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W.P.No.31257 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HONOURABLE **Mr.JUSTICE P.DHANABAL**

W.P.No.31257 of 2012

Tamil Nadu Ooraga Valarchi
Ullatchi Thurai Oozhiyargal
Sammelanam(CITU),
Rep. By its General Secretary,
Gnanaprakasapuram,
Begambur Post,
Dindukkal – 624 002.

....Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. By its Secretary,
Labour and Employment Department
Fort St.George,
Chennai – 600 009.
2. The Management,
Directorate of Rural Development and
Panchayat Raj,
Panagal Building,
Saidapet, Chennai – 600 015

....Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 05.06.2012 in G.O.(D).No.242, Labour and Employment



W.P.No.31257 of 2012

issued by the first respondent declining to refer demand nos.2 to 5 and 7 to 11 and first part of demand no.1 for adjudication, quash the same and consequently direct the first respondent to refer those reference for adjudication to the Industrial Tribunal.

For petitioner : Mrs.Porkodi
for Mr. R.Krishnaswamy

For respondents : Mr.T.Chezhan
Additional Government Pleader

ORDER

This writ petition is filed challenging the order dated 05.06.2012 in G.O.(D).No.242, Labour and Employment issued by the first respondent declining to refer demand nos.2 to 5 and 7 to 11 and first part of demand no.1 for adjudication and direct the first respondent to refer those reference for adjudication to the Industrial Tribunal.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1 The petitioner is a trade Union registered under the Trade Unions Act,1926. The Union represents the cause of the Over Head Tank Operators (in short 'OHT operator') and Sweepers in all village panchayats which are functioning under the control of the second respondent Directorate.



2.2. In order to operate the power supply, the village panchayats have appointed OHT operator for each water pump house. The OTH operator is responsible for operation of the pumps and he has to switch on and off the pumps depending upon the need and further he is responsible for the supply of water to the people of the respective area both in the morning and evening. For this the presence of the OHT operator is required from morning 3:00 a.m.to do the above mentioned duties. This apart he is required to carryout all the other works as and when required and as directed by the panchayat President and other ward members.

2.3. Sofar as Sweepers are concerned, each panchayat will employ 1 to 10 employees depending upon the requirement of that particular village and they are responsible for cleaning the streets, roads etc. They would report for work at 6:00 a.m in the morning and work till 2:00 p.m .and they also work for more than 8 hours per day.

2.4. The OHT Operators and Sweepers are working in the village panchayat and carry out the duties as mentioned above on par with the other OHT Operators and Sweepers employed in major panchayats, municipalities and other Corporations. But the pump operators and Sweepers in village panchayats are paid lesser and only consolidated amount of wages.



2.5. At some areas, at the instance of the Union some employees have filed applications before the authority under the Payment of Gratuity Act (for brevity 'Act') and got their gratuity. However, the village panchayats though governed by the provisions of the Act do not provide gratuity to the employees working in the village panchayats. Therefore, the petitioner's Sangam raised various demands to meet the conditions of their employees to the second respondent Directorate. The second respondent Directorate *vide* letter dated 14.03.2008 informed the petitioner's Sangam that their demand could not be decided by them and the same shall be considered only by the Government.

2.6. Therefore, the petitioners Union issued strike notice on 28.04.2008 with 11 demands wherein the Government of Tamilnadu has referred only two demands and the Government by a G.O.(D).No.242 dated 05.06.2012 have referred demand nos.1 and 6 for adjudication while declining the other demands. Further, even under demand No.1 the Government has not referred the entire demand and only a part of it was referred. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel for the petitioner submitted that a strike



notice was issued referring 11 demands and after the receipt of the strike notice the Assistant Commissioner of Labour, Chennai issued Conciliation Notice dated 20.05.2008. The second respondent Directorate was not present for the proceedings and hence, Conciliation Officer submitted his failure report on 20.10.2008. Thereafter, the Government has not referred all the demands but only a part of it.

4. The learned counsel for the petitioner Sangam further submitted that the Government has no power to decide the dispute and the Government has power to see whether there exist any dispute or apprehension and cannot decide the dispute. For better appreciation of facts, the learned counsel for the petitioner has circulated a judgment reported in **(2010) 14 Supreme Court Cases 176** in ***Kuldeep Singh vs. General Manager Instrument Design Development and Facilities Centre and another.***

5. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner's Sangam had issued strike notice on 28.04.2008 with 11 demands and the Assistant Commissioner of Labour, Chennai conducted Conciliation proceedings and subsequently the failure



report was submitted. The staff of the panchayat have been appointed based on their economical condition by the members of the panchayat and therefore, they have to approach the panchayat. The above said orders were issued in accordance to law and hence, the Government has refused to refer the remaining demands. Moreover, the demands pertains to the year 2008 and most of the demands were attended by the Government and subsequent Government Orders were also passed and hence prayed for dismissal of this writ petition.

6. Heard both sides and perused the records.

7. In the case on hand, the petitioner Sangam has issued strike notice with 11 demands and the Government has referred only two demands and the other demands were not referred for adjudication against which the present writ petition is filed.

8. The learned counsel for the petitioner submitted that the Government has no power to decide the Industrial Dispute and has to see whether any apprehension or dispute exists or not. Apart from that the Government neither has any power to decide the dispute nor refuse to refer



the demands.

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9. The Government on the other hand has not referred the issue to the competent authority. However, as rightly contended by the learned Additional Government Pleader all the demands are related to the panchayats and almost all the demands have been fulfilled through subsequent Government Orders.

10. While so, the learned Counsel for the petitioner contended that though most of the demands have been settled through subsequent Government Orders, only part of demand no.1 was referred for adjudication. The first part of the demand viz., that the village panchayat employees shall be given time scale of pay has to be referred for adjudication. It is clear that some of the demands issued in the strike notice have been referred for adjudication and most of them have already been settled through subsequent Government Orders.

11. Considering the facts and circumstances of the case and after careful perusal of the records, this Court directs the petitioner Sangam to give a fresh representation in respect of the first part of the demand viz., that the



W.P.No.31257 of 2012

village panchayat employees shall be given time scale of pay, to the respondents and on receipt of the same the respondents shall consider the representation with demands and decide the possibility of settlement and in case, if there are no possibilities for settlement then the matter can be referred to the concerned authorities for adjudication.

12. With these observations and directions, this writ petition is disposed of. Costs made easy.

21.12.2024

vca

Index : Yes/No
Citation : Yes/No
Index : Yes/No

To,

1. The Government of Tamil Nadu,
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Labour and Employment Department

Page No.8 of 10



W.P.No.31257 of 2012

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