



W.P.No.23599 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23599 of 2004
and
W.M.P.No.28575 of 2004

The Station Director,
Madras Atomic Power Station,
Kalpakkam.

...Petitioner

-Vs-

1.The Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan, Chennai.

2.The General Secretary,
Tamil Nadu Atomic Power
Employees Union,
Kalpakkam.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, by calling for the proceedings of the 1st respondent Labour Court in its impugned Award I.D.No.147 of 2001 dated 13.02.2004 and quash the same.

For Petitioner : Mr.V.Vijayashankar
For R2 : Mr.V.Ajoy Khose



W.P.No.23599 of 2004

ORDER

WEB COPY With the consent of both the parties, this writ petition is taken up for final disposal.

2. Under a rice loan scheme, that was prevailing in the petitioner-Industrial Establishment for more than two decades, the management sanctions loan to the Society, which in turn, distributes the rice at subsidized price to the workmen. The scheme was discontinued, without prior notice in the year 1997. Aggrieved against the withdrawal of this rice loan scheme, the second respondent-Trade Union raised a dispute before the Central Government Industrial Tribunal cum Labour Court, Chennai and by an Award dated 13.02.2004, the unilateral withdrawal, without notice, was held to be in violation of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). This Award is under challenge in the present Writ Petition.

3. Section 9-A of the Act mandates that, whenever an employer intended to effect any change in the conditions of service applicable to any workman, in respect of any matters specified in the Fourth Schedule, a prior



W.P.No.23599 of 2004

notice, for such proposal to effect the change, requires to be given to the workman. Among various conditions of service prescribed under the Fourth Schedule of the Act, Clause 8 pertains to withdrawal of any customary concession or withdrawal of any change in usage.

4. It is not in dispute that the rice loan scheme was in continuous usage for more than 20 years, at the time when the management decided to drop the scheme. Thus, it requires to be held that the rice loan scheme by itself was a customary privilege granted to the workers, which they had been utilising over a long period of time. Withdrawal of such a privilege would squarely fall under Clause 8 of the Fourth Schedule and therefore, would amount to change in the conditions of service of the workmen. While that being so, when the management intended to change its conditions of service, they were required to issue a notice in writing to the workmen on the proposed change, in the absence of which, the mandate under Section 9-A is deemed to have been violated. It is under this legal ratio that the Industrial Tribunal had allowed the claim made by the Trade Union, by holding that since the claim was in vogue and in practice for more than 25 years, it is deemed to be a condition of service and in the absence of a notice under Section 9-A of the



W.P.No.23599 of 2004

Act, withdrawal of the scheme of rice loan was illegal and arbitrary.

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5. The learned counsel for the second respondent placed reliance on the following judgments of the Hon'ble Supreme Court in support of his claim and submitted that withdrawal of a customary privilege or usage is deemed to be a change in conditions of service, for which, a prior notice is mandatory.

6. In the case of *M/s. Tata Iron and Steel Co. Ltd., Vs. The Workmen and others reported in (1972) 2 SCC 383*, the Hon'ble Supreme Court held that, when the weekly days of rest, which the workers were enjoying for a long period of time, was unilaterally changed without prior notice, it is deemed to be a change in the conditions of service. By holding so, it was pointed out that such change in the conditions of service, without prior notice, is violative of Section 9-A. The relevant portion of the judgment reads as follows:-

"12. We are not unmindful of the force of the argument pressed on behalf of the appellant that if a holiday is changed from Sunday to some other week



days it would not affect the material gain or financial benefit available to the workmen because the workmen would nonetheless get one day off with pay in a week. Whether the paid day of rest is a Sunday or some other week days would no doubt cause no financial loss to the workmen. But the financial benefit cannot be the sole criterion in considering this question. In this connection it must not be ignored that due to long usage and other factors Sunday as a holiday may for conceivable reasons have assumed importance for workmen. For certain classes of workmen Sunday as a weekly rest day may also have special significance. Workmen may, for example, also generally like to have weekly rest day on a Sunday when their school-going children have a holiday so that the entire family may be able to take part in recreational or other social activities. This consideration has its own importance. If that be so, then, notice for effecting such a change would be within the contemplation of Section 9-A. The real object and purpose of enacting Section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management



and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital.

13.

14. In our opinion, in order to effectively achieve the object underlying Section 9-A, it would be more appropriate to place on the Fourth Schedule read with Section 9-A a construction liberal enough to include change of weekly rest days from Sunday to some other week day. The appellant having thus effected a change in the weekly days of rest without complying with Section 9-A read with the Fourth Schedule this change must be held to be ineffective and the previous schedule of weekly days of rest must be held to be still operative. Reference was made at the bar to certain decisions but they are of little assistance in construing the statutory provisions with which we are concerned and which, as



already observed have to be construed on their own language and scheme. We, therefore, do not consider it necessary to refer to those decisions."

A similar view was also taken in the case of ***The Management of Indian Oil Corporation Ltd. Vs. Workmen reported in (1976) 1 SCC 63***. Thus, I do not find any infirmity in the findings of the Industrial Tribunal.

7. Now that this Court is of the view that the withdrawal of the rice loan scheme to be illegal, the petitioner-Industrial Establishment is directed to restore the rice loan scheme forthwith to the workers. In case the management is of the view that such loan scheme is not feasible for continuance, they are at liberty to issue notice under Section 9-A of the Act and thereafter proceed further in the matter in accordance with law.

8. With the above liberty, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2022

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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To

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Kalpakkam.
- 2.The Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan, Chennai.



W.P.No.23599 of 2004

M.S.RAMESH,J.

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