

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.35603 OF 2019
AND WMP NO.5843 OF 2020

All India EPF Staff Federation
(Recognized)

Rep. by its Secretary General R.Krupakaran
No.37, Royapettah High Road,
Royapettah, Chennai - 600 014.

... Petitioner

Vs.

1.The Union of India

Ministry of Labour & Employment
Rep. by its Secretary
Shram Sakthi Bhavan, Rafi Marg,
New Delhi - 110 001.

2.The Chief Labour Commissioner (Central)

Ministry of Labour & Employment
Shram Sakthi Bhavan, Rafi Marg,
New Delhi - 110 001.

3.The Employment Provident Fund Organisation

Rep. by it's Central Provident Fund Commissioner (CPFC)
Bhavishiya Nithi Bhavan
No.14, Bhikaji Cama Place,
New Delhi - 110 066.

4.The Regional Labour Commissioner (C)

4th Floor, Jeevan Deep Building Parliament
Parliament Street,
New Delhi - 110 001.

5.The Regional Labour Commissioner (C)

Wing - A, 5th Floor,
Shastri Bhavan, Haddows Road,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the second respondent to take action against the third respondent under Section 29 of the Industrial Disputes Act, 1947, as per the representation dated 21.10.2019.

For Petitioner : Mr.S.Sivakumar

For Respondents: Mr.V.Vijay Shankar
Standing Counsel

O R D E R

The petitioner is the Federation of Employees of the third respondent Organisation. The third respondent, in its 213th meeting of the Central Board of Trustees called for participation of the employees to discuss about the Organisational Restructuring of Employees Provident Fund. That was taken as item no.8 of the Agenda and they passed a resolution to accept the report of the Sub-Committee placed before the Board on 06.02.2016 and 29.03.2016 and also the report of the Anomaly Redressal cum Implementation Committee. They have passed some other resolution also in the same Agenda. Now that, the petitioner would contend that resolution as "Settlement" and it has binding force on the third respondent to enforce the same. The petitioner made a representation to the third respondent and also to the second respondent Chief Labour Commissioner (Central) Ministry of Labour and Employment, New Delhi. Since the second respondent failed to take action, they preferred the present writ petition for a mandamus directing the second respondent Chief Commissioner of Labour, to initiate action against the third respondent employer under Section 29 of the Industrial Disputes Act, 1947.

2. The learned counsel for the petitioner would vehemently contend that it is after their participation, the Management has taken a decision to form a Sub-Committee and to accept the report of the Anomaly Redressal cum Implementation Committee. In that view of the matter, once a resolution has been passed and approved by the Central Government Committee, the employer is bound to implement the same. Failure to implement the same is breach of Settlement which warrants action under Section 29 of the Industrial Disputes Act, 1947.

3. Per contra, learned counsel for the third respondent would submit that the resolution passed in the 213th meeting of the Central Board of Trustees cannot be construed as Settlement. He would draw the attention of this Court to Section 2(p) of the Industrial Disputes Act, 1947, which defines "Settlement". Section 2(p) of the Industrial Disputes Act, 1947 reads as under:

"2.[(p) "settlement" means a settlement arrived at in the course of conciliation

proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to 5[an officer authorised in this behalf by] the appropriate Government and the conciliation officer;] "

He also drew the attention of this Court to Form "H", the form under which the settlement has been recorded. The settlement in the context of Industrial Disputes Act, 1947, shall be negotiated in the presence of the Conciliation Officer and the agreement recorded in writing, signed by both the parties will be binding on both of them. In case, if a settlement or award is signed by both the parties, in the presence of the Conciliation Officer and the same is not implemented, for breach of settlement under Section 29 of the Industrial Disputes Act, 1947, criminal action can be initiated against the person, who breaches the settlement.

4. In the instant case, I am of the view that the resolution passed by the Central Board of Trustees will not take the character of the settlement and it has no binding force on the Management to implement it. A perusal of the minutes of 213th Meeting of the Central Board of Trustees dated 08.07.2016 shows that a decision was taken by the Board of Trustees. That has to be approved in the next Board's meeting. Till it is approved, it will remain as a resolution and will not take effect.

5. Be that as it may, in the instant case, I do not find any settlement as contemplated under Section 2(p) of the Industrial Disputes Act. In the absence of any settlement, nobody can allege breach of settlement and such alleged breach warrants penal action under Section 29 of the Industrial Disputes Act, 1947. In that view of the matter, I do not find any cause of action for the petitioner to maintain this writ petition and there is no violation of any statutory right arising from any settlement reached between the petitioner and the third respondent. Therefore, I do not find any merit in the writ petition.

6. It is also relevant to point out that this Court in its order dated 18.02.2020 in W.P.No.35847 of 2019 has directed the Conciliation Officer to complete the conciliation proceedings within a period of six weeks. It is also brought to the notice of this Court that aggrieved over the cadre restructuring, an organ of the very same federation filed an Original Application before the Central Administrative Tribunal

in O.A.No.1218 of 2016 and the same is pending. When there are avenues of redressal of grievances, with regard to the dispute raised by the federation, as well as the service grievances, they shall not approach this Court with futile reliefs, which amounts to forum shopping. However, I restrain myself from imposing any cost to the petitioner.

7. In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III-MDU)

//True copy//

Sub Assistant Registrar

TK

To

- 1.The Secretary
Union of India
Ministry of Labour & Employment
Shram Sakthi Bhavan, Rafi Marg,
New Delhi - 110 001.
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W.P.NO.35603 OF 2019

BR(CO)
GMY(24/09/2020)