



W.P.No.477 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 14.03.2024

ORDER PRONOUNCED ON : 15.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.477 of 2024
and W.M.P.Nos.502 & 503 of 2024

OCF Thozhilalar Munnetra Sangam,
Represented by its General Secretary,
Mr.A.Mohamed Meera,
Arivagam, No.50 A,
OCF Road, Avadi,
Chennai – 600 054.

... Petitioner

/Vs./

1.The Union of India,
Represented by its Secretary,
Department of Defence,
South Block,
Central Secretariat,
New Delhi – 110011.

2.The Management of Ordinance Clothing Factory,
Represented by its General Manager,
Avadi – 600 054. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, calling for the records in connection with the



W.P.No.477 of 2024

impugned communication of the 1st respondent dated 05.05.2017 and the consequent letter of the 2nd respondent bearing reference No.581/WP/15371/2017/D&L, dated 26.12.2023, and quash the same and issue such further or other appropriate orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.V.Prakash, Senior Counsel for
M/s.K.Sudalai Kannu

For Respondents : Mr.K.Srinivasamurthy
SPCCG

* * * * *

ORDER

This writ petition is filed to call for the records in connection with the impugned communication of the 1st respondent dated 05.05.2017 and the consequent letter of the 2nd respondent bearing reference No.581/WP/15371/2017/D&L, dated 26.12.2023, and quash the same.

2.With the consent of both the learned counsels the main writ petition is itself taken up hearing and disposal.



W.P.No.477 of 2024

3.The second respondent is a Government of India Organisation having its factory at Avadi, Chennai and coming under the Ministry of Defence. The Factory of the second respondent is having more than 2000 workers, who are involved in the production of Combat Shirts, Combat Jacket, Trousers Shorts, Tents, Disposable shirts and Parachutes for the defence forces. The petitioner is the majority union and it is recognised by the Government of India. It is stated that about 30 workers are employed as Office Superintendents and through they are designated as Office Superintendents, they were doing clerical work. The respondent issued MOD dated 30.10.2014 and 24.12.2014 permitting the Office Superintendents to participate in JCM (Scheme). By order dated 05.05.2017, the respondent withdrew MOD dated 30.10.2014. The then President of the petitioner's Union filed W.P.No.15371 of 2017 challenging the order dated 05.05.2017. Pending Writ Petition the Office Superintendents were permitted to participate in JCM (Scheme) in pursuance of interim orders of this Court. Later the Writ Petition was disposed as infructuous. Thereafter the second respondent issued the letter dated 26.12.2023 stating that in view of the order passed by the Hon'ble High Court of Madras, the MOD dated 04.05.2017 stood good. As the erstwhile President Mr.Velusamy retired, the petitioner has filed the writ petition



W.P.No.477 of 2024

challenging both the impugned communications dated 05.05.2017 and 26.12.2023.

4.The respondent inter alia, stated that the writ petition was barred by the Principles of Resjudicata, as the petitioner's earlier writ petition challenging the impugned communication dated 05.05.2017 was dismissed. The respondents stated that as both the writ petitions were filed by the same Union, the situation did not change and what the petitioner could not do directly he could not do indirectly. The respondent stated that the impugned communication dated 26.12.2023 did not give rise to fresh cause of action. It was stated that the post of Office superintendent did not belong to the 'Workman' category and if the petitioner disputed the same it ought to approach the Industrial tribunal. It was also stated that clarification was sought from the Nodal Ministry (i.e.) Ministry of Labour on the status of Office Superintendents. It was in pursuance of the views of the Ministry of Labour and Employment that the Ministry of defence decided to withdraw the letters dated 30.10.2014 and 29.12.2014. It was stated that the issue involved disputed questions of fact and so the petitioner ought be relegated to the Industrial Tribunal as this Court exercising jurisdiction under



W.P.No.477 of 2024

Article 226 of the Constitution of India would not enter into disputes question of facts.

5.The learned counsel for the petitioner submits that the dismissal of the earlier writ petition as infructuous would not operate as Resjudicata. The learned counsel further submits that as the impugned letters deprived the Office Superintendents from participating in the JCM Scheme prior notice ought to have been given to the petitioner. As prior notice was not given, the impugned letters were violative of the principles natural justice. The learned counsel further submitted that the nomenclature of the post was not determinative of the nature of the work and therefore, withdrawal of permission to the Office Superintendents JCM Scheme on the ground that they did not belong to workmen category was untenable. The learned counsel therefore submitted that the writ petition deserved to be allowed.

6.The learned counsel for the respondent relying on the averments made in the counter submitted that the respondent prima facie established that the post of Office Superintendent was classified as Group 'B' Post and the principal



W.P.No.477 of 2024

functions of the Office Superintendent was supervising the group 'C' posts. The learned counsel submits that withdrawal of participation of the Office Superintendents was justified and in conformity with the service rules. The learned counsel submits that, if for any reason, this Court thinks that the issue needs further investigation then the proper forum to decide the issue would be the Industrial Court, as the issue is a pure question of fact which will have to be established by leading evidence. The learned counsel therefore submits that the writ petition deserves to be dismissed.

