



W.P. Nos.10806-10808/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.08.2023	22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.10806 TO 10808 OF 2017

Railways Employees Co-operative
Society Staff Union, rep. by its
General Secretary
R.C.Cyril Thiyagaraj
No.2/30, Lettangs Road
Vepery, Chennai 600 007.

.. Petitioner in all petitions

- Vs -

1. The State of Tamil Nadu
Rep. by its Secretary
Department of Labour & Employment
Fort St. George, Chennai 600 009.

2. The Chief Executive
The Railway Employees Cooperative
Credit Society Ltd.
Ashok Vihar Complex
Old Zoo Road
Chennai 600 003.

.. Respondents in all petitions

W.P. No.10806 of 2017 filed under Article 226 of the Constitution of
India praying this Court to issue a writ of certiorarified mandamus to call for



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the records pertaining to G.O. (D) No.671 (Labour & Employment (A1) Department) dated 16.11.2016 passed by the 1st respondent and quash the same and direct the 1st respondent to refer the demands (dispute) for adjudication.

W.P. No.10807 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to G.O. (D) No.567 (Labour & Employment (A1) Department) dated 04.10.2016 passed by the 1st respondent and quash the same and direct the 1st respondent to refer the demands (dispute) for adjudication.

W.P. No.10808 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to G.O. (D) No.676 (Labour & Employment (A1) Department) dated 17.11.2016 passed by the 1st respondent and quash the same and direct the 1st respondent to refer the demands (dispute) for adjudication.

For Petitioner : Ms. D.Nagasaila

For Respondents : Mr. S.Ravindran, SC, for
M/s. S.Bazeer Ahamed for R-2
Mr. V.Arun, AAG, assisted by



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Mr. S.John J.Raja Singh, AGP for R-1

COMMON ORDER

Assailing the rejection of the demands by the 1st respondent vide the respective Government Orders by rejecting the reference sought for on the disputes to the Industrial Tribunal for adjudication in terms with the Industrial Disputes Act (for short 'ID Act'), the present writ petitions have been filed.

2. The petitioner is a registered Trade Union espousing the cause of about 733 workers, who are in membership of the petitioner, which Union was formed as the earlier Union had not correctly espoused the cause of the workmen.

3. It is the case of the petitioner that the 2nd respondent, in scant regard to the various labour legislations, is indulging in unfair labour practice and is altering the service conditions of the workmen in violation of the safeguards provided u/s 9-A of the ID Act. It is the further case of the petitioner that the protest by the members of the petitioner Union in the



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manner known to law is meted out with victimization in the form of charges and transfer, which are not in line with the service regulations. It is the further case of the petitioner that the service regulations have not been framed in terms with the Act. As and when a dispute is raised, the 2nd respondent comes up with an amended service regulation to suit their convenience. The service regulations were changed at the whims and fancies of the 2nd respondent. The petitioner had filed W.P. No.16797 of 2012 challenging the act of the 2nd respondent in altering the service regulations without notice to the petitioner as mandated u/s 9-A of the ID Act and this Court had directed that no changes to the service conditions shall be made by the 2nd respondent by recording the undertaking given by the 2nd respondent and the petitioner. However, without adhering to the undertaking and direction, the 2nd respondent changed the service regulations, resulting in filing of Contempt Petition in C.P. No.1302 of 2012 at which time, a new set of service regulations were handed over, which is said to have been issued in the year 2004.



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4. It is the further case of the petitioner that the 2nd respondent is not willing to hold negotiations with the petitioner, which resulted in the dispute being raised in Dispute No.535 of 2014, which dispute was closed by the conciliation officer without filing a final report by stating that similar issue is pending before Central Government Industrial Tribunal. Thereafter, the petitioner filed W.P. No.26553 of 2015 challenging the order of the Labour Commissioner in closing the dispute without submitting a failure report and this Court allowed the writ petition and directed the Conciliation Officer to commence conciliation proceedings and to file appropriate report.

5. It is the further case of the petitioner that in the course of conciliation proceedings, documents were filed relating to the victimization caused by the 2nd respondent against the members of the petitioner. The petitioner also filed additional statements, which are also part of the same statements, which was given earlier, however, the conciliation officer gave the additional statement different numbers and numbered all that as three different disputes and submitted failure reports dated 4.4.2016 in Na.Ka. No.A/535/14 and Nos.778/14 and 99/14. On the basis of the failure reports,



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the 1st respondent, while referred only one demand, rejected the other demands raised, vide G.O. (D) No.670 dated 16.11.2016 and G.O. (D) Nos.567 and 675 dated 4.10.2016 and 17.11.2016. Challenging the said rejection, the present petitions have been filed.

6. Learned counsel appearing for the petitioner submitted that the 1st respondent has no authority to reject the demands raised by the petitioner for being referred to the Tribunal, as it would otherwise run contrary to Section 10 (1) of the ID Act. It is the further submission of the learned counsel that as per Section 10 (1) of the ID Act, the Government has to only form an opinion as to the existence of a dispute and it has no authority to exercise powers u/s 10 (1) to find out the merits or demerits of the dispute so as to arrive at a finding as to the legality of the dispute.

7. It is the further submission of the learned counsel that while the failure report of the Labour Commissioner was filed, recommendations were made, which were alleged to have been taken into consideration by the 1st respondent while rejecting the demands for reference, however, curiously,



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there is no discussion in the impugned order about the recommendations that were made by the Labour Commissioner.

