



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2023

Pronounced on : 20.12.2023

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**W.P.No.3320 of 2012**

K.Ramesh

... Petitioner

Vs.

1. Union of India,
Rep. by the Secretary, Ministry of Labour,
Government of India, New Delhi.

2. The Chairman,
Railway Board, Ministry of Railways,
Government of India, New Delhi.

3. The Deputy Chief Labour Commissioner (Central),
Dy. Chief Labour Commissioner (C),
Ministry of Labour & Employment,
Shram Raksha Bhawan, 1st Floor,
Opp. Priyadarshini Shiv Shrushti Road,
Easter Express Highway, Sion, Mumbai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order made in No.L-41011/112/2010-IR (B-I) dated 17.01.2011 by the 1st respondent and to quash the same and consequently direct the 1st respondent to refer the dispute for adjudication before the appropriate



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For Petitioner : Mr. L.Chandrakumar
For R1 & R2 : Mr.P.T.Ram Kumar,
Standing Counsel for Railways

ORDER

This Writ Petition has been filed questioning the order passed by the respondent no.1, refusing to refer the disputes raised by the petitioner under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) to the concerned Labour Court for adjudication.

2. The petitioner herein, which is an association of Controllers, raised certain demands under Sub-Section 1 of Section 22 of the Act and the same was duly served on the respondent no.2 on 25.03.2010, proposing to call for a strike by applying en mass casual leave on 01.05.2010. The said demands, numbering 10 were referred for conciliation. On failure of the same, the respondent no.1 issued the impugned proceedings dated 17.01.2011, intimating the petitioner that the Ministry, *prima facie* does not consider the disputes for adjudication on the ground that the demands raised are all policy matters. Aggrieved by the said communication dated 17.01.2011, the present



Writ Petition is filed.

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3. As already noted above, the demands that were raised by the petitioner association were under Sub-Section 1 of Section 22 of the Act. If the demands raised by the petitioner are under Section 22, in terms of second proviso to Sub-Section 1 of Section 10 of the Act, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under Sub-Section 1 notwithstanding that any other proceedings under the Act in respect of the disputes may have already commenced. In the light of the said proviso, the scope of the respondent no.1 to refuse to make reference is only under few circumstances, which are provided under the said proviso.

4. In the instant case, the reason for not referring the demands/ disputes under Section 10 by the respondent no.1 by passing the impugned order is that the disputes are all policy matters. Such a situation is not one of the situations contemplated under second proviso to Sub-Section 1 of Section 10 of the Act. Therefore, the action of the respondent no.1 in passing the impugned order is liable to be declared as illegal and arbitrary.



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5. Be that as it may, the demands that were raised by the petitioner association were as early as on 25.03.2010. A perusal of the list of demands shows that the same pertains to revision of grade pay, payment of certain allowances and also about the working conditions of the controllers etc.,

6. As is brought to the notice of this Court by the learned counsel on either side that subsequent to the demands raised by the petitioner, two pay revisions have taken place, i.e., 6th and 7th pay revision and pay and grade pay of the controllers were already revised twice. If that be the case, whether the demands raised by the petitioner association with regard to the revision of grade pay of the controllers still survives or not is a matter to be looked into. So also, the other demands raised were also still subsisting or not is a matter to be looked into afresh.

7. The respondent no.2 filed a detailed counter affidavit contending that there is alternative in-house mechanism provided for redressal of the grievance of the controllers and the other employees of the railways and the same is effectively working and therefore, the petitioner is not entitled to



seek reference without exhausting such internal remedies provided.

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8. No doubt, there appears to be some internal and in-house mechanism provided for redressal of the grievances, but the same cannot be treated as a substitute for the right conferred upon the workman under Section 10 of the Act. Therefore, mere provision for in-house mechanism for resolution of dispute cannot be a ground to refuse to make a reference under Section 10. Even otherwise, such a reason is not the basis for issuing the impugned order.

9. In the circumstances, though this Court came to the conclusion that the impugned order is illegal and arbitrary, this Court is not inclined to make reference under Section 10 in view of the long lapse of time of nearly 12 years since the date of passing of the impugned order. In the circumstances, the petitioner association is granted liberty to make a fresh representation raising their demands if any subsisting out of the 10 demands raised through their demand notice dated 25.03.2010 before the respondents 1 to 3, within a period of six weeks from the date of receipt of a copy of this order. In case, any such representation is submitted by the petitioner



association within the time stipulated above, the same shall be considered by the respondents and in case, if the disputes is not resolved, the respondent no.1 is directed to make a reference under Section 10 to the proper forum / Court for adjudication of the same in accordance with law.

10. Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, shall stand closed.

20.11.2023

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary, Ministry of Labour,
Government of India, New Delhi.
2. The Chairman,
Railway Board, Ministry of Railways,
Government of India, New Delhi.
3. The Deputy Chief Labour Commissioner (Central),
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MUMMINENI SUDHEER KUMAR, J.

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