7. In so far as the first objection to the maintainability of the writ petition on the ground of res judicata is concerned, I am of the view that the objection cannot be sustained, as the earlier writ petition was not decided on merits.

8. The learned counsel for the respondent at the time of hearing produced the JCM (Scheme). The petitioner did not object to the same but relied on certain Clauses in support of his stand. The first Clause of the JCM scheme relates to its scope. From the 'Scope' of the JCM scheme, it is seen that the object is to promote harmonious relations so as to secure the maximum amount



W.P.No.477 of 2024

of co-operation from the employees to achieve greater efficiency.

WEB COPY

9.Clause 2 of the JCM relates to constitution and procedure. It reads as follows:

“The scheme covers all the regular Central Government civil employees except the following:---

(i) Members of Group 'A' services;

(ii) Members of Group 'B' services than the Central Secretariat Services and the other comparable services in the Headquarters organization of the Government;

(iii) Persons in industrial establishments employed mainly in managerial or administrative capacity and those who being employed in supervisory capacity draw salary in the revised scales, the maximum of which exceeds Rs.2,900;

(iv) Employees of the Union Territories; and

(v) Police personnel.”

In the said Clause 2 there is a Heading “Posts elevated from Group 'C' to Group 'B' cannot participate in the JCM scheme” which reads as follows.

“The undersigned is directed to the salutary principle of JCM Scheme which provides that the Scheme will cover



WEB COPY

all regular civil employees of the Central Government except inter alia the Class I and Class II Services (now classified as Group 'A' and Group 'B' Services) and to say that consequent to the implementation of recommendations of Fifth Central Pay Commission, many posts which were earlier classified as Group 'C' Services, have now become Group 'B' services.”

10.From a reading of the aforesaid 'Heading' in Clause 2, it is clear that the JCM scheme covers only Group 'C' employees and not Group 'B' employees. The General Secretary of the petitioner Union wants to participate in the JCM meetings and therefore he has filed the above writ petition. The General Secretary of the petitioner council, the deponent of the affidavit admittedly is holding the post of Office Superintendent. According to him though he is holding the post of Office Superintendent he is not discharging any supervisory functions but doing only clerical work. The respondent on the other hand in its counter states that the Post of an Office Superintendent is a Group 'B' Post and the nature of work is only supervisory. The Office Superintendent's job is to supervise the work of Group 'C' posts (LDC's/UDC's). The respondent's specific averments in it's counter are not denied by the petitioners. In any event, if the



W.P.No.477 of 2024

petitioner seriously disputes the nature of functions of the Office Superintendent, then as rightly contended by the respondent's counsel, the petitioner should raise a dispute before the Industrial Tribunal.

11. According to the respondent, the post of Office Superintendents is classified as Group 'B' (non-gazetted and non-ministerial post). The petitioner contends that the nomenclature of the post is not determinative of the nature of the post. The said proposition is not disputed but when there is a specific stipulation in the JCM scheme that the post of Office Superintendent falls under 'B' category and when the JCM excludes employees of Group 'A' and Group 'B' services, it is unfathomable how the withdrawal of participation of the Office Superintendent from the JCM can be faulted. It is further relevant to note here that even the posts which were earlier classified as Group 'C' post on implementation of the recommendations of 5th Pay Commission were brought under Group 'B' posts. The scheme clearly states that the employees who are elevated to Group 'B' from Group 'C' will cease to participate in the JCM council. From the JCM scheme it is clear that Group 'B' posts are not covered by the scheme. When the scheme itself does not cover Group 'B' posts. The



W.P.No.477 of 2024

impugned communications withdrawing the participation of the Office Superintendents in Trade Union JCM scheme is sustainable.

12.The petitioner has not challenged the scheme. Therefore, as long as the scheme is not challenged the provisions of the scheme will prevail. The learned counsel appearing for the petitioner referred to certain other Clauses of JCM, but in my view when the coverage under the JCM is restricted to Group 'C' services only, the provisions referred to by the counsel cannot be read so as to include the excluded category. The purpose of the JCM is to have effective representation of the workman and to provide them an opportunity to put forth their demands with regard to the matters provided in Clause 8 of the JCM. When the issues to be dealt with therein relate to the workman, it is unjustified and improper to seek representation of persons not belonging to the category.

13.I therefore, find no merits in the writ petition and the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.



W.P.No.477 of 2024

15.04.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
ah

To

- 1.The Union of India,
Represented by its Secretary,
Department of Defence,
South Block,
Central Secretariat,
New Delhi – 110011.
- 2.The Management of Ordinance Clothing Factory,
Represented by its General Manager,
Avadi – 600 054.
- 3.OCF Thozhilalar Munnetra Sangam,
Represented by its General Secretary,
Mr.A.Mohamed Meera,
Arivagam, No.50 A,
OCF Road, Avadi,
Chennai – 600 054.

N.MALA, J.

ah



WEB COPY



W.P.No.477 of 2024

PRE-DELIVERY ORDER IN
W.P.No.477 of 2024

15.04.2024