8. Learned counsel appearing for the petitioner further submitted that whenever any demand or dispute is raised by the Union/workmen against the Management, it is necessary for the registered union to make a chartered demand to the conciliation officer. The conciliation officer has to forward the same to the Government, which has to refer the dispute to the competent court for proper adjudication and the State Government cannot prevent the union or the workmen, at the threshold, by rejecting the dispute/demand. In the present case, the State Government, at the threshold, without referring the dispute to the competent Court had decided to take a decision not to refer the dispute, which is *per se* unsustainable and it is contrary to Section 10 (1) of the ID Act.

9. Learned counsel for the petitioner further drew the attention of this Court to the various provisions and the Schedules to the Industrial Disputes Act and vehemently contended that the State Government without



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considering the tenor of the provisions and the Schedules and the demands made by the petitioner, being in consonance with the provisions of the ID Act and the Schedules, it is bounden duty and necessity for the State Government to refer the dispute to the competent Industrial Tribunal for adjudication between the Union and the Management.

10. It is the further submission of the learned counsel that the principles which are to be followed by the Government while making a reference have been laid down by the Apex Court in ***Shaw Wallace & Co. Ltd. – Vs – State of Tamil Nadu (1988 (1) LLJ 177)***. However, while adhering to the principles laid down therein and considering the *prima facie* dispute that exists between the parties, mechanically the 1st respondent has rejected the demands raised by the petitioner, which reflects total non-application of mind to the materials available before it and, therefore, the said impugned orders require interference.

11. In support of the aforesaid submissions, learned counsel appearing for the petitioner placed reliance on the following decisions :-



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- i) *Alembic Chemical Works Co. Ltd. – Vs – Workmen (1961 (1) LLJ 328);*
- ii) *Bombay Union of Journalists & Ors. – Vs – State of Bombay & Anr. (1964 (1) LLJ 351);*
- iii) *Ram Avtar Sharma – Vs – State of Haryana (1985 (3) SCC 189);*
- iv) *Shaw Wallace – Vs – State of T.N. (1987 (1) LLJ 177 (Mad.));*
- v) *Hindustan Teleprinters General Employees Union – Vs – State of T.N. & Anr. (1988 (1) LLJ 159);*
- vi) *Telco Convoy Drivers Mazdoor Sangh & Anr. – Vs – State of Bihar & Ors. (1989 (3) SCC 271);*
- vii) *Gaya Prasad – Vs – UOI (2003 (4) LLJ (Supp.) 60);*
- viii) *Sarva Sharmik Sangh – VS – Indian Oil Corporation (AIR 2009 SC 2355);*
- ix) *Puthiya Jananayaga Thozhilalar Munnani Gestamp Sungwoo Hitech Employees Branch – Vs – Govt. of T.N. (W.P. No.19138/2013 – Dated 12.01.2016 – Madras Hct.);*
- x) *U.P. Electricity Board & Anr. – Vs – Hari Shankar Jain & Ors. (1978 (4) SCC 16);*
- xi) *LIC of India – Vs – D.J.Bahadur & Ors. (1981 (1) SCC 315);*
- xii) *RECCSU – Vs – The Joint Commissioner & Ors. (W.A. No.314 of 2010); and*



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*xiii) SLP No.35834 of 2013 against the order in W.A.
No.314 of 2010*

12. Per contra, learned Addl. Advocate General appearing for the 1st respondent, placing reliance on the counter affidavit filed by the 1st respondent submitted that the factum of transfer orders and alteration of service conditions of the members of the petitioner were not within the awareness of the 1st respondent. However, the employees of the 2nd respondent invoked Section 2 (k) of the ID Act and raised an industrial dispute, which were taken on file as a dispute.

13. It is the further submission of the learned Addl. Advocate General that the 2nd respondent is well within its authority to frame service regulations and the fact that the allegation relating to no notice having been issued to the petitioner while framing regulations is within the realm of the petitioner to discharge the burden by proving the said averments. It is the further submission of the learned Addl. Advocate General that with regard to the allegation of victimization meted out to the employees of the 2nd respondent, industrial dispute was raised in which enquiry as contemplated under the



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provisions of the ID Act was conducted leading to submission of failure reports. On scrutiny of the failure reports, the competent referred certain disputes for adjudication before the Industrial Tribunal and the same was taken on file in I.D. No.32/2016. However, insofar as the other demands of the petitioner, the same were rejected by the 1st respondent, as it was not within the purview of the Tribunal to decide the same, as the same did not fall under the 2nd and 3rd schedules to the ID Act.

14. It is the further submission of the learned Addl. Advocate General that the demands raised by the petitioner, which stood failed in the conciliation proceedings were not disputes, which could be referred for adjudication and, therefore, the said demands were rejected by assigning valid reason, as the Industrial Tribunal was not vested with power to adjudicate the said disputes.

15. It is the further submission of the learned Addl. Advocate General that the order declining to refer all the demands, but for a few, by the 1st respondent is on proper reasoning and the grounds raised by the petitioner



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flimsy and vexatious alleging that the 1st respondent has not assigned any reasons for declining to refer the demands raised, without adverting to the sum and substance of the provisions of the ID Act.

16. In fine, it is the submission of the learned Addl. Advocate General that the 1st respondent, in strict consonance with the provisions enumerated u/s 10 of the ID Act and the ratio laid down by the Court, have issued the order declining the demands raised by the petitioner, but for some demands, which have been referred before the Industrial Tribunal, by assigning proper reasons and, therefore, the impugned orders refusing to refer the demands is wholly justifiable and, therefore, requires no interference.

17. Learned senior counsel appearing for the 2nd respondent submitted that the service regulations are in vogue since 2004, but the petitioner Union had come into picture only in the year 2012 and, therefore, it cannot question the regulations, which have been framed after following the due process of law, which has gone through certain amendments on account of revision of pay scales.



