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W.P.No.2719 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 25.03.2024
ORDER PRONOUNCED ON : 03.06.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.2719 of 2024

and

W.M.P(MD)Nos.2995 and 7656 of 2024

The General Secretary
Madras Gymkhana Club Staff
and Workers Union,
Theevuthidal, Anna Salai,
Chennai-600 002.

...Petitioner

Vs.

The Management,
Madras Gymkhana Club,
Theevuthidal, Anna Salai,
Chennai-600 002.

...Respondent

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, by calling for the records in the impugned award in O.P.No.93 of 2019 dated 30.10.2023 by the Principal Labour Court, Madras and quash the same.

For Petitioner : Mr.S.Kumarasamy

For Respondent : Mr.S.Sanjaymohan

for M/s.Ramasubramanian Associates



W.P.No.2719 of 2024

ORDER

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This writ petition is filed to call for the records in the impugned award in O.P.No.93 of 2019 dated 30.10.2023 by the Principal Labour Court, Madras and quash the same.

2.The workers union will be referred to as the petitioner and the management club will be referred to as the respondent.

3.As the writ petition involves purely a legal issue as to the applicability of Section 9(A) of the Industrial Dispute Act(hereinafter referred to as 'the Act') to the petitioner union in the context of its relocation by the respondent club, the facts of the case are not dealt in detail.

4.The petitioner union is the registered union and is the sole collective bargaining agent espousing the cause of the workers with the respondent management. It is stated that the respondent club is a registered Society having its registered office at Island Ground No.1, Anna



W.P.No.2719 of 2024

Salai, Chennai. The respondent club is a members club which is a non-profit making social club. It is stated that the petitioner Union was allowed to function in the room allocated by the respondent. There was no letter or any writing for the allocation of the room for the functioning of the petitioner union.

5. On 05.08.2016, the respondent asked the Union to move to a new office at the earliest. The petitioner replied on 10.08.2016 stating that new place specified by the management was outside the compound of the club and was situated on public land. It was further stated that the proposal of the respondent to withdraw a customary concession or privilege as per item 8 of the Schedule Fourth of the Industrial Disputes Act, 1947, was illegal. The petitioner requested the management to provide better place with improved facilities inside the premises itself. The petitioner further agreed to relocate its office on condition that better place with improved facilities was provided. On 23.08.2016 the union raised an industrial dispute against the proposed change of location. On 30.04.2017 the respondent issued a reply stating that relocation of the petitioner's office was not a service condition and that the place was required for the



W.P.No.2719 of 2024

purpose of constructing new building so as to augment the club's revenue.

On 05.07.2019, the Government referred the following issue for adjudication:

"Whether the action of the management in changing the office of the trade union which was functioning for several years within the campus of Madras Gymkhana Club falls within the definition of change in working conditions under Section 9A of the Industrial Disputes Act? If so, pass suitable orders."

6.The Labour Court, based on the pleadings and the evidence, concluded that the action of the respondent in relocating the office premises of the petitioner Union did not amount to change in service condition applicable to the workman as per Section 9(A) of the Act. Aggrieved by the order of the Labour Court, the Union has filed the present writ petition.

7.The respondent filed a counter stating that the dispute raised by the petitioner was not maintainable and was liable to be rejected at the threshold. The respondent further stated that the petitioner had no right to prevent the respondent from exercising its right to terminate, what at best



W.P.No.2719 of 2024

could be called license arrangement enabling the petitioner to occupy the premises belonging to the respondent. The respondent stated that the facility extended by the respondent to the petitioner union did not form part of the conditions of service of the employees of the club. It was only discretionary facility which could be withdrawn at any time. The respondent stated that the reason for shifting the union office was only due to discomfort and inconvenience caused to the members who visited the club everyday and not for any other reason. It was the specific case of the respondent that the relocation of the union office did not amount to change of condition of service as contemplated under Section 9A of the Act.

8.The learned counsel appearing for the petitioner submitted that the allotment of the union office inside the premises of the respondent was a concession, privilege and usage within the meaning of Clause 8 of the Fourth Schedule of the Industrial Dispute Act and therefore, notice under Section 9A of the Industrial Dispute Act was mandatory. Apart from the above principal contentions, the learned counsel further submitted that the proposal to relocate the union office to a place belonging to the Highways



W.P.No.2719 of 2024

Department was mala fide, unjust and illegal. The learned counsel therefore prayed that the writ petition be allowed and the award of the Labour Court be quashed.

