



WEB COPY

W.P.No.9662 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9662 of 2010

and

M.P.No.1 of 2010

H. & R Johnson Thozhilalargal Nala Sangam
Rep. by its Secretary
No.5, Kamalambal Nagar, Pettai Road
Thirunallar, Karaikal - 609 002.

...Petitioner

Vs

1. The Presiding Officer
Labour Court
Appellate Authority under the
Industrial Employment (Standing Orders) Act, 1946
District Court Compound
Puducherry.
2. The Commissioner of Labour cum
Certifying Officer under the Industrial
Employment (Standing Orders) Act, 1946
Labour Department
Government of Puducherry
Vazhudhavur Road, Gandhi Road
Puducherry.
3. H & R Johnson (India) Limited
Rep. by its General Manager (Operations)
Plot No.143, Thennangudi
Sellur Post, Karaikal - 609 607.

...Respondents



W.P.No.9662 of 2010

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order S.O.A.No.1 of 2005 dated 30.11.2009 passed by the 1st respondent and to quash the same as being illegal, arbitrary and consequently, to direct the 1st and 2nd respondents to modify the clause 3.01(e), 3.03, 3.05, 3.06, 6.04, 7.02, 12.03 and 18 of the certified standing orders in order to give suitable protection to the workmen employed in the 3rd respondent company.

For Petitioner : Mr.V.Govardhanan
For Respondents : Mr.B.Balavijayan
M/s.C.S.Associates, for R3

ORDER

The writ petition is filed challenging the order dated 30.11.2009 in S.O.A.No.1 of 2005 passed by the first respondent and to quash the same inasmuch as it relates to clauses 3.01(e), 3.03, 3.05, 3.06, 6.04, 7.02, 12.03 and 18 of the Certified standing orders and to give a suitable protection to the workmen employed in the third respondent company.

2. The brief factual background is that the petitioner is a Trade Union, functioning in the third respondent management. While so, by the impugned order, standing orders were certified by the Industrial Employment (Standing Orders) Act 1946 [said Act]. As per Section 4 of



W.P.No.9662 of 2010

said Act, whenever the management, submits the draft standing orders for certification, it shall be the duty of the Certifying Officer or the Appellate authority to adjudicate upon the fairness or reasonableness of the provisions of standing orders. It is the grievance of the petitioner Union that the aforesaid clauses which are mentioned supra and which are oppressive, amount to and give rise to victimization and unfair labour practice have not been considered by the authority and therefore, those clauses ought not to have been permitted and are illegal and therefore, this Court should interfere. With reference to each of those clauses, Mr.Govardhanan, learned counsel for petitioner had made detailed arguments and this Court also heard the submissions made on behalf of learned counsel for management in that regard.

3. The first contention raised is with reference to clause 3.01 and consequential definitions contained in clauses 3.05 and 3.06. He would submit that as per the definition it can be seen that a trainee is some person, who has been given the training and there is scope of absorption in the available vacancy on completion of the training. If a person is not a trainee, if he is an apprentice, the term apprentice is separately contained in 3.01(f) and the definition is contained in clause 3.07. While



W.P.No.9662 of 2010

that being the position, there cannot be a separate category as Company Apprentice.

4. I have considered the said submissions.

5. It is true that an apprentice is governed by the Apprentices Act, 1961. As a matter of fact, he would not be a workman within the definition of the Industrial Disputes Act, 1947 [ID Act]. Whereas a trainee will be absorbed into regular employment. In between the said categories, a new category called Company Apprentice is sought to be introduced. It is one thing to contend that in the name of company apprentice, if the Management indulges in employing persons as Badlis and changes them, then indirectly camouflaging the term 'company apprentice' if it wants to periodically change the regular workman, then the management would still be guilty of unfair labour practice. But however *de hors*, the persons, who are coming for Apprenticeship under the Act, if the company engages its own apprentice not exceeding for 18 months in a *bona fide* manner, then the same cannot be faulted with.

6. The second contention is with reference to the period of probation mentioned in clause 3.03. The contention of learned counsel is that in the model standing orders, it is only 3 months which is granted.



W.P.No.9662 of 2010

Here, it is mentioned as one year extendable for a further period of one year. I do not see any illegality in having a longer period of probation. In any event, it is kept as one year and if it is only unsatisfactory, it can be extended for a further period of one year. It goes without saying that the extension of period of probation on the ground that it is unsatisfactory cannot be done without the periodical recording of the unsatisfactory work.

7. The next contention is with regard to clause 6.04. As per the said clause, no workman in the shift shall leave the work spot until the scheduled reliever arrives to take over or until their supervisor is able to make other arrangements for relieving subject to the provisions of the Factories Act. When an Industry is running continuously, no exception can be taken for having such a provision. As a matter of fact, in the subsequent provisions which is impugned, if the workman turns up late, more than 10 minutes, then that would amount to misconduct and there will be deduction of wages. Therefore, if workman is coming within 10 minutes of the time, the existing workman cannot simply walk away on the striking of the clock and the provision under clause 6.04 cannot be said to be unreasonable or arbitrary in any manner. Needless to mention



W.P.No.9662 of 2010

that if the next workman does not come for a long time exceeding the hours of duty, then the workman will always be entitled to claim overtime wages if he works continuously for 2 shifts etc., That does not in any manner, is a ground to impugn clause 6.04.