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18. It is the further submission of the learned senior counsel that it is within the prerogative right of the 1st respondent to reject any demand from being referred for adjudication, as it is within the discretionary power of the 1st respondent to exercise its administrative power to examine the admitted facts to arrive at a just and reasonable conclusion. Only by exercising such power, by giving proper reasons, the 1st respondent has referred certain demands by making a limited reference, which cannot be interfered with on the mere allegation of non-application of mind.

19. It is the further submission of the learned senior counsel that the parity claimed by the petitioner with the employees of Railways and the demand of the petitioner Union that its employees should be governed by the Railways Employees (Discipline & Appeal) Regulation has already been negatived by the Apex Court in ***Union of India (Railways Board) & Ors. – Vs – J.V.Subhaiah & Ors. (1996 (2) SCC 258)*** holding that the servants, employees and officers appointed by the Railway Cooperative Stores/Societies cannot be treated on par with the railway servants.



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20. It is the further submission of the learned senior counsel that the 1st respondent has acted within its discretionary administrative power not to refer all the demands of the petitioner for adjudication and the 1st respondent has not adjudicated on merits the demands raised by the petitioner as it is only on the basis of proper application of Section 10 (1) (d) of the ID Act in reference to the schedules referred therein and, therefore, the said order does not call for any interference.

21. In support of the aforesaid submissions, learned senior counsel for the 2nd respondent placed reliance on the following decisions :-

- i) *Union of India (Railway Board) & Ors. – Vs – J.V.Subhaiah & Ors. (1996 (2) SCC 258);*
- ii) *The Chief Executive – Vs – Railway Employees Co-operative Society Staff Union & Ors. (W.A. Nos.1350 & 1413 of 2016 – Dated 4.1.2017);*
- iii) *P.Sivasankaran & Ors. – Vs – The Secretary, Railways Employees Cooperative Credit Society Ltd. & Ors. (W.P. Nos.25091 to 25094 of 2016 – Dated 14.11.2006);*
- iv) *G.Haribabu & Ors. The Secretary, Railway Employees Cooperative Credit Society Ltd. & Ors. (W.A. Nos.572 to*



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- 588 of 2017 & W.P. No.13006 to 13018 of 2003 – Dated 14.07.2010);*
- v) The Chief Executive & Anr. – Vs – The Commissioner of Labour – cum – Registrar of Trade Union & Ors. (W.A. Nos.768 & 771 of 2017 – Dated 17.08.2017);*
 - vi) Railway Employees Cooperative Society Staff Union – Vs – The Chief Executive, Railway Employees Cooperative Credit Society Ltd. & Ors. (SLP Nos.235 & 236 of 2018 – Dated 28.03.2018);*
 - vii) United Labour Federation – Vs – Government of Tamil Nadu & Ors. (2011 (1) LLJ 792); and*
 - viii) Rahman Industries Pvt. Ltd. – Vs – State of U.P. & Ors. (2016 (1) LLJ 513)*

22. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record as also the decisions relied on by the learned counsel on either side.

23. The following issues arise for consideration in the present petitions:-

- i) Whether the 1st respondent has power to refuse to refer all the disputes raised by the workmen for*



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- adjudication in terms of Section 10 (1) (d) of the ID Act.*
- ii) *Whether the 1st respondent, without going into the veracity of the demand and the report of the conciliation officer, can refuse to refer the dispute to the Labour Court.*
 - iii) *Whether the Union can make a demand to refer the entire dispute, as demanded by them to the Labour Court without the same being adjudicated by the Conciliation Officer.*
 - iv) *Whether the Railways Co-operative Employees demand for considering them on par with railways employees union could be considered by the 1st respondent and the same could be referred as a dispute to the Labour Court for adjudication.*

24. It is borne out by record that under the three writ petitions, certain demands were raised by the petitioner of which one demand in each of the petitions were referred, vide G.O. (D) Nos. 670, 566 and 675 dated 16.11.2016, 4.10.2016 and 17.11.2016 in I.D. Nos.32/2016, 27/2016 and 31/2016, which are as under :-

W.P. No.	Referred Dispute
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10806/2017	<i>Whether the demand of the petitioner Union that it should be declared that the service conditions of the employees amended and executed on 1.9.2004 under Multi Operative Society Act should not be implemented since it was issued without giving notice under Section 9-A of the ID Act is justified? If yes, pass appropriate orders.</i>
10807/2017	<i>The demand that the transfers of the following 96 members of the Union to the places as per the enclosures should be revoked is justified? If yes, proper orders shall be given.</i>
10808/2017	<i>The demand that the transfers of the following 39 members of the Union to the places as per the enclosures should be revoked is justified? If yes, proper orders shall be given</i>

25. However, as aforesaid, many of the demands raised by the petitioner were rejected as not liable to be referred, which according to the petitioner requires to be referred, as it is squarely covered u/s 10 (1) (d) of the ID Act and for better appreciation, the demands, which were not referred and the reason for its not being referred are quoted hereunder :-

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<i>Demand</i>	<i>Reason for Rejection</i>
<i>Demand – 2 – To declare the service conditions formed unilaterally by the Management is not binding on the employees and only Railway employees Disciplinary and Appeals Rules and Industrial Standing Orders are applicable to the</i>	<i>With regard to the demand that only Railway Employees Disciplinary and Appeal Rules are applicable to the employees of the society, only the Central Government is empowered to enforce such rules</i>



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employees	also the case regarding application of Standing Orders are pending in the Supreme Court (SLP No.35834 of 2013) and hence this demand need not be referred for adjudication.
Demand – 3 – The demand that the respondent is harassing the members of the petitioner union by transferring them to distant places by issuing charge memos by foisting charges by threatening with discharge and dismissal and by harassing them on day to-day basis and therefore the respondent should be prohibited from indulging in unfair labour practices already committed and to take action against the respondent under Section 25-T and 25-U of the Industrial Disputes Act.	Since the precise details of the demand were not submitted particularly by the petitioner this demand need not be referred for adjudication.

