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W.P.No.26648 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26648 of 2014 and
WMP.No.1336 of 2018

United Labour Federation,
Rep. by its General Secretary,
No.149, Thambu Chetty Street,
C.J.Complex, IVth Floor,
Chennai – 600 001

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. by its Chief Secretary,
Department of Labour and Employment,
Secretariat, Fort St.George,
Chennai 600 001
2.Woosu Automative India Pvt.Ltd.,
Rep. by its Managing Director,
No.130, Narasingapuram Village,
Perambakkam Post, Thiruvallur 602 105
3.The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai-9
(R3 impleaded as per order dated 22.11.2019
made in WMP.No.1337/2018 in
WP.No.26648/2014)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the impugned order



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dated 18.06.2013 in G.O.(D) No.235 and quash the same and direct the first respondent to refer the demands annexed with the impugned order for adjudication under Section 12(5) of the Industrial Disputes Act, 1947.

For Petitioner : Mr.K.Sudalai Kannu

For Respondents

For R1 & 3 : Mr.V.Veluchamy,
Additional Government Pleader

For R2 : No appearance

ORDER

This writ petition has been filed to quash the impugned order dated 18.06.2013 in G.O.(D) No.235, thereby rejected the demands for adjudication under Section 12(5) of the Industrial Disputes Act, 1947.

2. The second respondent was inaugurated in the year 2008 and it is engaged in business of manufacturing spare parts of the engine gear parts, namely automobile spare parts required for making of automobile. There are more than 400 workers employed by the second respondent factory at Tiruvallur. So far, no workman was made permanent and all the workers are treated as trainees and contract worker. Though they are engaged in the direct manufacturing process and



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they are also doing work as that of permanent workers, they were not made permanent and they are exploited by the second respondent management. Therefore, to protect their rights in exercise of their right of freedom of association, they joined in the petitioner Union. Therefore, the petitioner Union placed their demands with regards to the permanent status, wage revision and other measures before the second respondent management. The second respondent has agreed on 20.10.2011 with regards to the permanent status of the workers based on their performance. However, the second respondent did not keep up their promise.

2.1 The second respondent also has resorted to unfair labour practices and in order to create fear among the workers and to undermine the trade union has foisted false complaint as against the active workers belongs to the petitioner Union. Therefore, they raised dispute before the Assistant Commissioner of Labour and even though the second respondent failed to appear, the Labour Officer issued failure report dated 20.01.2012 for the reason there were no chances of amicable settlement.



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The failure report was sent to the first respondent for reference of the dispute for adjudication. However, it was rejected.

3. The learned counsel for the petitioner would submit that the Government's power under Section 10 of the Industrial Disputes Act related to the reference of the dispute is only administrative in nature. Further, the Government's power is limited as to decide whether a prima facie dispute exists and cannot go into the merits of the dispute. Therefore, the Government cannot assume the role of judicial forums while deciding the reference of the dispute for adjudication. The power should be judiciously exercised by the Government. However, the first respondent had gone into merits of the matter and passed the impugned order without any basis. In support of his contention, she also relied upon the judgment of this Court in the case of *Shaw Wallace and Company Limited Vs. State of Tamilnadu* reported in (1988) ILLJ 177 Mad.

4. Heard the learned counsel appearing on either side.



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5. In the above referred judgment , the Hon'ble Division Bench of this Court held that the dispute relates to closure of a unit. The petitioners were working in the house furnishing factory of Spencer and Company Limited. The Management issued notice and closed the factory and the employees were retrenched from their service. Therefore, the employees approached the Commissioner of Labour and after receipt of failure of conciliation, the Government refused to make reference on the ground that on perusal of profit and loss accounts, the house furnishing factory was incurring loss for the period of four years and on account of that loss, it was closed. However, the factory issued advertisements in newspapers calling for deposits from general public and shareholders. Therefore, the order of rejection for reference was set aside. Whereas in the case on hand, on perusal of demands, which are not relevant to closure of factory or retrenchment of the employees from their service. Therefore, the judgment cited by the learned counsel for the petitioner is not applicable to the case on hand.



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6. On perusal of the order passed by the first respondent, revealed that out of 29 demands made by the petitioner Union, only 14 demands were rejected for reference of the demands for adjudication. The demands which are rejected by the first respondent are not related to the agreement as entered between the second respondent and the employees. Therefore, the first respondent rightly rejected those demands of the petitioner and this Court finds no infirmity or illegality in the order passed by the first respondent. As such, this writ petition is devoid of merits.

7. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

05.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.Chief Secretary,
The Government of Tamilnadu,
Department of Labour and Employment,
Secretariat, Fort St.George,
Chennai 600 001
- 2.Managing Director,
Woosu Automative India Pvt.Ltd.,
No.130, Narasingapuram Village,
Perambakkam Post, Thiruvallur 602 105
- 3.The Secretary to Government,
Labour and Employment Department,
Secretariat, Chennai-9
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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