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W.P.No.10608 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.10608 of 2016

and

W.M.P.Nos.9313 & 9004 of 2016

1.D.Kalyanaraman

2.M.Vijayalakshmi

3.G.Mugunthan

4.R.Parameswari

.. Petitioners

Vs.

1.The Government of Tamil Nadu,
Labour Department,
Fort St.George,
Chennai-600 002.

2.M/s.Southern Petrochemical Industries Corporation Ltd.,
Registered Office at
“Spic House”
No.88, Mount Road,
Guindy, Chennai-600 032.

. . Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction in the nature of a Writ, to call for the records relating to the Government Order in G.O.Ms.No.532, dated 05.10.2015 passed by the First Respondent herein and quash the same and consequently, direct the First Respondent to refer the Dispute to the Labour Court for adjudication.



W.P.No.10608 of 2016

For petitioners : M/s.T.R.Sathiyamohan
For Respondents : Mr.S.John J.Raja Singh for R1
: Mr.Anand
for M/s.T.S.Gopalan & Co. for R2

ORDER

This Writ Petition has been filed in the nature of Writ of Certiorarified Mandamus seeking to call for the records relating to the G.O.Ms.No.532 dated 05.10.2015 passed by the Government of Tamil Nadu, Labour Department and quash the same and seeks a further direction to the 1st respondent to refer the matter to the Labour Court.

2. The petitioners are the employees of the 2nd respondent the Southern Petrochemical Industries Corporation Limited. The 2nd respondent was engaged in the manufacturing of drugs and medicines and had two factories, one at Maraimalai Nagar near Chengalpattu and the other at Cuddalore. It is contended by the petitioners that the unit at Cuddalore was closed and the employees therein were granted ex-gratia payments and apart from the normal retireable benefits such as Provident Fund, Gratuity, Notice Pay, Leave Encashment etc. After closure of its unit at Cuddalore on



W.P.No.10608 of 2016

16.07.2011, the 2nd respondent management, on account of the loss suffered by them, had closed its business activities pertaining to the factory at Maraimalai Nagar during April 2012. The grievance of the petitioner is that they were not given compensation as that as they were given to the employees at Cuddalore, and they were given only the normal retirable benefits and not the compensation or ex-gratia payment. The union in which the petitioners were members had raised an Industrial Dispute before the Joint Commissioner of Labour claiming that all the petitioners were entitled to be paid due compensation as was paid to all other categories of employees namely both workmen and non-workmen of the 2nd respondent Company. However, the conciliation ended in failure and the failure report was sent by the Assistant Commissioner of Labour to the Government of Tamil Nadu. The allegation of the petitioners is that instead of the 1st respondent referring the said dispute to the Labour Court which is the normal practice according to the petitioners, vide impugned order refused to refer the dispute to the Labour Court for proper adjudication. Challenging the same, the present Writ Petition is filed.



W.P.No.10608 of 2016

3. Learned counsel for the petitioners submitted that the petitioners never exercised any supervisory or managerial powers so as to define them not as workmen under the Industrial Disputes Act, 1947. He further submitted that the 2nd respondent management had discriminated the petitioners alone while paying the compensation to all the employees at the time of closure of the Company. He further submitted that the petitioners and the workmen are part of the same organisation and therefore, the 2nd respondent is duty bound to pay lump sum amount as compensation to all the workers, the discrimination of which violated principles envisaged under Article 14 of the Constitution of India.

4. Per Contra, learned counsel for the 1st respondent submitted that since the conciliation proceedings had ended in failure and the failure report was submitted by the Assistant Commissioner of Labour, the said adjudication was referred to the Labour Court. He further submitted that prior to the commencement of the Industrial Dispute, the settlement had arrived at under Section 12(3) of the Industrial Disputes Act and the terminal benefits was also settled to the workmen of the 2nd respondent. He



W.P.No.10608 of 2016

also submitted that since the employees had already received the monetary benefits, the additional claim of compensation cannot be covered under the Industrial Disputes Act. Since, no settlement was arrived at in the Industrial Dispute in compliance of the powers vested upon the 1st respondent, the impugned Government Order has been passed.