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Demand	Reason for Rejection
Demand - 2 – To set aside the punishments of “Reduction in time pay scale by four stages for a period of 36 months” enforced on by the following penalty advices issued to the employees as these punishments are in violation to Section 33 of the Industrial Disputes Act of 1947 and to initiate necessary proceedings against respondent Society under Section 33(1) of Industrial Disputes Act.	The Union did not mention the names of the employees in the dispute also the dates from which the 36 months period is commenced is not mentioned and also the details of the reduction in four stages is not submitted. Hence the dispute need not be referred.
Demand – 3-A – The Management has issued 342 minor penalty charge memos to 133 members of our Union and 140 major	The Union did not submit the list of employees mentioned in their demand. Also the details of the



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penalty charge memorandums were issued and non-punching of access cards were treated as misconducts based on which complimentary free passes were withheld to the members from 6 months to 46 months and 58 members of Union were imposed with penalties of withholding of increments for a period from 6 to 36 months.	punishment and the punishment orders were not submitted. Hence the dispute need not be referred.
Demand – 3-B – Tamil Nadu Model Standing Orders are applicable to the Society till standing orders are certified and the enquiries on charge memos which were issued for certain violation of service conditions of the society framed under Section 49 (2)(e) of Multi State Cooperatives Act and the enquiries on which shall not be proceeded.	This will not come under Industrial Disputes Act and hence need not be referred.
Demand – 3-C – To set aside the punishment orders of “Withholding of eligible complimentary pass/s and complimentary PTOs” and “withholding of eligible promotions” issued to the members of out union as these punishments were enforced for certain misconducts which are not misconducts as per the Tamil Nadu Model Standing Order.	In the demand to whom the promotions were not given is not clearly mentioned.
Demand – 4 – The Management of the society has decided to fill 80 numbers of posts in Section Officer cadre and in 40 numbers of posts in Assistant Administrative Officer Cadre-II. There is no vacancy to fill in as claimed by the Management. The Management has created these posts to promote the people who are in favour and party to the arbitrary conduct of the Management. In our dispute dated 30.07.2014 (Item 12 IV) we have objected to the creation of new posts like AAO as they are created by changing service conditions without proper notice which is a violation of	The demand is not clear and this will not come under the Industrial Disputes Act and as per the recommendations of Labour Officer this need not be referred.



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9A of Industrial Disputes Act. Till 2000 the promotions to the posts of SGSOs were given only on seniority basis. The present Management changed this only to hand over the promotions to the employees who are in favour of the Management. This announcement of exams for promotion is only a tool to lure the employees away from the petitioner union. This is only done to dilute the bargaining power of our Union.

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Demand	Reason for Rejection
Demand – 1 – Transfer Policy	Omitted in the report
Demand – 2 – Pay Scale and Basic Pay The basis pay and pay scales of the employees of the society were on par with the railway employees till 1999 which was changed without notice as per Section 9-A of the ID Act of 1947 and this should be immediately reintroduced.	Since no documents were submitted by the petitioner union which shows that similar salaries were given to the employees of the society on par with the Railways and equal pay were drawn by the employees doing similar work and in similar cadre in railways and no document was filed by the petitioner which shows as per which date or which order the same was executed and also which of the members of the petitioner union were affected by such order hence demand shall not be referred to adjudication.
Demand – 3 – The Union has raised the following demands with reference to promotions. I) Seniority to be the main criteria for promotion II) Scrapping of test and interview and confidential report	This will not come under industrial dispute hence this is not needed to be referred for adjudication.



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III) <i>Guaranteed two promotions to every employee to avoid stagnation through the process of supernumerary post</i> IV) <i>Granting two increments for fixation on promotion</i> V) <i>Every year a list of seniority according to the date of appointment to every cadre should be published.</i>	
Demand – 4 – Revival of the pension scheme	<i>Omitted in the report</i>
Demand – 5 – Recognition of trade union <i>Industrial democracy demands recognition of a trade union. Society must immediately take steps to recognize the union enjoying the majority support of the employees. For this secret ballot election should be conducted in every two years. With regard to this in Madras High Court W.P. 1615/2015 is filed and is pending</i>	<i>Since the W.P. 1615/2015 is pending before Madras High Court this demand need not be referred.</i>
Demand – 6 – Employees Representation in the decision making <i>The office bearers of the recognized union should be associated with in the Management decision making process of the society as per Section 42 of the Multistate Cooperative Society Act.</i>	<i>This demand should be implemented under provisions of law and such cannot be treated as industrial dispute and cannot be referred.</i>
Demand – 7 – Exgratia <i>All the employees shall be paid a minimum amount of 20% of their annual gross wages as Bonus/Ex-gratia every year</i>	<i>The payment of ex-gratia is the prerogative of the Management and the relief in the matter of payment of minimum bonus is available as per Payment of Bonus Act, 1965 and also it is not submitted for which year the bonus was demanded and hence this demand need not be referred.</i>