8. The next grievance is raised with reference to the carrying of identity card contained in standing order clause 7.02. In the present day, the context of the security and also identifying the employee, there can be nothing wrong in insisting on the employee carrying the identity card. The only argument, which is made is that, if by a human error the employee misplaces the identity card, he should not be forced to take leave. No employer would normally do that, if they very well know the identity of the employee and always whoever is in the gate with reference by conversing with the appropriate higher authority can help out the workman for one or 2 days if he genuinely left the identity card or lost the same until the receipt of the new one. Those arguments cannot be arguments for impugning the very provision itself.

9. The next grievance is made with reference to clause 12.03, which is only relating to late coming. As a matter of fact, this grievance runs counter to the earlier grievance which is made. There is nothing



W.P.No.9662 of 2010

erroneous in expecting the workman to be on time, especially when the establishment is a factory which is running throughout and when the production line is there. Therefore, I do not find any merit in the submission of the learned counsel that it should not automatically lead to deduction of wages or that it should not automatically amount to misconduct. The shift always starts in factories on the ringing of the bell sharply and all the workmen are expected to be well before in time. Therefore, they are only providing the half day wage cut. The rule introduces further transparency and uniformity in matters of punishment.

10. Grievance is made out as against clause 18 which contains the provision for transfer. It is stated that the company has also branches in Northern India and Western India. Therefore, if ordinary workman, with *mala fide* intention or by way of victimisation for the trade union activities transferred to such far off places, that would be a lethal weapon in the hands of the management to subdue the workman and to avoid collective bargaining.

11. I have considered the said submission.

12. When the management has more than one unit, the legal



W.P.No.9662 of 2010

position is settled that so long as they do not have a provision to transfer from one unit to another unit, they cannot transfer. But if they have such a provision, such a provision by itself is not antithetic to labour welfare. If the services of a particular skilled employee, namely mechanic etc., whose services is required in the other units of the management, transfer in the *bona fide* interests of the unit, cannot by itself held to be arbitrary, and it is an incident of service. It is another story if the transfer is made by way of *mala fide* or victimisation. That is only the abuse of provision. An argument that there will be abuse of provision cannot be a ground for challenging the very provision itself. In any event, in this case since there are workmen, who have joined the third respondent management even prior to such a standing order came into force, this Court specifically adjourned the matter for the learned counsel for the management to get instructions. Learned counsel for the Management, on instructions submits that as on date there are 24 employees, who are employed prior to the certification of the present standing order in the year 2004 and in respect of those 24 employees, the third respondent management will never invoke clause 18 to transfer them to the other units. The said undertaking is recorded.



W.P.No.9662 of 2010

WEB COPY

13. Therefore, the other submissions are only relating to abuse of the said provision. In any event, if the provision is abused, the Workman concerned can always seek remedy by complaining victimisation or *mala fide* as the case may be and I do not deem it necessary that the clause itself should be set aside. In view thereof, except for recording the above undertaking, I find that the order of the appropriate authority in certifying the standing orders is in order and accordingly, the Writ Petition is disposed of by recording the above undertaking. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.12.2024

Neutral Citation : Yes

mk



WEB COPY



W.P.No.9662 of 2010

D.BHARATHA CHAKRAVARTHY.J.,

mk

To

1. The Presiding Officer
Labour Court
Appellate Authority under the
Industrial Employment (Standing Orders) Act, 1946
District Court Compound
Puducherry.
2. The Commissioner of Labour cum
Certifying Officer under the Industrial
Employment (Standing Orders) Act, 1946
Labour Department
Government of Puducherry
Vazhudhavur Road, Gandhi Road
Puducherry.

W.P.No.9662 of 2010

21.12.2024



W.P.No.9662 of 2010

W.P.No.9662 of 2010

WEB COPY

D.BHARATHA CHAKRAVARTHY, J.

This matter is listed under the caption “for being mentioned”.

2. In the original order dated 21.12.2024, in the cause title, pin code of the petitioner's address and appearance portion are incorrect.

3. Accordingly, the pincode shall be replaced with “**Karaikal -609 602**” instead of Karaikal – 609 002 and appearance portion shall be corrected as follows:

“For Petitioner	:	Mr.V.Govardhanan
For R1	:	Labour Court
For R2	:	No appearance
For R3	:	Mr.B.Balavijayan M/s.C.S.Associates”

4. The Registry is directed to issue a fresh order copy by carrying out the said correction in the cause title and in appearance portion.

30.01.2025

ns1



WEB COPY



W.P.No.9662 of 2010

D.BHARATHA CHAKRAVARTHY.J.,

nsi

W.P.No.9662 of 2010

30.01.2025