



W.P.No.13746 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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ORDER RESERVED ON : 19.01.2024

ORDER PRONOUNCED ON : 26.02.2024

**CORAM**

**THE HON'BLE MRS. JUSTICE N.MALA**

**W.P.No.13746 of 2020**

**and**

**WMP.No. 17085 of 2020**

Parry Retired Employees Welfare Association,  
Rep. by its President,  
No.10, Jain Complex,  
Kamarajar Street, Near CSI Church,  
Walajahpet- 632 613.

...Petitioner

Vs.

1. The Government of Tamil Nadu,  
Rep. by its Secretary,  
Labour and Employment (P2) Department,  
Fort St. George, Chennai-600 009.

2. The Conciliation Officer,  
Labour Office-1,  
No. 10, Thiyagarajapuram,  
Vellore-632 001.

3. The Management of Roca  
Bathroom Products Private limited,  
Ranipet- 632 401,  
Vellore District.



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4.The Management of Coromandel,  
International Limited, Fertiliser Division,  
Ranipet- 632 401,  
Vellore District.

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order bearing ref. G.O. (D). No.582 dated 21.10.2019 passed by the 1<sup>st</sup> respondent Department and to quash the same as being illegal, arbitrary and contrary to the provisions of the I.D. Act and for a direction to the 1<sup>st</sup> respondent Department to refer the dispute relating to the revision of pension for the members of the petitioner Association to the appropriate Labour Court and to adjudicate the same within a time frame fixed by this Court.

For Petitioner : Mr.V.Govardhanan

For Respondents: Mrs.R.L.Karthika, Govt. Advocate  
for RR1 & 2

Mr.G.Anandakrishnan  
for T.S.Gopalan and Company  
for RR3 & 4

### **ORDER**

Writ petition is filed for a writ of certiorarified mandamus calling for the records relating to the order bearing ref. G.O. (D). No.582 dated 21.10.2019 passed by the 1<sup>st</sup> respondent and to quash the same and to further direct the 1<sup>st</sup> respondent to refer the dispute relating to the revision



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of pension for the members of the petitioner Association to the appropriate Labour Court for adjudication.

2. The petitioner Association will be referred to as Association and the respondent's 3 and 4 will be referred to as Management.

3. The members of the petitioner Association are retired employees of EID Parry India Ltd., Ranipet branch. The members of the petitioner Association belong to non-covenanted staff and lower category. While the members of the petitioner were working in EID Parry at Ranipet factory in the fertilizer and ceramics division, the Parry's Employees Union on 20.12.1993 entered into a settlement with the Management under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as I.D. Act). The settlement exclusively provided for payment of pension which was payable after a period of 20 years. The members of the petitioner Association are all pensioners and are the beneficiaries of the settlement dated 20.12.1993. It is the case of the petitioner that the pension was fixed way back in the year 1993 and therefore it made a representation to the 3<sup>rd</sup> and 4<sup>th</sup> respondents who are transferee's of the ceramics and the fertilizer



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division of EID Parry Private Limited to revise the pension. On 15.10.2012, the petitioner terminated the 12(3) settlement dated 20.12.1993 by giving written notice as contemplated under the I.D. Act. Thereafter on 16.03.2013, the petitioner demanded revision of pension. As the 3<sup>rd</sup> and 4<sup>th</sup> respondent did not respond, the petitioner raised a dispute on 19.08.2013 for revision of pension before the 2<sup>nd</sup> respondent. On 04.10.2013, the petitioner submitted its reply to the queries raised by the 2<sup>nd</sup> respondent on the dispute raised by it. The 3<sup>rd</sup> and 4<sup>th</sup> respondents on 24.10.2013 questioned the maintainability of the dispute on the ground that the pensioners could not be construed as workman under the definition of the term 'workman' in the I.D. Act. Though the petitioner filed its rejoinder to the objections of the respondents 3 and 4, the 2<sup>nd</sup> respondent on 01.04.2014 abruptly closed the dispute. The petitioner therefore filed a writ petition in W.P.No.995 of 2015 challenging the order dated 01.04.2014 of the 2<sup>nd</sup> respondent closing the dispute. The writ petition was allowed by this Court on 25.07.2017. Aggrieved by the aforesaid order, the 3<sup>rd</sup> respondent filed writ appeal in W.A.No.978 of 2017. The Division Bench of this Court allowed the writ appeal and directed the 2<sup>nd</sup> respondent, conciliation officer to look into the matter afresh. The petitioner made its submissions



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before the Conciliation officer on 26.12.2017 and the Management submitted its reply on 15.03.2018 to which the petitioner filed rejoinder on 28.03.2018. On 15.10.2018, the 2<sup>nd</sup> respondent Conciliation officer submitted a failure report. On 23.03.2019, the petitioner requested the Labour officer to refer the dispute. The 1<sup>st</sup> respondent on 04.04.2019 directed the Commissioner of Labour, Chennai to forward the records. Thereafter on 21.10.2019, the 1<sup>st</sup> respondent declined to refer the dispute. Aggrieved by the order of the 1<sup>st</sup> respondent declining to refer the dispute, the petitioner has filed the writ petition impugning the same.