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Demand – 9 – Cashiers Honorarium The employees who are doing the duties of cashiers should be paid .1% of the every cash transaction made by them as honorarium. This payment should be paid every month.	Since this demand shall be met with the financial viability of the Management this demand need not be referred.
Demand – 10 – Provident Fund Provident Fund/Contributory Provident Fund should be at 12% of Basic + Grade Pay + DA for all employees of the society	Since the relief is available as per the Provident Fund Act of 1952 this demand need not be referred.
Demand – 11 – DAR i) No misconduct except mentioned in the Tamil Nadu Model Standing Orders should not be treated as misconduct ii) The employees should be allowed assistance of a legal counsel during departmental enquiries. iii) The enquiry officer should be appointed with the consent of recognized/majority union iv) Members of the recognized/majority union should be allowed to be present during departmental enquiries.	This will not fall under the purview of Industrial Disputes Act and hence need not be referred.
Demand – 12 i) Accumulation of Leave on average pay (LAP) should be allowed upto 360 days	The demand is not clear and hence not referred
Demand – 12 ii) Unavailed CL should be carried forward to the subsequent year	The demand need not be referred
Demand – 12 iii) Sick Leave upto 5 days be granted without medical certificate	Since relief is available for this demand under 1948 Labour Medical Act this need not be referred



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Demand – 12 iv) Unutilized sick leave should be allowed to be encashed at the time of retirement/death	The relief for this demand is available under 1948 Employees State Insurance Act and this need not be referred
Demand – 12 v) Maternity leave should be extended to six months	The relief for this demand is available under Maternity Benefit Act, 1961 and hence this need not be referred.
Demand – 12 vi) Paternity leave of one month should be granted to the employees on two times during entire service period.	Since this will not fall under Industrial Dispute this demand need not be referred.
Demand – 12 vii) Trade Union leave for 30 days every should be allowed to office bearers of the recognized/majority union for union activities	Since this will not fall under industrial dispute this demand need not be referred.
Demand – 12 viii) Leave shall be treated as a matter of right to the employees	This demand is the prerogative of the Management and cannot be demanded as a matter of right and this need not be referred.
Demand – 12 ix) If any leave is rejected the reason for the same should be informed to the employee in writing.	Since this will not fall under industrial dispute this demand need not be referred.
Demand – 13 – ii) Vehicle Advance All employees shall be granted loan upto Rs.2,00,000/- or the cost of vehicle whichever is less for the purchase of vehicle including motor car. 100% invoice price including registration charges and taxes shall be sanctioned as vehicle advance.	This demand is the prerogative of the Management and hence need not be referred.



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After completion of 5 years employees shall be permitted to purchase another vehicle.	
Demand – 13 – iii) Flood / Drought / Natural Calamities Advance All affected employees shall be granted Rs.36,000/- free of interest.	Since this demand shall be met with the financial viability and is also prerogative of the Management this need not be referred.
Demand – 13 – iv) Loan for Marriage Loan shall be granted free of interest to the employees upto Rs.1,00,000/- for his / her own marriage or for the marriage of his / her dependants	Since this demand shall be met with the financial viability this need not be referred.
Demand – 13 – v) Computer Loan All employees shall be granted loan of Rs.35,000/- free of interest for purchase of computer/laptop	Since this demand shall be met with the financial viability this need not be referred.
Demand – 14 – Subsidized Canteen Subsidy to the extent of 50% shall be provided by the society for supply of whole sum food to the employees in the canteen	This demand is the prerogative of the Management and hence need not be referred.
Demand – 15 – Gratuity The quantum of gratuity shall be calculated at the rate of one month's gross salary for each completed year of service without ceiling. Income Tax liability shall be borne by society.	The relief for this demand can be arrived as per Gratuity Act, 1972 hence this need not be referred.
Demand – 18 – Service Conditions and Bye Laws of the society Each and every employee should be provided with the complete set of service conditions and updated bye-laws of the society. Any amendment to the bye-laws of the society should be intimated to each and every employee.	This demand should be implemented as per provisions of law. Since there is a provision under law to implement this need not be referred. Hence the demand that employees shall participate in the decision making process of the Society as per Section 42 need not be referred.
Demand – 19 – Superannuation The age of superannuation for every employee should be 60 years	This demand is the prerogative of the Management and hence need not be referred.



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26. In a nutshell, while one demand in each of the writ petition has been referred as a dispute for adjudication by the Tribunal, all the other demands have been either rejected on the ground that already a mechanism is available to redress the demand raised or that the said demand would not fall within the four corners of reference to be adjudicated by the Tribunal as a dispute. Assailing such rejection vide the impugned Government Orders, the writ petitions have been laid by the petitioners.

27. Though very many decisions have been relied on by either side, however, as the issue at hand falls on the interpretation and application of the provisions of Section 10 (1) (d) vis-a-vis Section 2 (k) read along with Second and Third Schedule to the ID Act, there is no necessity for this Court to skim through all the references, as the case on hand does not warrant such an elaborate discussion on the issue, which have since been well settled.



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28. The petitioner has raised the following demands and tabled it as an industrial dispute to the Government for its reference. Section 2 (k) of the ID Act defines “*industrial dispute*”, which, for reference, is quoted hereunder :-

“(k) “industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

29. From the above, it is evident that insofar as issues connected with the employment or non-employment or the terms of employment or with the conditions of labour between an employer and workmen, the said dispute could be a dispute referable as an industrial dispute u/s 2 (k).

30. In respect of an industrial dispute, which is raised u/s 2 (k) of the ID Act before the Government, on the failure of conciliation proceedings, upon report of the Conciliation Officer, the Government is vested with the powers to refer the dispute to the Tribunal, as is provided u/s 10 of the ID Act.



