

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2020

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THE HONOURABLE Mrs. JUSTICE V.PARTHIBAN

W.P. No.12913 of 2020
& WMP.Nos.15970, 15972 & 15974 of 2020

Central Organisation of Tamil Nadu,
Electricity Employees (COTEE),
No.27, Mosque Street,
Chepauk, Chennai-600 005

.. Petitioner

Vs.

1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai-600 002

2.The Secretary,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai-600 002

3.The Assistant Commissioner of Labour (Conciliation),
DMS Compound, Teynampet,
Chennai-600 018.

.. Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings in (PER) CMD TANGEDCO PROCEEDINGS No.129 dated 24.08.2020 of the second respondent suspending the periodical surrender of earned leave and payment of leave salary for one year and quash the same.

For Petitioner : Mr.V.Stalin

For Respondents : Mr.Karthik Rajan, St. C

O R D E R

This matter is taken up though Web hearing.

This Writ Petition has been filed seeking for issuance of a Writ of Certiorari, to call for the impugned proceedings in (PER) CMD TANGEDCO No.129 dated 24.08.2020 of the second respondent suspending the periodical surrender of earned leave and payment of leave salary for one year and quash the same.

2. The facts which gave raise to the filing of the Writ Petition are as under:

2.1 The petitioner is an Association representing the electricity employees employed in TANGEDCO. The members of the Association are stated to be aggrieved by the TANGEDCO proceedings in (PER) CMD TANGEDCO No.129 dated 24.08.2020 declaring that in respect of Class III and Class IV employees of TANGEDCO, benefit of periodical surrender of earned leave for encashment of 15 days for a year or 30 days for two years was suspended initially for a period of one year with effect from 27.04.2020. The said proceeding has been issued on the basis of the Government Order issued in G.O.Ms.No.48 P& AR(FR-III) Department dated 27.04.2020. The principal ground on which the challenge is made by the Association is that the proceeding has been issued without following the mandatory procedure contemplated under Section 9(A) of the Industrial Disputes Act, 1947.

2.2 The learned counsel for the petitioner would submit that the TANGEDCO being a Public Utility Service, when there is a change in service conditions of its employees, the employees concerned should be put on notice and consensus must be arrived at before effecting any changes in their service conditions. The present proceedings of the TANGEDCO is in effect, an alteration of condition of service of the employees and therefore, it is liable to be interfered with as being violative of mandatory provisions of the Industrial Disputes Act and also contrary to law declared by the Hon'ble Supreme Court of India reported in "(2002) 2 SCC 244 "(Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and Others)". The learned counsel would also submit that since the impugned proceedings is per se illegal, the respondents may be enjoined from proceeding further with the said proceedings.

3. The Court is unable to appreciate the challenge in this Writ Petition on the ground that there is alteration of condition of service of the employees covered under the impugned proceedings and therefore, notice is a mandatory requirement under Section 9 (A) of the Industrial Disputes Act. Unfortunately, the petitioner Association has not read the impugned proceedings in proper perspective. It is very clear in the language of the proceedings that in view of the

extraordinary and unprecedented Pandemic crisis faced by the State and in order to serve a larger public interest and purpose, the benefit as envisaged towards encashment of leave is merely suspended for a year. The benefit of encashment is not taken away altogether. Therefore, the employees cannot complain of alteration of condition of their services, when the Government has initiated slew of measures to ameliorate the unprecedented crisis engulfing entire State and also to alleviate the sufferings faced by the people at large in the State. In such times of crisis, the suspension of a particular benefit can never be construed as an alteration of condition of service warranting invocation of Section 9 (A) of the Industrial Disputes Act. By no stretch of legal standards, that mere suspension of encashment of leave for a period of one year could be said to be a unilateral change effected by the TANGEDCO in the service conditions of its employees. Moreover, this Court finds that the benefit of leave encashment enjoyed by the employees has not been dis-continued or withdrawn and mere suspension of such benefit for a period of one year cannot give the employees of TANGEDCO, any legitimate cause of complaint and compel the administration to invoke Section 9 (A) of the Industrial Disputes Act. Arriving at a consensus or settlement under Section 9 (A) of the Industrial Disputes Act as originally envisaged in the provision has a different scope and purpose, when the changes of service conditions are contemplated on a long term measure, but quite certainly the said provision cannot have any application in the case on hand, as the impugned measure is only transient initiated by the employer to serve larger public purpose.

4. In any case, it appears to this Court that filing of this Writ Petition challenging mere suspension of benefit for a period of one year, in the present circumstances, is unabashed attempt to protect their self-interest unmindful of the crisis, which is looming large around them and faced by the public at large by this State. The preservation of self interest by challenging the impugned action of the TANGEDCO is a sad reflection as to how callously is the collective conscious of the employees who are members of the petitioner Association could be unconcerned brazenly, notwithstanding the calamitous situation being witnessed all around them and therefore, the Writ Petition needs to be dismissed.

5. Hence, the Writ Petition is dismissed at the admission stage itself with a cost of Rs.25,000/- payable by the Association to the Chief Minister Covid -19 Relief Fund within a period of two weeks from the date of receipt of a copy of this order. In case the cost is not paid, the same is to be

recovered by initiating proceedings under the Tamilnadu Revenue Recovery Act with appropriate interest payable after the due date. The Registry is directed to mark a copy of this order to the District Collector of Madras for taking follow up action. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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2.The Secretary,
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144, Anna Salai, Chennai-600 002

3.The Assistant Commissioner of Labour(Conciliation),
DMS Compound, Teynampet,
Chennai-600 018.

4.The District Collector, Chennai

5.The Secretary
The Chief Minister Relief Fund
Secretariat, Fort. St. George
Chennai 9.

+1 CC to Mr.V.Stalin, Advocate sr 30728.

+1 CC to Mr. Karthik Rajan, Advocate sr 30577.

W.P. No.12913 of 2020

PVS(CO)
SP(19/10/2020)