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W.P.No.7324 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7324 of 2018

And

W.M.P.No.9097 of 2018

The Workmen of Unipres India Private Limited,
(Through Unipres India Private Limited Employees Union
Regn.No.471)
Rep. by its General Secretary ... Petitioner

Vs.

1.The Joint Commissioner of Labour,
Certifying Officer under the Industrial
Employment (Standing Orders) Act
Office of the Commissioner of Labour,
6th Floor, DMS Compound,
Teynampet,
Chennai.

2.The Management of Unipress India Private Limited,
Rep. by its Managing Director ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records in connection with the Certified Standing Order dated 04.12.2015 passed by the first respondent in Standing Orders Case File No.B/4522/2013 and quash the same and direct the first respondent to reopen the proceedings and provide opportunity to both parties to let in evidence.



WEB COPY



W.P.No.7324 of 2018

For Petitioner : Ms.M.Karthikeyani
for M/s.A.Rekha

For Respondents : Mr.M.S.Prem Kumar for R1
Government Advocate
Mr.Sai Prasad for R2
M/s.Sai Raj Associates

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for records in connection with the Certified Standing Order dated 04.12.2015 passed by the first respondent in Standing Orders Case File No.B/4522/2013 and quash the same and direct the first respondent to reopen the proceedings and provide opportunity to both parties to let in evidence.

2.The case of the petitioner is that the second respondent is a Multinational Company and it manufactures automobile spare parts. The petitioner is the only recognized union functioning in the second respondent factory. The second respondent Management filed its draft Standing Order before the Certifying Officer under the Industrial Employment (Standing Orders) Act, Office of the Commissioner of Labour, Chennai and vide letter dated 25.10.2013, informed the petitioner to take notice of the same and to submit its objections.

2/17



W.P.No.7324 of 2018

WEB COPY

3.The further case of the petitioner is that the petitioner sought time to give its objections and the same was rejected by the Authority and hence the petitioner filed W.P.No.13638 of 2014 seeking direction to the first respondent to afford reasonable opportunity to the petitioner to file its objections to the draft Standing Orders and hear the parties before proceeding any further with regard to the certification of the draft Standing Orders and this Court vide order dated 08.07.2015 allowed the writ petition, pursuant to which, the petitioner filed its objections on 05.10.2015 and the second respondent Management filed its reply on 12.10.2015, for which, the petitioner filed its reply on 26.10.2015, however, without considering the same, the first respondent passed the impugned order. Hence this writ petition.

4.The learned counsel appearing for the petitioner submitted that the issue involved in this writ petition is no longer *res integra*. Similar issue has already been elaborately considered by this Court in ***W.P.No.28785 of 2018 [United Labour Federation rep. by its Secretary Vs. The Joint Commissioner of Labour, Certifying Officer under the Industrial Employment (Standing Orders)***



W.P.No.7324 of 2018

Act] dated **22.02.2019**, wherein, this Court allowed the said writ petition and remitted the matter back to the first respondent therein for fresh consideration in terms of Section 5 (2) of The Industrial Employment (Standing Orders) Act, 1946.

5.The learned counsel appearing for the second respondent submitted that the second respondent Management filed its draft Standing Order before the Certifying Officer under the Industrial Employment (Standing Orders) Act, Office of the Commissioner of Labour, Chennai during October, 2013. Thereafter, the Certifying Officer held hearing on various dates, however, the petitioner filed W.P.No.13638 of 2014 claiming that the petitioner was not given adequate opportunity and pursuant to the order of this Court dated 08.07.2015 made in the said writ petition, the petitioner filed its objections and in response the second respondent Management filed its reply, for which, the petitioner again filed its objections and after considering all the above, the first respondent certified the Standing Orders on 04.12.2015.

6.The learned counsel appearing for the second respondent further submitted that as per Section 7 of The Industrial Employment



W.P.No.7324 of 2018

(Standing Orders) Act, Standing Orders shall, unless an appeal is preferred under Section 6 of the Act, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under Section 5 (3) of the Act, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the Appellate Authority are sent under Section 6 (2) of the Act.