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31. In the case on hand, the conciliation proceedings failed, and upon report, the Government, by invoking its powers u/s 10 (1) (d) of the ID Act, had referred a portion of the dispute to the Tribunal for adjudication, while rejecting the majority of the demands by assigning reasons. Insofar as the reference made referring the dispute for adjudication, there is no quarrel, however, only in respect of the demands, which have been rejected by assigning reasons, the petitioner is aggrieved.

32. To appreciate the power vested with the Government with regard to reference of disputes, Section 10 of the ID Act clothes the Government with the power and the same is quoted hereunder :-

*“10. Reference of disputes to Boards, Courts or Tribunals. –
(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing -*

(a)

** * * * **

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication :



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* * * * *

33. From a careful reading of the above provision, viz., 10 (1) (d), it transpires that for a demand to fall within the ambit of a dispute, which could be referred by the Government to the Tribunal for adjudication, the demand should relate to matters, which falls under the Second Schedule or Third Schedule. Only such of those matters, which fall under Second Schedule and Third Schedule could be the issues, which could be adjudicated by the Tribunal upon a reference by the Government. More importantly, it is to be pointed out that not all demands would partake the character of disputes, as dispute is totally different from a demand. Further, what is more important and imperative is that the formation of opinion of the Government is a mandatory condition for acting on the demand. Therefore, opinion of the Government before referring the demand as a dispute to the Industrial Tribunal is an useful procedure and it is not an empty formality, which could just be wished away so as to wash hands of the dispute. The Government must necessarily analyse all the chartered demands made by the Union and upon forming an opinion as to whether the demands are in consonance with the provision and



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the Schedules to the Industrial Disputes Act, has to act upon the demands in consonance with the aforesaid provisions.

34. In the case on hand, reference is sought for u/s 10 (1) (d) and the 1st respondent has made a reference of one matter under each of the three demands to the Tribunal for adjudication and has rejected the other demands as the same could not be qualified as disputes, which require to be adjudicated by the Tribunal for the reasons shown in the impugned order of rejection. First of all, this clearly shows that the Government has carefully considered all the demands made by the petitioner and upon forming an opinion as to the veracity of the demands in consonance with the Schedules, had thought it fit to refer such of the disputes for adjudication, while rejecting the other demands.

35. Therefore, the impugned orders, rejecting the demand having been put in issue, it becomes imperative for this Court to find out whether the demands do qualify themselves to fall under Second Schedule or Third Schedule of the Industrial Disputes Act, so that the same could be referred to



the Tribunal for adjudication. Therefore, the matters falling under Second and Third Schedule are quoted hereunder to appreciate as to whether the demands raised fall under the aforesaid two schedules :

THE SECOND SCHEDULE

MATTERS WITHIN THE JURISDICTION OF LABOUR COURTS

- 1. The propriety or legality of an order passed by an employer under the standing orders;*
- 2. The application and interpretation of standing orders;*
- 3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to workmen wrongfully dismissed;*
- 4. Withdrawal of any customary concession or privilege;*
- 5. Illegality or otherwise of a strike or lock-out; and*
- 6. All matters other than those specified in the Third Schedule.*

THE THIRD SCHEDULE

MATTERS WITHIN THE JURISDICTION OF INDUSTRIAL TRIBUNALS

- 1. Wages, including the period and mode of payment.*
- 2. Compensatory and other allowances.*
- 3. Hours of work and rest intervals.*
- 4. Leave with wages and holidays.*
- 5. Bonus, profit sharing, provident fund and gratuity.*
- 6. Shift working otherwise than in accordance with standing orders.*



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7. *Classification by grades.*
8. *Rules of discipline.*
9. *Rationalisation*
10. *Retrenchment of workmen and closure of establishment; and*
11. *Any other matter that may be prescribed.*

36. A careful perusal of the Second and Third Schedules clearly enumerate the matters that would constitute a dispute, which could be referred to the Labour Court/Industrial Tribunal for adjudication. While the matters under Second Schedule fall under the jurisdiction of the Labour Court, the matters under Third Schedule fall under the jurisdiction of the Industrial Tribunal.

37. A cursory perusal of the Second Schedule reveals that any order in contravention of the standing orders or interpretation of the standing orders and matters relating to dismissal/retrenchment of workmen and withdrawal of customary concession or privilege, which had been given to the workmen, would be referable as a dispute to the Labour Court, while matters relating to the working conditions and the remuneration and benefits that the workmen



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are entitled would fall within the ambit of Third Schedule, which could referable as a dispute to the Industrial Tribunal.

38. In the above backdrop, a careful perusal of the demands raised in W.P. No.10806/2017, totalling two in number, which have been rejected by the 1st respondent, would show that Demand – 2, relating to the allegation of service conditions having been unilaterally changed by the Management has already been referred to as a dispute for adjudication and insofar as the other demand is concerned, it is evident from the demand that it does not relate to dismissal of the workman or any punitive action against the workman and the demand raised is an incidence of service, which would not fall within the ambit of Second Schedule. Further, the two demands, which are the subject matter of W.P. No.10806/2017 do not relate to matters falling under Third Schedule. Therefore, rightly, the 1st respondent has rejected the demands raised in W.P. No.10806/2017 and, therefore, the same does not suffer any infirmity.



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39. Insofar as the demands raised in W.P. No.10807/2017 are concerned, as in W.P. No.10806/17, one demand was referred by the 1st respondent as a dispute for adjudication, while the other demands were rejected. It is now for this Court to decide whether the said demands would fall within the ambit of Third Schedule to be referred to as a dispute for adjudication.