5. Learned counsel for the 2nd respondent would submit that the petitioners were employees under the non-workmen category and their wages and other service conditions were not governed by the settlements made by the Government with the workmen. In the Industrial Dispute taken before the Conciliation Officer, the 2nd respondent had given a reply that the petitioners could not be given the compensation that was made available to the employees under the workmen category pursuant to the 12(3) settlement made before the conciliation authority. He further submitted that in the Industrial Dispute raised by the conciliation officer by the union the petitioners were not party to that. He further submitted that the Industrial Dispute raised by the union in which the petitioners were not a party. Hence, this Writ Petition is not maintainable as the said union was not made



W.P.No.10608 of 2016

a party to the Writ Petition either as a petitioner or as respondent.

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6. This Court heard the learned counsel appearing on either side and perused the materials available on record.

7. It is not in dispute that the petitioners are the employees of the 2nd respondent Company which had been closed during April 2012. It is also not in dispute that the terminal benefits pertaining to the petitioners have been paid. The contention of the petitioners is that the petitioners should be treated as workmen and given compensation as that of the employees who were given such a compensation. Since their positions were not in the nature of managerial position, such a contention could not be accepted because if the petitioners were also to be considered as workmen category, they can raise an industrial dispute only against the termination and could not claim compensation for the loss of employment. It is seen that the union has entered into settlement under Section 12(3) of the ID Act. Therefore, since the union espoused the cause of the employees who were the workmen within the meaning of Section 2(s) of the ID Act entered into and concluded



W.P.No.10608 of 2016

the settlement, the union is not competent to take up the cost of the petitioners. The union having already entered into a settlement with regard to the workmen category, said settlement cannot be agitated again particularly by the non-workmen category like the petitioners. In conclusion, he relied upon a decision Hon'ble Supreme Court in case of ***Ram Prasad Vishwakarma Vs. Chairman, Industrial Tribunal, Patna & others*** in Civil Appeal No.31 of 1960 vide order dated 12.12.1960, wherein, the Hon'ble Supreme Court while answering the question whether the appellant is entitled for representation inspite of the fact that the union which had espoused his cause was being represented by its Secretary, Fateh Singh, has held as follows:-

“8.The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the union. The union or those workmen who have by their sponsoring turned the individual dispute into an Industrial dispute, can therefore claim to have a say in the conduct of the proceedings before the Tribunal.

9.It is not unreasonable to think that Section 36 of the Industrial Disputes Act recognise this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. While it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should be



WEB COPY



W.P.No.10608 of 2016

in our opinion be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned. We are not satisfied that in the present case, there were any such exceptional circumstances. It has been suggested that the union's Secretary Fateh Singh himself had made the complaint against the appellant which resulted in the order of dismissal it has to be observed however that in spite of everything, the union did take up this appellant's case against his dismissal as its own. At that time also, Fateh Singh was the Secretary of the union. If the union had not taken up his cause, there would not have been any reference. In view of all the circumstances, we are of opinion, that it cannot be said that the Tribunal committed any error in refusing the appellant's prayer for representation through representatives of his own choice in preference to Fateh Singh, the Secretary of the union."

8. It is well said that a dispute between an individual workman and the employer cannot be an industrial dispute as defined under Section 2k of the ID Act. It should be only by the union or considerable number of workmen. A dispute between the employer and a single employee cannot *per se* be an industrial dispute. But, it may become one if it is taken by an union or a number of workmen. The scheme of the Industrial Disputes Act is to settle only disputes which involves right of workmen as a class and not individual rights of workmen to be the subjective adjudication.



W.P.No.10608 of 2016

9. In the light of the above, following the ratio laid down by the

Hon'ble Apex Court in case of ***Ram Prasad Vishwakarma Vs. Chairman, Industrial Tribunal, Patna & others*** cited supra, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

06.07.2023

Index : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes / No

NHS

To

The Government of Tamil Nadu,
Labour Department,
Fort St.George,
Chennai-600 002.



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W.P.No.10608 of 2016

M.DHANDAPANI, J.

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W.P.No.10608 of 2016

06.07.2023