7.The learned counsel appearing for the second respondent further submitted that pursuant to the certification, in accordance with Section 7 of The Industrial Employment (Standing Orders) Act, the certified Standing Orders were brought into force on and with effect from 04.12.2015. The petitioner is entitled to appeal against the certification before the Appellate Authority by virtue of the provisions of Section 6 of The Industrial Employment (Standing Orders) Act, however, without filing appeal, the petitioner has filed this writ petition that too after a lapse of nearly three years after implementation of the Standing Orders, which is not sustainable one.

8.Heard the arguments advanced on either side and perused the materials available on record.



W.P.No.7324 of 2018

WEB COPY

9. Admittedly, the second respondent Management filed its draft Standing Order before the Certifying Officer under the Industrial Employment (Standing Orders) Act, Office of the Commissioner of Labour, Chennai during October, 2013 and vide letter dated 25.10.2013, informed the petitioner to take notice of the same and to submit its objections.

10. The petitioner sought time to give its objections. Since the same was rejected by the Authority, the petitioner filed W.P.No.13638 of 2014 before this Court seeking direction to the first respondent to afford reasonable opportunity to the petitioner to file its objections to the draft Standing Orders and hear the parties before proceeding any further with regard to the certification of the draft Standing Orders and this Court vide order dated 08.07.2015 allowed the said writ petition.

11. Thereafter, the petitioner filed its objections on 05.10.2015 and the second respondent Management filed its reply on 12.10.2015, for which, the petitioner filed its reply on 26.10.2015. Thereafter, the first respondent certified the Standing Orders on 04.12.2015. The issue arises for consideration in this writ petition is that, whether the



W.P.No.7324 of 2018

objections made by the petitioner was properly considered by the first respondent or not.

12.Perusal of the impugned order reveals that the first respondent has only stated when the draft Standing Order was submitted; when the parties were called for hearing and when the petitioner has filed its objections and has not discussed anything about the objections filed by the petitioner.

13.It is appropriate to extract hereunder Sections 5 and 7 of The Industrial Employment (Standing Orders) Act, 1946:

"5.Certification of standing orders.-

(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.



WEB COPY



W.P.No.7324 of 2018

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

7.Date of operation of standing orders.- *Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are*



W.P.No.7324 of 2018

sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.”

14.Perusal of Section 5 of The Industrial Employment (Standing Orders) Act, 1946, makes it clear that on receipt of the draft Standing Order, the Certifying Officer, namely, first respondent shall forward a copy to the trade union, namely, petitioner, in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice. Thereafter, after giving the employer and the trade union an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft Standing Orders certifiable and shall make an order in writing accordingly.

15.In the present case, except in the opening paragraph, where the first respondent accept that the second respondent submitted draft



W.P.No.7324 of 2018

WEB COPY

Standing Orders for Certification under Section 5 (3) of The Industrial Employment (Standing Orders) Act, 1946 for adoption in the Industrial Establishment, has not discussed anything about the objections filed by the petitioner, which is *per se* illegal to Section 5 (2) of The Industrial Employment (Standing Orders) Act, 1946.

16.It is true that the Standing Orders will operate, unless an appeal is preferred under Section 6 of the Act, within a period of thirty days from the date on which authenticated copies thereof are sent under Section 5 (3) of the Act. In the present case, though the petitioner has filed this writ petition, after a lapse of nearly three years after implementation of the Standing Orders, there is blatant error in the impugned Standing Order, which cannot be allowed to continue. Hence, it is presumed that there is compliance of Section 7 of The Industrial Employment (Standing Orders) Act.

17.Further, similar issue has already been elaborately considered by this Court in ***W.P.No.28785 of 2018 [United Labour Federation rep. by its Secretary Vs. The Joint Commissioner of Labour, Certifying Officer under the Industrial Employment***



W.P.No.7324 of 2018

(Standing Orders) Act] dated **22.02.2019**, the relevant portion of which reads as follows:

"11.As rightly contended by the learned Senior counsel appearing for the petitioner, once the Statute prescribes certain procedure to be followed while issuing certification for the Draft Standing Orders, the same has to be strictly followed by the authority concerned. In this case, obviously and very plainly, the first respondent has not followed the procedure as contemplated under Sections 3, 4 and 5 of the Act. A specific contention has been raised by the learned Senior Counsel appearing for the petitioner Union that the parties ought to have been allowed to let in evidence in support of their objections, as the same is also contemplated under the Industrial Employment (Standing Orders) Act, 1946, but the first respondent has not considered such plea and has violated the procedure contemplated under the Act. This is more so because when the authority exercises a quasi judicial function, he is expected to afford reasonable opportunity to the parties concerned while passing orders. Moreover, when a certification for Draft Standing Orders is issued, the same is going to bind the service conditions of the employees in



WEB COPY



W.P.No.7324 of 2018

future and therefore, the authority has the responsibility to afford reasonable opportunity to the Unions, in order to appreciate their objections in a manner known to law. Unfortunately, the first respondent has given a go-by to such procedure and has passed a non-speaking order by suggesting some cosmetic changes, which have no impact on the objections raised by the Union.

12. Moreover, as rightly contended by the learned Senior counsel for the petitioner the availability of alternative remedy of appeal under the provisions of the Industrial Employment (Standing Orders) Act is no bar for filing the Writ petition, since the order passed by the first respondent is in violation of established principles of natural justice and also the order is wholly without justification. Mere existence of alternative remedy is no bar for entertaining the Writ Petition, since the bar imposed on the Constitutional Courts is self-imposed and it is only a matter of convenience and public policy. Therefore, this Court is of the view that the present writ petition can be entertained, since the first respondent, while passing the order impugned, has not followed



W.P.No.7324 of 2018

the mandatory procedure as contemplated in the Act.

13.On the whole, there appears to be no application of mind when the first respondent has passed the order. A mere perusal of the documents would disclose that on behalf of the Petitioner Union, several objections were raised and instead of allowing the parties to adduce evidence in support of their objections, unfortunately, the authority has simply brushed aside those objections and passed the order.

14.In the said circumstances, this Court is of the considered view that the order impugned in the present writ petition is liable to be set aside and accordingly the same is set aside and the writ petition stands allowed. The matter is remitted back to the first respondent for fresh consideration in regard to the certification granted to the Model Standing Orders submitted by the second respondent/Management. The first respondent is directed to afford a reasonable opportunity to both the petitioner Union as well as the Management before granting any certification to the Model Standing Orders. In case, the



parties want to let in any evidence, the same shall be permitted and on the basis of the objections put forth on behalf of the parties, the first respondent is directed to pass a reasoned order. The first respondent is also directed to consider each of the objections earnestly and thereafter, arrive at a conclusion on those aspects. The first respondent is directed to complete the enquiry in regard to the above and pass orders within a period of six months from the date of receipt of copy of this order."

18. In view of the above facts, the impugned order is in clear violation of Section 5 of The Industrial Employment (Standing Orders) Act. Hence applying the ratio laid down by this Court in the decision in ***W.P.No.28785 of 2018 [United Labour Federation rep. by its Secretary Vs. The Joint Commissioner of Labour, Certifying Officer under the Industrial Employment (Standing Orders) Act]*** dated **22.02.2019**, the impugned order is liable to be set aside.

19. Accordingly, the writ petition stands allowed. The Certified Standing Order dated 04.12.2015 passed by the first respondent in Standing Orders Case File No.B/4522/2013 is set aside and the matter



W.P.No.7324 of 2018

is remanded back to the first respondent for fresh consideration in regard to the certification granted to the draft Standing Orders submitted by the second respondent Management. The first respondent is directed to afford a reasonable opportunity to both the petitioner as well as the second respondent Management before granting any certification to the draft Standing Orders. In case, the parties want to let in any evidence, the same shall be permitted and on the basis of the objections put forth on behalf of the parties, the first respondent is directed to pass a reasoned order. The first respondent is also directed to consider each of the objections earnestly and thereafter, arrive at a conclusion on those aspects. The first respondent is directed to complete the enquiry in regard to the above and pass appropriate orders within a period of three months from the date of receipt of copy of this order.

20. In fine, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

30.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

15/17



W.P.No.7324 of 2018

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To

- 1.The Joint Commissioner of Labour,
Certifying Officer under the Industrial
Employment (Standing Orders) Act
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6th Floor, DMS Compound,
Teynampet,
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