40. Four demands were raised of which, as stated above, one was referred. Of the three demands, which were not referred, Demand No.2 pertains to punishments imposed on the workmen while Demand No.3, which consists of three issues relate to issuance of charge memos to the workmen, applicability of Tamil Model Standing Orders till standing orders are framed and withholding of promotions and complimentary passes to members, who have suffered punishments and Demand No.4 pertains to filling up of certain posts.

41. On a holistic consideration of the aforesaid demands, it could very well be held that Demand No.3 and Demand No.4 do not fall either under the



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matters covered under the Second Schedule or the Third Schedule. The said issues have rightly been rejected by the 1st respondent as the same cannot be adjudicated by the Tribunal. Only issues which cover wages, allowances, working hours, leave, etc., which are relatable to the working conditions of the workmen alone could be referred to the Tribunal for adjudication. Further, the matters are internal administrative issues between the workmen and the Management and so long as it is within the administrative authority of the 2nd respondent to take action against its workmen by issuing charge memo, the same cannot be said to be a dispute, as otherwise, the 2nd respondent would be denuded of its powers to take action against its workmen. Further, insofar as Demand No.4 is concerned, it pertains to the filling up of vacancies and it is not within the matter envisaged under the Third Schedule. In such circumstances, the above demands do not fall within the parameters mentioned under Third Schedule and, therefore, the same cannot be adjudicated by the Tribunal.

42. However, insofar as Demand No.2 is concerned, the same relates to the punishment inflicted upon the workmen. The main grievance of the



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petitioner is that the said punishment squarely falls u/s 33 (1)(b) of the ID Act and, therefore, the same is referable. Section 33 of the ID Act relates to change of conditions of service during the pendency of proceedings. Sub-section (1) (b) of Section 33 deals with any misconduct not connected with the dispute, in which case, it is open to the Management to impose punishment on the workmen. However, it is pending the conciliation proceedings, the allegation is that the orders imposing punishments of reduction in time scale of pay has been passed and, therefore, it is squarely covered u/s 33 (1)(b) and, therefore, reference ought to be made by the 1st respondent.

43. When there is a specific allegation that pending the conciliation proceedings, conditions of service have been altered by infliction of punishment on the workmen and that the said issue is directly connected with the dispute, necessarily, the provisions of Section 33 (1)(b) of the ID Act stands attracted and the 1st respondent ought to have made a reference of the dispute to the Industrial Tribunal. Further, it is the case of the petitioner that materials pointing out the punishments have been placed for consideration and in such a scenario, it is the duty of the 1st respondent to refer the dispute



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and the 1st respondent cannot take shelter by merely stating that the details have not been provided, when it is the specific case of the petitioner that details have been provided. Therefore, this Court is of the considered view that the reference with regard to Demand No.2 ought to have been made to the Tribunal by the 1st respondent. To that extent, the grievance of the petitioner for reference of the said demand to the Tribunal, deserves to be acceded to.

44. Coming to the demands raised by the petitioner in W.P. No.10808/2017, akin to the other writ petitions, one demand has been referred for adjudication, while the other demands have been rejected.

45. A perusal of the materials reveal that barring the demand, which has been referred, as many as 16 demands have been raised by the petitioner of which Demand Nos.12 and 13 consists of 9 and 4 internal demands respectively. All the demands have been rejected by the 1st respondent by giving reasons.



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46. To put in a nutshell, the demands raised by the petitioner fall broadly under the categories of grant of pay scales on par with Railway employees; manner in which promotions have to be granted; recognition of the trade union; including employees in the decision making process; grant of bonus/ex-gratia; grant of honorarium; Disciplinary Regulations; Grant of various leaves; grant of various advances; provision of subsidized canteen; providing copy of service conditions to employees; Deduction of Provident Fund and Payment of gratuity.

47. The rejection of the leave under Demand No.12 is countered by the petitioner contending that it falls under Entry 4 of Third Schedule and, therefore, the dispute is referable. Though such a contention, on the face of it looks attractive, as Entry 4 of the Third Schedule deals with "*Leave with wages and holidays*", however, it is to be pointed out that what is sought for by the petitioner is the manner in which the leave, which is being given to the workmen is to be dealt with. Further, certain leave, which are not granted is also being sought for. In this regard, it is to be stated that the said grievance have to be ventilated by the workmen before the Management and the same



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cannot partake the character of dispute so as to be referred to the Tribunal for adjudication. The adjudication before the Tribunal with regard to an industrial dispute, as defined u/s 2 (k) is only to the extent of a difference between the employer and workmen which is connected with the employment or the terms of the employment or with the conditions of labour. It is to be pointed out that the terms of employment prescribes the leave that a workmen would be entitled to and anything beyond the terms is something, which is deliberated and discussed by the Union of the Management, and any change in leave structure or addition of leave which is sought for cannot be a matter of adjudication by the Tribunal and, therefore, placing reliance on Entry 4 of Third Schedule to cloth the Tribunal with the power to adjudicate is wholly unsustainable. Merely because Entry 4 of Third Schedule uses the word “Leave with wages” and the demand made by the petitioner relates to leave, the same cannot be referred as a dispute as any new inclusion to the terms of employment relating to leave is a matter to be deliberated by the Union and the Management and it is not a matter, which is to be adjudicated by the Tribunal, as it is a demand made by the petitioner seeking structural inclusions in the leave and by no means could it be categorised as a dispute, which



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would fall within the realm of the Tribunal for adjudication. Therefore, rightly, the 1st respondent has not referred the aid dispute and the same does not require any interference.

