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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

**W.P.Nos. 10929, 10931, 10932, 19064 to 19067, 25674 & 10930 of 2013
& 11191 of 2014**

And

M.P.Nos. 1 of 2013

W.P.No. 10929 of 2013

The Managing Director
Tamil Nadu Co-operative Milk
Producers Federation Ltd.,
Chennai – 600 051.

... Petitioner

..Vs..

1. M.Radhakrishnan
C/o. Tamil Nadu Dairy Development
Corporation Employees Union
5, Vasudevan Street,
Chennai – 600 010.

2. The Presiding Officer
I-Additional Labour Court,
City Civil Court Buildings,
Chennai.

... Respondents



PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records pertaining to the order passed by the second respondent in the Claim Petition No.455 of 2004 dated 27.09.2012 and quash the same.

For Petitioner in all
W.Ps. :: Mr.Jayakumar
for Mr.T.K.Ashok Kumar

For 1st Respondent in
all W.Ps. :: Mr.K.M.Ramesh,
Standing Counsel
for Mr. Bharathi

COMMON ORDER

The interesting question that arises for consideration in these cases are whether the date on which the Assistant Commissioner of Labour passes the failure report should be taken into consideration for the purpose of approval petition under Section 33(2)(b) of the Industrial Disputes Act? or whether the date on which it is notified by the Government should be considered under Section 33(2)(b) of the Industrial Disputes Act?



2. The Tamil Nadu Dairy Development Corporation Employees'

Union raised an Industrial Dispute regarding charter of demands before the Assistant Commissioner of Labour, Conciliation, Chennai – 108. This was raised on 29.10.2002.

3. The Assistant Commissioner of Labour, Conciliation, Chennai, took up the matter for conciliation. About a year later ie., on 18.08.2003, the writ petitioner / Management placed one Radhakrishnan and P.Sundaraj under suspension. On 25.08.2003 a charge memo was issued to the workmen alleging misappropriation as well as other charges.

4. Both the Workmen challenged the said order of suspension by way of a Writ petition in W.P.Nos. 24189 & 24190 of 2003.

5. On 29.08.2003, the Writ Petitions were disposed of with a direction to complete the enquiry within a period of three months. The day earlier, that is on 28.08.2003, the Assistant Commissioner of Labour, Conciliation, Chennai, sent his failure report to the Government of Tamil Nadu through the Commissioner of Labour, Chennai. On 24.12.2003, the



writ petitioner / Management dismissed both the workmen from service.

About nearly an year later ie., on 04.10.2004, the failure report sent by the Assistant Commissioner of Labour, Conciliation, Chennai, was sent to the Government for further processing. It was another three months later, ie., on 12.01.2005, the Government has notified the Industrial Dispute as regards the charter of demands under G.O.Ms.No. 29, Labour and Employment Department, Government of Tamil Nadu.

6. It is admitted by both sides that necessary application under Section 33(2)(b) of the Industrial Disputes Act was not presented by the Management for approval of the dismissal of the two workmen.

7. Mr.Jayakumar for Mr.T.K.Ashok Kumar, learned counsel appearing for the petitioner would submit that the conciliation came to an end on the failure report sent by the Assistant Commissioner of Labour, Conciliation, Chennai on 28.08.2003 and since no matter was pending before the said authority, it was open to the Federation to dismiss the two employees.



8. Mr.K.M.Ramesh, learned Standing Counsel for Mr. Bharathi, learned counsel appearing for the first respondent would represent that there is no dispute that on 28.08.2003, the Assistant Commissioner of Labour, Conciliation, Chennai, had sent his failure report but it is deemed to be pending till it is received by the Secretary to the Government Labour Department. He would rely upon Rule 25-A of the Tamil Nadu Industrial Dispute Rules, 1958.

9. It is now pertinent to refer to Section 33(2)(b) of the Industrial Disputes Act, which reads as follows:-

“(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. ”



10. Therefore, the issue is whether the dispute is deemed to have been closed on 28.08.2003 or whether it can be treated as pending till the report is received by the Government.

11. It is pertinent to point out here that the Conciliation Officer is required to send his report under Section 12(4) of the Industrial Disputes Act to the concerned State Government.

12. Section 12(4) of the Industrial Disputes Act reads as under:-

“(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. ”



13. Reading of Section 12(4) with Section 33(2)(b) as well as Rule 25-A makes it clear that one can come to the conclusion that till the report of the Conciliation Officer reaches the Government, it is deemed to be pending. The word that has been used in Rule 25-A is mandatory in nature. Use of the word '**shall**' does not give any discretion to the Conciliation Officer to keep the report pending with him. This is in line with Section 12(4) of the Act which states that if no such settlement is arrived at, the Conciliation Officer '**shall**' after the closure of investigation send to the appropriate Government the full report setting forth the steps taken by him.

14. After the report received from the Conciliation Officer, the Government considers the issue further. Therefore, between the period that the report is sent from the Conciliation Officer to the appropriate Government and till its notified under Section 12(5) of the Act, the conciliation proceedings should be treated as deemed to be pending. If the conciliation proceedings are deemed to be pending, then it is necessary that the Management seeks approval for any action that has been taken against the workmen. It is too well settled that in case approval is not obtained from the appropriate authority under the Industrial Disputes Act, any action taken is null and void.



15. In this particular case, the order of dismissal having been passed without approval did not come into effect.

16. The learned counsel appearing for the petitioner would submit that an advance copy should be treated as a notification that there is a failure of conciliation and therefore, it should be treated as closed.

17. I am not agreeable with the said contention because an advance copy sent without the confidential report of the Assistant Commissioner of Labour is not in compliance with Rule 25-A. Rule 25-A of the Tamil Nadu Rules are statute rules and therefore, when the report is received by the Government, it should be together with the confidential report sent by the Commissioner of Labour and thereafter only, the power under Section 12(5) of the Act is exercised by the Government. An advance copy cannot be treated as an intimation given by the Conciliation Officer. I draw support for this view of mine from the Judgment of the Supreme Court reported in *Lokmat Newspapers Pvt. Ltd., Vs. Shankaraprasad (1999) 6 SCC 275* .



18. In view of the above, these Writ Petitions stand dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

21.06.2023

vsg

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

The Presiding Officer
I-Additional Labour Court,
City Civil Court Buildings,
Chennai.



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V. LAKSHMINARAYANAN, J.,

Vsg

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