4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed their common counter reiterating the factual background of the case. It was stated by the respondent's that the 1<sup>st</sup> respondent scrutinized the failure report and the recommendation of the Conciliation officer and thereafter for valid reasons declined the reference by assigning valid grounds.

5. The learned counsel for the petitioner submitted that all questions raised were matters to be adjudicated by the Labour Court under the I.D. Act and therefore the rejection of reference was bad in law. The learned



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counsel further submitted that the petitioner's were 'workman' as per the definition of 'workman' under the I.D. Act and were thus entitled to raise the dispute for revision of pension. The learned counsel further submitted that the respondents failed to note that the settlement was cancelled and was terminated in terms of Section 19(2) of the I.D. Act and therefore it was for the Labour Court to adjudicate the fairness of the Clauses in the settlement.

6. The learned counsel for the respondents on the other hand submitted that the 1<sup>st</sup> respondent scrutinized the failure report and the recommendation of the Conciliation officer and thereafter issued the Government Order assigning valid reasons for not referring the dispute for adjudication. The learned counsel further submitted that the issue raised before the Conciliation officer was whether a dispute existed or not in terms of Section 2(K) of the I.D. Act and in view of the existence of a valid settlement between the workman and the management, the respondent had rightly concluded that no reference was necessary.



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7. I have heard both the learned counsels and I have perused the entire materials placed on record.

8. The short question is whether the 1<sup>st</sup> respondent was justified in declining to refer the dispute relating to the revision of pension to the members of the petitioner Association to the appropriate Labour Court for adjudication.

9. Before embarking on the factual aspects, I consider it appropriate to discuss the legal position regarding the scope and ambit of power of the Government under Section 10(1) r/w. Section 12(5) of the I.D. Act. There are abundant Judgments on this aspect, but I would confine the discussion to some of the Judgments which have considered the earlier Judgments and culled out the legal principles. The Division Bench of this Court summarized the legal principles emerging out of the analysis of the earlier Judgments in the case of *Shaw Wallace & Co., Ltd., vs State of Tamil Nadu (by Commissioner and Secretary, Labour)* reported in 1988 (1) LLN 172 and held as follows:



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*“32. On a final analysis, the following principles emerge:*

*(1) The Government would normally refer the dispute for adjudication;*

*(2) The Government may refuse to make reference, if*

*(a) the claim is very stale;*

*(b) the claim is opposed to the provisions of the Act;*

*(c) the claim is inconsistent with any agreement between the parties;*

*(d) the claim is patently frivolous;*

*(e) the impact of the claim on the general relations between the employer and the employees in the regions is likely to be adverse; and*

*(f) the person concerned is not a workman as defined by the Act.*

*(3) The Government should not act on irrelevant and extraneous considerations.*

*(4) The Government should act honestly and bona fide.*

*(5) The Government should not embark on adjudication of the dispute.*

*(6) The Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate.”*

The aforesaid Judgment of this Court was followed by Hon'ble Mr.Justice Sri.P.Sathasivam ( as His Lordship then was). The Hon'ble Judge in the



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case of *Cheran Transport Employees Union, Coimbatore Versus Government of Tamil Nadu (represented by its Secretary to Labour and Employment Department), Madras & Another* reported in 1999(3) LLN 293 held as follows:

*“15.....In other words, the reasons given by the Government would tantamount to adjudication which is impermissible under law. That is the function of the Tribunal/Labour Court and the Government cannot arrogate to itself that function. Therefore if the grounds on which or the reasons for which the Government declined to make a reference under S.10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a writ of mandamus....”*

10. The Hon'ble Supreme Court in the case of *Telco Convoy Drivers Mazdoor Sangh and another versus State of Bihar and others* reported in 1989 (3) SCC 271 in the context of whether a dispute existed or was apprehended held that while exercising power under Section 10(1) of the I.D. Act, the function of the appropriate Government was an administrative function and not a judicial or quasi judicial function, and that in performing the said administrative function, the Government could not delve into merits of the dispute and take upon itself the determination of the lis, as it would be in excess of the power conferred on it by Section



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10 of the I.D. Act. It is pertinent to note that in the said Judgment the Hon'ble Supreme Court issued a positive direction to the Government to make the reference under Section 10(1) of the I.D. Act to an appropriate Tribunal.