48. Likewise Demand No.13 pertains to the demand for loans, such as vehicle advance, flood advance, loan for marriage, etc. The said demands are not part of the terms of employment and as such they are fresh demands by the petitioner, which could not be gainsaid to be a dispute, which requires the adjudication by the Tribunal and rightly the same has been rejected to be referred.

49. Insofar as Demand No.10 and Demand No.15 relating to Provident Fund and Gratuity are concerned, the petitioner wants the computation of 12% to be made to include the Basic + Grade Pay + DA and gratuity to be calculated in a different manner. However, advertent to the provisions of the Provident Fund Act and Payment of Gratuity Act, based on which such deduction is made and gratuity is paid, the 1st respondent has rejected the reference sought for, which cannot be said to be unreasonable or arbitrary.



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50. Insofar as provision of subsidized canteen and increase in the superannuation age, made in Demand Nos.14 and 19 are concerned, the same are demands, which would not partake the character of dispute and, therefore, the rejection of reference to the Tribunal cannot be found fault with as the reason for such rejection is just and reasonable.

51. Coming to Demand No.2 relating to pay on par with Railway employees are concerned, the issue is covered by the decision of the Apex Court in *J.V.Subhaiah case (supra)*, where the Apex Court has held that the servants appointed by the Railway Co-operative Stores/Societies cannot be treated on par with Railway servants under paragraph 10-B of the Railway Establishment Code nor can they be given parity of status, promotions, scales of pay, increments, etc. The issue being dealt with and decided by the Apex Court, seeking reference for adjudication of the issue by the Tribunal is nothing but would be an exercise in futility and, rightly, the 1st respondent has rejected the reference.



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52. Demand Nos.3, 4, 5, 6, 7 and 9 relating to seniority to be the criteria for promotion, recognition of the petitioner trade union, representation of the employees in the decision making process, honorarium for cashiers and payment of bonus/ex-gratia to the workmen are concerned, the said demands could at best be termed to be demands, which are raised by the workmen, which needs to be deliberated by the Union and the Management with regard to the terms of employment and they are not dispute within the meaning of industrial dispute as defined u/s 2 (k) of the ID Act and as such they cannot be said to be matters falling within the purview of matters enumerated under Third Schedule to the ID Act. Therefore, the 1st respondent was fully justified in rejecting the demand of the petitioner to refer the matters for adjudication.

53. The Apex Court in *Ram Avtar Sharma's case (supra)* has observed that *"while exercising power under Section 10 (1), the function performed by the appropriate Government is an administrative function and not a judicial or quasi-judicial function is beyond a pale of controversy"*. This Court, while in respectful agreement with the aforesaid view, is constrained to add that while exercising the administrative function, it is the bounden duty of the



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Government to act within the four corners of Section 10 (1) and the Government cannot transgress beyond what is provided for in the Schedule to make any reference of a dispute, which is not within the ambit of Section 2 (k) of the ID Act. In the case on hand, barring the one issue, which would fall within the ambit of being referred for adjudication by the Tribunal, the 1st respondent has acted within its power of reference and performed its function in a proper manner, which cannot be found fault with.

54. For the reasons aforesaid, this Court is of the considered view that barring Demand No.2 of W.P. No.10807/2017, all the other demands, put forth by the petitioner would not come within the ambit of matters enumerated either under the Second Schedule or the Third Schedule and, therefore, its rejection by the 1st respondent is fully justified and, no interference is called for.

55. In view of the discussion made above, the questions framed by this Court are answered as under :-

- i) *It is well within the power of the 1st respondent to refuse to refer all the disputes raised by the workmen*



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for adjudication in terms of Section 10 (1) (d) of the ID Act.

- ii) *The 1st respondent is bound to go into the veracity of the demand and the report of the conciliation officer administratively by discharging its function and is entitled to refuse to refer the dispute for adjudication in terms with the provisions of Section 10 (1)(d) r/s Second Schedule and Third Schedule to the ID Act.*
- iii) *The mere demand by the Union for reference of all the demands for adjudication need not be referred and it would be only in strict adherence to the provisions of the ID Act read along with the Schedules to the ID Act.*
- iv) *The demand of the Railways Cooperative Employees for considering them on par with railway employees is no longer res integra and is squarely covered by the decision in J.V.Subhaiah case (supra) and, therefore, rejection to refer the same is fully justified.*

56. For the reasons aforesaid while W.P. Nos.10806 and 10808 of 2017 are dismissed confirming the impugned order of rejection passed by the 1st respondent, W.P. No.10807/2017 is allowed in part by directing the 1st respondent to refer Demand No.2 as quoted hereunder for being adjudicated by the Industrial Tribunal :-



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“Demand - 2 – To set aside the punishments of “Reduction in time pay scale by four stages for a period of 36 months” enforced on by the following penalty advices issued to the employees as these punishments are in violation to Section 33 of the Industrial Disputes Act of 1947 and to initiate necessary proceedings against respondent Society under Section 33(1) of Industrial Disputes Act.”

57. In the result, W.P. Nos.10806 and 10808 of 2017 are dismissed confirming the impugned order of rejection passed by the 1st respondent and W.P. No.10807/2017 is allowed in part with the aforesaid direction as shown in Para No.54 above. There shall be no order as to costs.

22.08.2023

Index : Yes / No

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To

The Secretary to Government
Department of Labour & Employment
Government of Tamil Nadu
Fort St. George
Chennai 600 009.



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W.P. Nos.10806-10808/2017

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.10806, 10807
& 10808 OF 2017**

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22.08.2023