9.The learned counsel for the respondent on the other hand submitted that the trade union and its members were two different entities and therefore, the trade union cannot be construed as workmen as defined under the Industrial Dispute Act. Hence, the provision of Section 9(A) and Clause 8 of the Fourth Schedule of the Industrial Dispute Act were not applicable. On the factual aspects, it is contended that the proposed location offers significantly improved amenities, such as larger space, easier access and covered open shed making it a more favorable and accommodating environment for the petitioner's activities. Hence, the respondent prayed to dismiss the writ petition.

10.The principal contention of the learned counsel for the petitioner is that the action of the respondent in relocating the office of the petitioner union which was functioning for several years within the campus of the respondent club amounted to change in working condition under Section



W.P.No.2719 of 2024

9(A) of the Act. The learned counsel for the petitioner states that the subject issue is covered under Clause 8 of the Fourth Schedule of the Industrial Disputes Act.

11.To decide the legal issue, the provisions of the Industrial Disputes Act, which are relevant for the purpose have to be looked into. Section 9A of the Act reads as follows:

"9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-

(a)without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b)within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

12.For the purpose of Section 9(A) of the Act, the condition of service applicable to any workman, for change of which, notice is mandatory



W.P.No.2719 of 2024

under Section 9(A) of the Act, is enumerated in the Fourth Schedule to the Act. The relevant clause in the Fourth Schedule of the ID Act is as follows:

8. Withdrawal of any customary concession or privilege or change in usage:

13. The learned counsel for the petitioner submits that though Section 9(A) of the Act refers to workman, as the Trade Union is the representative of the workman, the term 'workman' will include trade union. The learned counsel for the petitioner would also rely on Vth Schedule of Industrial Disputes Act and contend that the Vth Schedule relates to unfair labour practices which has two parts. The first part relates to unfair labour practise on the part of employers and trade unions of employers. The second part relates to workman and trade unions of workman. The learned counsel therefore states that the Vth Schedule includes both the workman and the trade union, hence workman includes, the trade union. Per contra, the learned counsel for the respondent submits that Section 9(A) of the Industrial Disputes Act speaks only of workman and the union is only a representative body and a juridical person and therefore, the workman and the trade union are two different entities. Hence, the trade union cannot be construed as a workman.



W.P.No.2719 of 2024

WEB COPY

14.The Act defines both workman as well as Trade Union Section 2 of the Act defines workman as follows:

"workman: means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--"

15.Section 2(qq) of the Act defines "Trade Union" to mean trade union registered under the Trade Union Act, 1926. Section 2(h) of the Trade Union Act defines 'trade union' as any combination whether temporary or permanent formed primarily for the purpose of regulating the relationship between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions. The proviso is not relevant for



W.P.No.2719 of 2024

the purpose of this case.

WEB COPY

16. It is to be decided whether the contention of the learned counsel for the petitioner that the provisions of Section 9(A) of the Act relating to change in the conditions of service of a workman will include the trade union.

17. It is a golden rule of statute that the words of statute should be read literally and no additions can be made to *litera legis*. The term 'workman' has been specifically defined under Section 2(A) of the Act and the term 'trade union' is also defined under Section 2(qq) of the Act. When the definitions are distinct to read one into the other will amount to rewriting the statute which is impermissible. When Section 9(A) of the Act speaks of notice of change in conditions of service applicable to any workman in respect of any matter specifically stated in the IVth Schedule, it means the conditions of service applicable to the individual workman. There cannot be any conditions of service for a trade union just because the trade union espouses the cause of individual workman. The trade union is a juridical person conferred with rights and privileges under the Industrial Disputes Act and therefore it is distinct from a workman.



W.P.No.2719 of 2024

WEB COPY

18.The other provisions of the Act also support the said position.

Section 35 of the Act provides for protection of persons. Sub-Section 1 of Section 35 of the Act states that no person refusing to take part or to continue to take part in any strike or lock out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this Section, be subject to expulsion from any trade union or society or to any fine or penalty, or to deprivation of any right or benefit to which his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

19.It is therefore clear that the member's of the trade union are distinct from the union. The Act protects the individual workman from any action taken by the union against him. The trade union at the most is the mouthpiece of the workman and it is created for the purpose of collective bargaining and for the protection of the workman's rights. It



W.P.No.2719 of 2024

should be remembered that affiliation to a Union is optional for the workman and hence trade union cannot be equated to a workman. So also, under Section 36 of the Act, the workman who is a party to a dispute is entitled to be represented in any proceedings under the Act by any member of the executive or other office bearer of a registered trade union of which he is a member, any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated and where the worker is not a member of any trade union by any member of the executive or other office bearer of any trade union connected with or by any other workman employed in the industry in which the worker is employed and authorized in such manner as prescribed. The above provisions establish that the legislature was conscious of the role of the trade union vis-a-vis its members (i.e.) workers. When Section 9-A speaks of change of conditions of service of workman, it only refers to individual workman. Reading the trade union as a workman would be doing injustice to the provision apart from rewriting the same, which is impermissible. In my view, various provisions of the Act referred to above clearly establish that the union is completely different and wherever the union had a role to play in espousing the cause



