



W.P.No.22167 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22167 of 2023

Kothari Petrochemicals Ltd.,
Employees Welfare Union
Represented by its General Secretary,
No.78, Tiruvalluvar Street,
Manali, Chennai – 600 068.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Labour and Employment,
Fort St. George,
Chennai - 600 009.

2. The Deputy Commissioner of Labour,
(Conciliation - 1) Kuralagam,
Chennai.

3. The Management,
Kothari Petrochemicals Limited,
1/2B, 33/5, Sathangadu Village,
Manali, Chennai – 600 068.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Government Order dated 21.12.2022 vide G.O.(D).No.637 issued by the first respondent, quash the same, consequently direct the first respondent to refer the demands annexed with the said Government Order for adjudication before the Labour Court as per Section 10(1) of the Industrial Disputes Act, 1947.

For Petitioner : Mr.C.D.Sugumar
For Respondents : Mr.M.S.Premkumar
Government Advocate for R1 & R2

ORDER

This Writ Petition has been filed seeking to quash the Government Order dated 21.12.2022 *vide* G.O.(D).No.637 issued by the first respondent and consequently, direct the first respondent to refer the demands annexed with the said Government Order for adjudication before the Labour Court as per Section 10(1) of the Industrial Disputes Act, 1947.



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2. Since no adverse order is going to be passed, notice to the third respondent is dispensed with.

3. The case of the petitioner in a nutshell is as follows:

3.1. The petitioner is the General Secretary of the petitioner employees union and totally, there are 31 employees, who are the members of the petitioner employees union. In the year 2015, a settlement dated 23.11.2015 was entered into between the petitioner union and the third respondent / Management under Section 12(3) of the Industrial Disputes Act, 1947. As per the said terms of settlement, for every three years there should be a grade change and there should be yearly increment in salary and the said arrangement has been scrupulously followed by the third respondent / Management for the years 2015, 2016 and 2017. Thereafter, the third respondent / Management has not awarded grade change or paid the annual increment for its employees and has not offered any explanation for stoppage of grade change and non-payment of annual increment. Since the representation submitted by the petitioner union has not been



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considered, the petitioner union raised a dispute u/s.2(K) of the Industrial Disputes Act, 1947 before the second respondent.

3.2. The third respondent / Management has filed its response in the said dispute stating that grade change of employees can be done based on the self appraisal of employees and despite notice was displayed in the notice board dated 19.12.2019 and 10.12.2020 for receiving self appraisal forms from the individual employees, the employees have not submitted the same.

3.3. The grievance of the petitioner union is that the third respondent / Management is producing Polyisobutylene, which is used as raw materials for manufacturing of cosmetics, engine oils etc., and the nature of work of employees of the third respondent / Management is in the nature of observation and control the process of manufacturing of the said product. Since the nature of work cannot be measured in terms of skill of employees, it is impossible for the employees to submit self appraisal forms.



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Further, the third respondent / Management is having every detail with regard to the performance of each employee and only to avoid grade change and payment of annual increment, they are seeking of self appraisal.

3.4. On finding that the issue could not be settled, the second respondent issued a failure report dated 29.03.2022. As the issue involved increment in salary and grade change of employees, a special report was sent to the first respondent for referring the matter to the appropriate Labour Court for adjudicating the dispute. However, the first respondent, without considering the issue in proper perspective, has passed the impugned order, stating that the third respondent / Management is not in a position to award grade change only due to failure on the part of the employees to submit self appraisal forms. Insofar as the issue with regard to non-payment of increment is concerned, the first respondent has found that the third respondent / Management is providing increment for every employees and those who are not getting increment, it is open to them to approach the Management and get their grievance redressed. On the above reasoning, the



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first respondent has refused to refer the aforesaid issue for adjudication before the Labour Court.

4. Though very many grounds have been raised in the present Writ Petition, it would suffice, if this Court may grant permission to the petitioner union to furnish all those details as sought for by the third respondent / Management and the same shall be considered and appropriate orders shall be passed on merits and in accordance with law.

5. The learned Government Advocate appearing for the respondents 1 and 2 has no serious objection for such an order being passed by this Court.

6. Considering the limited request made by the learned counsel for the petitioner, this Court, without interfering with the order impugned in this Writ Petition, grants permission to the petitioner union to furnish all those details as sought for by the third respondent / Management during



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conciliation proceedings before the second respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such details, the third respondent / Management shall pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter.

7. With the above directions, this Writ Petition is disposed of. No costs.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Principal Secretary,
Department of Labour and Employment,
Fort St. George, Chennai – 600 009.
2. The Deputy Commissioner of Labour,
(Conciliation – 1) Kuralagam
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