Second Respondent, reference was made in I.D. No. 133 of 2002 to the Labour Court, Salem for their regularization, which was granted by award dated 02.09.2009 and has been implemented, but when a similar claim has been made in respect of 33 others through the Trade Union of the Petitioner, the impugned order has been passed for extraneous reasons. It is further asserted by the Learned Counsel that when two legal remedies are available, the choice has to be left to the person who seeks relief and in the absence of any legal bar conferring exclusive jurisdiction only under one of the fora, the refusal to entertain the claim on the ground that the alternative remedy is available cannot be sustained. He relies on the decision of the Hon'ble Supreme Court of India in *Nirchiliya -vs- Management of Safire Theatre* [(1991) 1 LLJ 111], which has been followed by this Court in the subsequent decisions in *Superintending Engineer -vs- Labour Inspector, Vellore* (Order dated 09.12.2003 in W.P. No. 17692 of 1999 etc., batch) and *A.Kajendran -vs- Presiding Officer, Central Government Industrial Tribunal, Chennai* (Order dated 04.02.2011 in W.A. No. 1881 of 2010) in that regard.

4. It is the contention of the Learned Counsel for the Second Respondent that there is no jural relationship of employer and employee between the Second Respondent and the members of the Trade Union of the Petitioner, and as such, the First Respondent is justified in refusing to refer the matter for industrial

adjudication.

5. There is considerable force in the contentions raised by the Learned Counsel for the Petitioner impeaching the impugned order passed by the First Respondent. The limited scope of jurisdiction of the appropriate Government under Section 10 of the Act to determine as to whether dispute exists or is apprehended and then refer it to adjudication on merits has been reiterated in a series of decision of the Hon'ble Supreme Court of India. It would suffice here to refer to the decisions of the Hon'ble Supreme Court of India in *Telco Convoy Drivers Mazdoor Sangh -vs- State of Bihar* [(1989) 3 SCC 271], where it has been explained that while exercising power under Section 10 (1) of the Act, the function of the appropriate Government is administrative in nature and not a judicial or quasi-judicial one and the Government cannot delve into the merits of the dispute in carrying out that exercise and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it. Again in *M.P.Irrigation Karamchari Sangh -vs- State of M.P.* [(1985) 2 SCC 103], it has been restated that it has to be understood as a rule that adjudication of demand made by workmen should be left to the Tribunal to decide and the same could be refused only on the ground of patent frivolousness. In view of the dictum laid down in the aforesaid decisions cited by the Learned Counsel for the Petitioner, which squarely apply to the fact situation in this case, where there is no legal bar under any of the statutory provisions requiring the concerned workmen to resort to a specific legal remedy when options to pursue before any of the different fora is available, the only reason attributed by the First Respondent to decline reference that there is availability of another remedy, cannot be sustained.

6. The contention of the Learned Counsel for the Respondent that 33 persons to whom regularization is claimed are not the direct employees of the Second Respondent is exactly the factual dispute that has to be adjudicated by the Labour Court. It is neither within the province of the First Respondent nor this Court at this pre-mature stage to get embroiled into that controversy, which has to be determined following the prescribed procedure under the Act after affording full opportunity of hearing to both parties concerned.

7. In view of the foregoing discussion, it is not possible to uphold the impugned Order in G.O. (D) No. 706, Labour and Employment (D1) Department dated 19.12.2018 passed by the First Respondent declining to refer the dispute raised by the Trade Union of the Petitioner for regularization of its 33 members in the establishment of the Second Respondent, and the same is set

aside and the matter is remitted to the First Respondent to pass fresh orders for referring that for adjudication before the jurisdictional Labour Court under Section 10 of the Act. Such exercise shall be completed by the First Respondent expeditiously and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 31.12.2020 under written acknowledgment.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vjt/kv/dm

To

- 1.The Principal Secretary to the Government of Tamil Nadu,
Labour and Employment Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
- 2.The Management,
IRT Perundurai Medical College and Hospital,
Sanatorium,
Perundurai,
Erode - 638 053.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to Mr.Ajoy Khose, Advocate, S.R.No. 32461

JP(CO)
GN(02/11/2020)

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