W.P.No.2719 of 2024

of workman, the legislature had separately included the trade union. The relocation of the office of the petitioner union does not change the conditions of service of the workman as the workman continue to work irrespective of the location of the Union. In the present case, it is pertinent to note that the other union has already relocated and therefore, the contention that Section 9-A applies to the petitioner Union even on facts cannot be countenanced. Therefore the relocation of the office is not covered by Section 9(A) of the Act and therefore, sub- Section 8 of schedule IV of the Act, is also not attracted.

20. The learned counsel for the petitioner relied on the following judgments, in support of his case. The reliance placed by the learned counsel for the petitioner on the said judgments in the context of the facts of the present case in my view are misplaced.

(i) In *D. Thomas Franco Rajendra Dev-Vs-The Discipline Authority and Circle*, in W.P.No.16746 of 2013, on 4th July 2013.

(ii) In *Tamil Nadu Electricity Board Accounts-Vs-Tamil Nadu Electricity Board*, on 11th August 1980.



W.P.No.2719 of 2024

(iii) *In Rohtas Industrial Ltd-Vs-Rohtas Industrial Staff*

Union and Ors., on 18th December 1975.

(iv) *In The Tamil Nadu Electricity Board-Vs-Tamil Nadu*

Electricity Board Accounts, on 22nd September, 1980.

21.The legal issue having been answered against the petitioner. The factual position is now examined. The petitioner was asked to move to a place outside the club premises with access from the main road. It is the contention of the petitioner that the said location is not within the club premises and that the place belongs to the High ways. The petitioner's witness viz., General Secretary was examined as W.W.1. In his cross-examination, he admitted that if the new location was within the club campus, he would not have any grievance. In the course of argument, it was brought out that the new location was within the club premises, but the ingress and egress was from the road side. Therefore, the factual contention that the proposed premises was on land belonging to the Highways cannot be accepted.

22.It is to be further seen if the action of the respondent in relocating



W.P.No.2719 of 2024

the petitioner's office is justified. There is no doubt that the allocation of the premises for the office of the petitioner union, is only a concession given to the petitioner. The respondent though has every right to direct relocation, but the same should be exercised for justifiable reasons. The reason given by the respondent in the affidavit in support of the stay petition is that the present location was causing a lot of inconvenience and discomfort to the members who visited the club everyday and also that the place was required to construct new building to augment the revenue of the club.

23.The respondent, in its stay affidavit at para No.9, has stated as follows:

"9.I submit that in consideration of the concerns raised by the respondent/petitioner Union regarding the relocation of their office, the Management has now proposed to relocate them to a more suitable and convenient alternate location Room No.1 in Annexure No.'A' within the premises of the club itself but with access form the main public road. The proposed relocation aims to provide better access and facilities to the union members while ensuring that the



W.P.No.2719 of 2024

premises remain within the management's jurisdiction. The

Management will also allot an alternate location or place which will be adequate and suitable to conduct meetings in Annexure No.'B'.

It is emphasized that this relocation will not cause any inconvenience to the union members, and every effort will be made to facilitate a smooth transition to the new office space.

10. I submit that the proposed relocation site offers enhanced facilities, including a more bigger covered office area and covered upon shed for meeting as evidenced by the details provided in Annexure No.B. These amenities are designed to better accommodate the needs of the respondent/petitioner union and ensure a conducive environment for their operations within the management premises."

24.As the respondent has ensured better facilities to the petitioner in the relocated place, I am of the view that in the light of the aforesaid averments made in the affidavit, it would suffice if the respondent is directed to strictly adhere to its commitment, while relocating the petitioner's office. At the time of arguments it was submitted by the



W.P.No.2719 of 2024

petitioner union that there was no toilet facility in the proposed place. In view of the said submission, the respondent is directed to provide toilet facility for use of members of the union.

25.For all the aforesaid reasons, the writ petition is disposed of with the above directions, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

03.06.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

To

1.The Management,
Madras Gymkhana Club,
Theevuthidal, Anna Salai,
Chennai-600 002.

2.The I-Additional Labour Court,
Chennai.



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W.P.No.2719 of 2024

N.MALA,J.

Ns

PRE-DELIVERY ORDER IN
W.P.No.2719 of 2024
and
W.M.P(MD)Nos.2995 and 7656 of 2024

ORDER DELIVERED ON
03.06.2024



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W.P.No.2719 of 2024