11. Keeping in view the aforesaid judicial pronouncements, let me venture into the facts of the present case to find out if the Government was justified in declining to refer the dispute for adjudication to the Labour Court.

12. The controversy in the present case revolves around the right of the members of the petitioner Association to seek enhancement of pension on the ground that the 12(3) Settlement entered by the erstwhile Union was not binding on them and also that the permanency attached to the settlement would not bar the members of the petitioner from seeking revision of pension notwithstanding the cancellation of the settlement by them. It is also contented that the members of the petitioner were entitled to raise the dispute. The respondents on the other hand contend that the 12(3) settlement dated 20.12.1993 was binding on the members of the



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petitioner and therefore no dispute could be raised. The further contention of the respondents was that the dispute raised by the members of the petitioner was not covered by the provisions of Section 2(k) of the I.D. Act. Even the rejection of the reference for adjudication is based on the aforesaid two objections of the respondents. In my view the dispute involves adjudication of disputed facts involving the binding nature of the 12(3) settlement and also the validity of its termination by the petitioner. The dispute also raises the legal issue of whether there could be a permanent settlement restricting the pension to the members of the petitioner Association to a sum of Rs.1,000/- to Rs.1,200/- permanently irrespective of cost escalation and inflation.

13. The 1<sup>st</sup> respondent under Section 10(1) of the I.D. Act exercises administrative function. While exercising the administrative function, the 1<sup>st</sup> respondent is barred from examining the merits of the dispute and also from deciding the lis. In other words, the 1<sup>st</sup> respondent has no adjudicatory power. The refusal to refer the dispute by the 1<sup>st</sup> respondent on the specious ground that there is a 12(3) settlement clearly reflects the total non application of mind by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent has



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overlooked the fact that the existence of the settlement was itself disputed as the petitionr claimed to have validly terminated it by invoking Section 19(2) of the I.D. Act. It is pertinent to note that reference of the dispute is norm and refusal on irrelevant, frivolous and perverse grounds cannot be entertained, as held by the Hon'ble Supreme Court in the case of M.P.Irrigation Karamchari Sangh Versus State of M.P and Another reported in 1985 (2) SCC 103 that,

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

The learned counsel for the respondents relied on the Judgments of the Hon'ble Supreme Court reported in 2006 (11) SCC 731 and Calcutta High Court Judgment reported in 2007 (1) LLN 881. I have considered the Judgments of the learned counsel for the respondents and I am of the view that they have no application to the facts of the present case. I am therefore



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of the view that the impugned order refusing to refer the dispute for adjudication cannot be sustained.

14. Normally in a writ of mandamus the direction would be issued to the Government to reconsider the matter. The History of this litigation narrated supra shows that the members of the Association who are all retired members and senior citizens, even after lapse of almost 10 years are still fighting for reference of the dispute regarding revision of their pension of Rs.1,000/- to 1,200/-, fixed in the year 1993. It is therefore seen that right from 2013, the members of Association have been pressing the demand for revision for pension and even after lapse of more than 10 years, the matter is still hanging balance at the reference stage. I am therefore of the view that a positive direction can be given to the 1<sup>st</sup> respondent to refer the dispute for adjudication. In this regard the Judgment of the Hon'ble Supreme Court in the case of *M.P.Irrigation Karamchari Sangh Versus State of M.P and Another* reported in 1985 (2) SCC 103 and the case of *Telco Convoy Drivers Mazdoor Sangh and another versus State of Bihar and others* reported in 1989 (3) SCC 271 can be usefully referred. In the aforesaid cases, the Hon'ble Supreme Court directed the



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State Government to refer the dispute for adjudication.

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In view of the above discussions, writ petition is allowed and a direction is issued to the 1<sup>st</sup> respondent to make a reference under Section 10(1) of the I.D. Act of the dispute raised by the petitioner Association to the Labour Court within a period of one (1) month from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

26.02.2024

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation:Yes/No

dsn



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To

1.The Secretary,  
Labour and Employment (P2) Department,  
Fort St. George, Chennai-600 009.

2. The Conciliation Officer,  
Labour Office-1,  
No. 10, Thiyagarajapuram,  
Vellore-632 001.



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**N.MALA,J.**

dsn

Pre-Delivery order in  
W.P.No.13746 of 2020

Order Delivered on

26.02.2024