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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1091 OF 2020
AND
C.M.P.NO.13276 OF 2020

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

... Appellant/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/Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 18.09.2020 in W.P.No.12913 of 2020.

Prayer in W.P.No.12913 of 2020:-

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.

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For Appellant : Mr.N.G.R.Prasad
For M/s.Row and Reddy

For Respondents : Mr.P.Subramaniam
For RR 1 and 2

Mr.C.Jayaprakash
Government Advocate for R3

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The appeal is preferred by the writ petitioner, who is Central Organization of Tamil Nadu Electricity Employees (COTEE), challenging order of the writ Court, wherein and whereby, the challenge to the (PER) CMD TANGEDCO proceedings No.129, dated 24.08.2020, which had suspended for an year the periodical surrender of Earned Leave (EL) and payment of Leave Salary, based on G.O.Ms.No.48, Personnel and Administrative Reforms (FR-III) Department, dated 27.04.2020, was negatived.

2. G.O.Ms.No.48, dated 27.04.2020 was issued for suspension of EL and payment of Leave Salary for a period one year and the same reads as follows :

"In view of the fiscal stresses arising from the COVID-19 pandemic, the periodical surrender of Earned Leave for encashment for 15 days every year / 30 days every two years, as provided under Rule 7A of the Tamil Nadu Leave Rules, 1933 is suspended initially for a period of one year to all the Government Employees and Teachers, from the date of issue of this order. All surrender requests and bills pending as on date irrespective of their stage of Sanction and Disbursement shall not be processed. In cases where sanction orders have been issued, they are to be cancelled and Earned Leave re-credited to the leave account of the respective employees.

2. The order shall also be applicable to all Constitutional/Statutory bodies including all State Corporations, Local Bodies, Boards, Universities, Commissions, Companies, Institutions, Societies, etc.,"



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3. As the said Government Order applies to all the State Corporations, local bodies, etc., the TANGEDCO had issued the proceedings on 24.08.2020, which was challenged by the writ petitioner contending it to be an alteration of condition of service of the employees.

4. The learned Single Judge dismissed the writ petition imposing a cost of Rs.25,000/- (Rupees twenty five thousand only) payable to the Chief Minister COVID-19 Relief Fund within a period of two weeks. The appellant moved this Court at a time when there is an extraordinary and unprecedented pandemic crisis faced not only by the State, Country, but also the entire world at large.

5. It is only in the larger public interest, the Government had decided not to take away, but only to suspend the encashment of the EL, etc. for only one year. It is true that the Government extended it for one more year vide G.O.Ms.No.48, dated 13.05.2021, i.e, till 31.03.2022, which was adopted by the respondents in (PER) CMD TANGEDCO Proceedings No.113, dated 19.05.2021. This temporary suspension, by no stretch of imagination, can be called as alteration of condition of the service of the employees of TANGEDCO. It is not the individual, who has knocked the doors of this Court, but one of the Organization of employees had moved this Court.

6. When it is the policy of the Government to take certain measures to meet the extraordinary crisis, the same cannot be alleged to be a unilateral change in conditions of service, for which, the petitioner should be put on notice. The impugned action of the respondents do not warrant the compliance of Section 9A of the Industrial Disputes Act procedures, as it is only a temporary suspension, given the pandemic circumstances faced by the world.

7. It is to be stated that the judgment of the Hon'ble Supreme Court in Gujarat Mazdoor Sabha v. State of Gujarat, (2020) 10 SCC 459, relied on by the learned counsel for the appellant, is delivered by the three-Judge Bench on a different context and the same would not render any assistance to the appellant. It is relevant to reproduce the summation of the Hon'ble Supreme Court in the said judgment, which is as follows:

"I. Summation

49. This Court is cognizant that the respondent aimed to ameliorate the financial exigencies that were caused due to the pandemic and the subsequent lockdown. However, financial losses cannot be offset on the weary shoulders



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of the labouring worker, who provides the backbone of the economy. Section 5 of the Factories Act could not have been invoked to issue a blanket notification that exempted all factories from complying with humane working conditions and adequate compensation for overtime, as a response to a pandemic that did not result in an "internal disturbance" of a nature that posed a "grave emergency" whereby the security of India is threatened. In any event, no factory/classes of factories could have been exempted from compliance with provisions of the Factories Act, unless an "internal disturbance" causes a grave emergency that threatens the security of the State, so as to constitute a "public emergency" within the meaning of Section 5 of the Factories Act. We accordingly allow the writ petition and quash Notification No. GHR/2020/56/FAC/142020/346/M3 dated 17-4-2020 and Notification No. GHR/2020/92/FAC/142020/346/M3 dated 20-7-2020 issued by the Labour and Employment Department of the respondent State.

50. As a consequence of this judgment, and in the interest of doing complete justice under Article 142 of the Constitution, we direct that overtime wages shall be paid in accordance with the provisions of Section 59 of the Factories Act to all eligible workers who have been working since the issuance of the notifications."

8. A reading of the aforesaid paragraphs would amply make it clear that the said judgment relates to inhumane working conditions and denial of adequate compensation for overtime work, whereas, the impugned action of the respondents is a temporary suspension of payment of leave salary benefits.

9. As stated above, the State Government is operating with radical uncertainty faced with difficult health, economic and social challenges raised by COVID-19. Beyond the health and human tragedy of the COVID virus, it has triggered the most serious economic crisis. The nature of the crisis is unprecedented. Many governments at all levels have reacted quickly and implemented policy decisions in response to the crisis. Certainly, the COVID-19 pandemic will have short, medium and long term effects on Government functioning and finance. In such a situation, the petitioner has sought for the relief unmindful of the calamity engulfing the world and demanded the



EL encashment. Therefore, the writ Court awarded Rs.25,000/- cost payable to the Chief Minister COVID-19 Relief Fund.

10. The learned counsel for the appellant argued that it was uncharitable to award costs to the petitioner. When this Court offered to set aside the award of costs alone and confirm the order of the learned Single Judge, the counsel for the appellant refused to accept and wanted the entire order to be set aside, which we are not inclined to, in view of the above discussions.

11. For the foregoing reasons, the Writ Appeal is dismissed and the order of the learned Single Judge is confirmed. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

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DMS Compound, Teynampet,
Chennai - 600 018.

+1cc to Mr.P.Subramaniam, Advocate, S.R.No.40671
+1cc to M/s.Row and Reddy, Advocate, S.R.No.40228

W.A.NO.1091 OF 2020

CA(CO)
CS/24/09/2021