



W.P.(MD)No.2663 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2663 of 2020
and
W.M.P(MD)No.2294 of 2020

Tamil Nadu State Transport
Corporation Trichy Workers Union – AITUC
Rep. by its General Secretary,
Periya Milaguparai,
Trichirappalli.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Labour and Employment (B2) Department,
Fort St. George,
Chennai – 9.

2.The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Trichirappalli Region,
Rep. by its General Manager,
having office at Periyamilaguparai,
Trichirappalli – 620 001.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records



W.P.(MD)No.2663 of 2020

in G.O.(D)No.397, Labour and Employment (B2) Department, dated 29.06.2018, quash the same and consequently directing the respondents to refer the dispute mentioned in the demand No.1(e), 4 and 5 of the Annexure to the above G.O raised by the petitioner union to the Labour Court for adjudication within a time frame that may be fixed by this Court.

For Petitioner	: Mr.A.Rahul
For R-1	: Mr.S.P.Maharajan, Special Government Pleader
For R-2	: Mr.P.Balasubramanian

ORDER

This writ petition has been filed to quash the Government Order in G.O.(D)No.397, Labour and Employment (B2) Department, dated 29.06.2018 and consequently, to direct the respondents to refer the dispute mentioned in the demand Nos.1(e), 4 and 5 of the Annexure to the above G.O., raised by the petitioner union to the Labour Court for adjudication within a stipulated time.

2. The case of the petitioner is that the petitioner is a registered Trade Union. One Rengaraj, a member of the petitioner Union and employed as a Driver of Trichy Region, was imposed with the



W.P.(MD)No.2663 of 2020

WEB COPY

punishment of stoppage of increment with cumulative effect for a period of one year. Due to the said punishment, he could not get his review benefits as well as promotion. However, his colleagues have received five review benefits and some of them were promoted as Driving Instructor also. Hence, the petitioner Union raised an industrial dispute before the Assistant Commissioner of Labour (Conciliation), Trichy, under the Industrial Disputes Act, 1947. The Conciliation Officer initiated conciliation proceedings which ultimately ended in failure. Subsequently, failure report, dated 26.11.2011, was forwarded to the Government. Thereafter, the first respondent issued the impugned G.O., declining to refer the dispute to the labour Court. Aggrieved by the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that though the Conciliation Officer filed a failure report and the failure report was also forwarded to the Government for referring the matter to the labour Court for adjudication in terms of Section 10 of the Industrial Dispute Act, 1947, without considering the merits of the case, the first respondent mechanically rejected for referring the matter to labour Court,



W.P.(MD)No.2663 of 2020

WEB COPY

which is not sustainable. However, the first respondent without any bereft of material for declining to refer the matter to labour Court for adjudication, passed the impugned G.O., rejecting the petitioner's request. He would further submit that the issue raised in this writ petition is no longer *res integra* and in a catena of decisions, it is held that the respondents have no power to decline to refer a dispute to labour Court without assigning any reason and hence, the impugned G.O., is liable to be quashed and therefore, prayed for allowing of this writ petition.

4. Heard the learned Special Government Pleader appearing for the first respondent, the learned standing counsel appearing for the second respondent and perused the materials placed before this Court.

5. Admittedly, the second respondent Corporation imposed a punishment of stoppage of increment for one year with cumulative effect as against one Rengaraj, who is a Driver of the second respondent Corporation. As against which, conciliation proceedings were initiated under Section 2K of the Industrial Disputes Act, 1947 before the



W.P.(MD)No.2663 of 2020

Assistant Commissioner of Labour, Trichy. The Conciliation Officer filed a report and the same was also forwarded to the Government for referring the dispute for adjudication before the competent labour Court in terms of Section 10 of the Industrial Disputes Act, 1947. However, the first respondent Government refused to refer the matter vide the impugned G.O.(D)No.397, Labour and Employment (B2) Department, dated 29.06.2018. A perusal of the same would disclose that the said G.O., is bereft of any details for declining to refer the matter to labour Court.

6. When similar issue came up before the Hon'ble Apex Court in ***C.A.No.4377 of 1984 dated 29.10.1984(Workmen of Syndicate Bank, Madras and Government of India and another)***, the Hon'ble Apex Court has held as follows:

“We are of the view that the ground on which the Government of India has refused to refer the dispute relating to the imposition of punishment of stoppage of three increments of Shri Murugavelu to the Industrial Tribunal is not a valid ground. It would not be right for the Government of India to refuse to make the reference on the ground that the



W.P.(MD)No.2663 of 2020

charges of misconduct against the worker were proved during a duly constituted departmental inquiry and penalty was imposed on the worker after following the required procedure. If such a ground were permissible it would be the earliest thing for the management to avoid a reference to adjudication and to deprive the worker of the opportunity of having the dispute referred for adjudication even if the order holding the charges of misconduct proved was unreasonable or perverse or was actuated by malafides or even if the penalty imposed on the worker was totally disproportionate to the offence said to have been proved. The management has simple to show that it has held a proper inquiry after complying with the requisite procedure and that would be enough to defeat the worker's claim for adjudication. Such a situation cannot be countenanced by law. We must, therefore, set aside the order dated 2nd April, 1981 passed by the Government of India declining to make a reference of the industrial dispute for adjudication to the Industrial Tribunal. We would direct the Government of India to reconsider the question of making reference of the industrial dispute for adjudication without taking into account the aforesaid irrelevant



W.P.(MD)No.2663 of 2020

ground which seems to have prevailed with them in declining to make the Reference. If the Government of India yet declines to make a Reference and the ground on which such Reference is declined is improper or irrelevant, it would be open to the appellants to make an application to the Court under this appeal and for this purpose, we give liberty to the appellants to apply. The Government of India will give its decision on the question whether the industrial dispute should be referred or not within 45 days from today.”

**7. In *Civil Appeal No.8454(N) of 1983, dated 27.02.1985*
(*M.P.Irrigation Karamchari Sangh v. the State of M.P and another*),
the Hon'ble Apex Court has held as follows:**

“7. There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid



W.P.(MD)No.2663 of 2020

WEB COPY

disputes. To allow the Government to do so would be to render S.10 and S.12(5) of the Industrial Disputes Act nugatory.”

8. By applying the ratio laid down by the Hon'ble Apex Court, this Court is inclined to set aside the impugned G.O.

9. Accordingly, this writ petition is allowed and the impugned G.O. (D)No.397, Labour and Employment (B2) Department, dated 29.06.2018, is quashed and the first respondent, is directed to refer the dispute/issue to the competent labour Court for proper adjudication in terms of Section 10 of the Industrial Disputes Act, 1947, within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

04.01.2023

PM
NCC:Yes/No
Index:Yes/No

To



W.P.(MD)No.2663 of 2020

WEB COM

The Secretary to Government,
State of Tamil Nadu,
Labour and Employment (B2) Department,
Fort St. George,
Chennai – 9.



WEB COPY



W.P.(MD)No.2663 of 2020

M.DHANDAPANI,J.

pm

W.P.(MD)No.2663 of 2020

04.01.2023