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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.3656 of 2015 and
M.P.No.1 of 2015

Salem Mandala Anaithu Paniyalargal
Sangam, Rep. by its General Secretary,
44-A, Mariamman Koil Street,
Hasthampatty, Salem-7.

...Petitioner

Vs

- 1.Government of Tamil Nadu,
Rep. by its Principal Secretary,
Labour and Employment (D1)
Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Labour,
Teynampet, Chennai 600 006.
- 3.The Management,
Salem District Consumer Co-operative
Wholesale Stores,
Seetharaman Road, Salem-9.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 05.04.2013, passed by the first respondent in G.O.(D) No.162, Labour and Employment (D1) Department and the letter dated 30.12.2013 of the second respondent in Letter No.C3/43216/2013, quash the same and consequently, direct the first respondent to refer the dispute against the punishment imposed to Thiru.P.Varadarajan, treating the period of his suspension from 19.04.1996 to 01.12.2000 as suspension/punishment, for adjudication to a competent Labour Court, Award costs.



For Petitioner : Mr.V.Ajoy Khose
For Respondents : Mr.C.Selvaraj, AGP for RR1 & 2
Mr.L.P.Shanmugasundaram for R3

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O R D E R

This writ petition has been filed to call for the records pertaining to the order dated 05.04.2013, passed by the first respondent in G.O.(D) No.162, Labour and Employment (D1) Department and the letter dated 30.12.2013, of the second respondent in Letter No.C3/43216/2013, quash the same and consequently, direct the first respondent to refer the dispute against the punishment imposed to Thiru.P.Varadarajan, treating the period of his suspension from 19.04.1996 to 01.12.2000 as suspension/punishment, for adjudication to a competent Labour Court, Award costs.

2. The petitioner is registered under the Trade Unions Act, 1926. It represents the interest of workers working in various industries and establishments in Salem and nearby districts. The workmen employed in the third respondent Management are also the members of the petitioner Union.

3. According to the petitioner Union, out of total 300 workmen employed in the third respondent establishment, 146 workmen are the members of its Union. There was an issue in regard to the suspension of 10 workmen and initiating of disciplinary action against them. But, subsequently, the suspension was revoked and the workmen were reinstated in service on 01.12.2000. But, in respect of one retired workman Varadarajan, the Union raised dispute in regard to the treatment of his suspension period. The Labour Officer considered the matter and filed his report. Thereafter, the first respondent by an order dated 05.04.2013, in G.O (D) No.162, declined to refer the dispute on the ground that since the workman concerned had attained the age of superannuation and retired from service, he could not be termed as workman as per the judgment of the High Court of Calcutta reported in 2007 (II) LLJ Page 887. Challenging the order of the Government declining to refer the dispute, the Union is before this Court.

4. Notice is ordered. In response to the notice, Mr.C.Selvaraj, the learned Additional Government Pleader entered appearance on behalf of R1 & R2 and Mr.L.P.Shanmugasundaram, learned counsel entered appearance on behalf of the third respondent.



5. When the matter is taken up for hearing, the learned counsel for the petitioner Union would submit that the law on the issue is well settled, long ago. It is not within the power of the Government to decline reference by appreciating the merits of the claim. The Government cannot act as a judicial authority and to decide which dispute should be referred to for adjudication or not. Whether the dispute is tenable or not, it is for the Industrial Court to decide and not the Government. In the said circumstances, the reason for declining to refer the dispute cannot be countenanced in law.

6. On behalf of the petitioner, a decision of the Hon'ble Supreme Court of India reported in (1989) 3 SCC 271 in the case of Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others, has been referred to and relied upon. The learned counsel would specifically draw the attention of this Court to paragraph Nos.13 to 15, wherein, the Hon'ble Supreme Court has held that the Government while exercising the power under Section 10(1) of the Industrial Disputes Act, only can exercise the administrative function and not the judicial or quasi-judicial function. The Government therefore cannot delve into the merits of the dispute and take upon itself the determination of the lis.

7. The learned counsel would also refer to a decision of the learned Single Judge of this Court reported in 2004 (3) LLN 322 in the case of MGR Transport Corporation Employees' Union Vs. State of Tamil Nadu and others. A reference is made to paragraph No.5 of the order which is extracted hereunder:

"5. It is settled proposition of law that the Government has little or no discretion in the matter of reference of disputes before the Labour Court except in rare cases where a claim of the worker is glaringly frivolous or repeated references are sought to be made on the same issue. The question as to whether the dispute raised by the worker is justified or not is a matter for the Labour Court and not to be rejected by the Government at the stage of reference. When such is the legal position, it is a matter of regret and surprise that there could be a printed format for rejection (not for making reference). Right to have the dispute adjudicated by the Labour Court is a basic right of the employee and such a right cannot be rejected at the threshold by the Government. The observation that the employee had caused the death of a passenger and that the



punishment was justified is an issue which has to be decided by the Court on proper materials."

The learned counsel therefore would submit that the order refusing to refer the dispute is liable to be set aside.

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8. This Court is in complete agreement with the submission made on behalf of the petitioner. The above two specimen of citations placed for consideration before this Court would point to the legal position that it is not for the Government to decide the dispute on its merits. As such power is not mentioned in the provisions of the Industrial Disputes Act.

9. In view of the above settled legal position which cannot be disputed by the respondents, this Court is of the considered view that the petitioner has made out a case for grant of relief.

10. Accordingly, this writ petition stands allowed and the impugned orders dated 05.04.2013, passed by the first respondent in G.O.(D) No.162, Labour and Employment (D1) Department and the letter dated 30.12.2013 of the second respondent in Letter No.C3/43216/2013, are hereby set aside.

11. The first respondent is directed to refer the dispute and suitable orders to be passed in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Labour and Employment (D1)
Department,
Fort St.George, Chennai-9.
- 2.The Commissioner of Labour,
Teynampet, Chennai 600 006.



3.The Management,
Salem District Consumer Co-operative
Wholesale Stores,
Seetharaman Road,
Salem-9.

+1 CC to Mr.V. Ajoy Khose, Advocate sr 10628
+1 CC to The Government Pleader sr 11527.

W.P.No.3656 of 2015 and
M.P.No.1 of 2015

MT (CO)
SP (24/03/2022)