



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.07.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.19674 of 2021

and

WMP.Nos.20960 & 20963 of 2021

1.All India Defence Employees Federation (AIDEF)
Rep. by its President S.N.Pathak &
General Secretary C.Srikumar,
SM Banerjee Maligai,
OCF Road, Avadi, Chennai-600 054.

2.J.Wilson Christopher, T/HS-I,
T.No.105098/5098/PS3
JCM-IV Member,
No.87, I cross Street,
4th Main Road, Gopalapuram East,
Pattabiram, Chennai-600 072.

... Petitioners

Vs.

1.Government of India
Ministry of Defence
Department of Defence Production
Rep by its Secretary,
South Block, New Delhi-110 001.

2.Ordinance Factory Board,
Rep by its Secretary,
Ayudh Bhavan,
10-A, S.K.Bose Road,



W.P.No.19674 of 2021

Kolkatta – 700001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with the impugned Office Memorandum bearing No.1(5)/2021/OF/DP/(Plg-V) dated 21.06.2021 issued by the 1st Respondent, conveying the decision of the Cabinet taken at the meeting on 16.06.2021 and to quash the same.

For Petitioners : Mr.Ravikumar Paul

For Respondents : Mr.Srinivasamoorthy
Central Government Standing Counsel

ORDER

WMP.No.20960 of 2021 filed seeking permission to file single Writ petition is ordered on payment of separate Court fee, if not already paid.

2.Heard Mr.Ravikumar Paul, learned counsel for the petitioners and Mr.Srinivasamoorthy, learned Central Government Standing Counsel for the respondents.

3.The first petitioner is the All India Defence Employees Federation (1st petitioner/AIDEF). It is a National Federation founded in 1953 and recognized by the Ministry of Defence for purposes of espousing the cause of Defence Civilian Employees working in Ordinance Factories. The 1st petitioner is aggrieved by Office Memorandum dated 21.06.2021 issued by the Ministry of Defence, Government of India/R1 conveying the decision of the Cabinet taken



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on 16.06.2021, to convert the production units of the Ordinance Factory Board (OFB) into seven Defence Public Sector Undertakings (DPSU) with 41 units.

4. At the outset, both learned counsel would fairly represent that the decision of the Delhi High Court in *Bharatiya Pratiraksha Mazdoor Sangh v. Union of India, Ministry of Defence and another*¹ would be applicable on all fours to the present writ petition. In that writ petition, which was filed in public interest, the Bharatiya Pratiraksha Mazdoor Sangh (BPMS), a federation of registered trade unions working in defence installations of the Ministry of Defence including the OFB were also aggrieved by the conversion of the OFB into DPSU. After hearing the rival contentions, that writ petition came to be dismissed on the ground that the conversion of OFB into DPSUs constituted a policy decision that calls for no intervention or interference.

5. The respondents have also emphasized the position that the interests of the petitioner had been duly taken note of and protected and there was thus no cause for them to be aggrieved by the impugned decision.

6. This has been reiterated in both the counter as well as in the reply of the respondents to the petitioner's rejoinder wherein they state that the Government remains committed to safeguard the interests of the erstwhile OFBs. At paragraph 35 of reply dated 12.02.2024 of the respondents to

¹ WP(C)No.8056 of 2022 dated 03.08.2023



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rejoinder dated 08.11.2021, they make it clear that the employees of erstwhile OFBs on deemed deputation to the newly formed seven (7) DPSUs would continue as Central Government servants and their pay scales, allowances, leave, medical facilities, career progression and other service conditions will continue to be governed by the extant Rules, Regulations and orders as are applicable to Central Government servants.

7.They would be given an option for permanent absorption in the new DPSUs and their terms of service would change only consequent upon their exercise of such option. The Delhi High Court in BPMS has taken note of this fact.

8.To be fair, Mr.Ravikumar Paul also does not deny the commitment of the State to protect the interests of the employees of the OFBs. He would also accede to the position that the arguments put forth by the present petitioner more or less align with those put forth by BPMS and that they have been considered and decided adverse to the petitioner in the decision of the Delhi High Court. That decision is stated to have become final and with that, nothing further remains as far as the merits of the case is concerned.

9.The sole point on which he dilates is as to whether the impugned order is in contravention of the prescription under Section 33(1) of the



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Industrial Disputes Act (in short 'ID Act'). According to him, the parties were engaged in the process of conciliation and the impugned order has come as a missive even pending conciliation, which is contrary to Section 33(1) of the ID Act. If at all a decision adverse to the interests of the petitioner was to be taken, such decision ought to have been taken only post the conclusion of the conciliation proceedings and not while they were on-going.

10. In this regard, he would rely on a judgment of the Hon'ble Supreme Court in *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad*² specifically paragraphs 27 and 30. In that matter, an order of retrenchment had been passed in breach of Section 33(1) of the I.D. Act. The Bench in that case found that such breach was fatal to the order and the retrenchment was held to be illegal.

11. In the present case, the parties were admittedly engaged in the process of conciliation and in '*minutes of meeting on joint notice for commencing indefinite strike from 12.10.2020 by the defence establishment*' dated 09.10.20, the parties agree that during the pendency of the on-going conciliation proceedings, the employer, the respondents, will abide by the provisions of Section 33(1) of the ID Act. For their part, the Unions did not proceed in regard to strike proposed from 12.10.2020.

² (1999) 6 SCC 275



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12. That meeting was conducted on 09.10.2020 and on 15.06.2021, there was a joint communication by the petitioner, the Indian National Defence Workers Federation and the BPMS, recording the minutes of the conciliation proceedings held on 11.06.2021 and requesting that the subsequent meeting may be scheduled on any date post 18.06.2021. On 15.06.2021, the request for holding of the meeting post 18.06.2021 was rejected. After some discussion, the minutes recorded that the conciliation proceedings had been declared as 'failed' and the report on the failure of conciliation would be submitted to the Government of India.

13. The failure report is dated 18.06.2021 and this is what leads to the argument of Mr. Ravikumar Paul to state that the impugned order has been passed in haste and even prior to the failure of conciliation as the impugned order states that the decision of the Cabinet for conversion of OFB to DPSUs was made at the meeting held on 16.06.2021.

14. He would thus state that the decision of the Cabinet meeting was even prior to the failure report dated 18.06.2021. However, the decision was already taken in the minutes of the meeting held on 15.06.2021 and to this extent, the Cabinet meeting where the decision for conversion was taken was a day after the minutes recording failure of conciliation proceedings. Hence, the



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aforesaid timeline would reveal that there has been no violation of the prescription under Section 33(1) of the I.D. Act.

15.The decision in *Lokmat*³ is thus distinguishable on the facts arising for consideration in this matter. Though there reference to the argument touching upon Section 33(1) of the ID Act at paragraph 27 of the decision of the Delhi High Court, this specific argument does not appear to have been put forth for its consideration.

16.In light of the discussion as above, there is no merit in the challenge to impugned Office Memorandum bearing No.1(5)/2021/OF/DP/(Plg-V) dated 21.06.2021 issued by the 1st Respondent and this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

29.07.2024

Index : Yes / No
Speaking Order
Neutral citation :Yes
vs

3 Footnote supra 2



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DR.ANITA SUMANTH,J.

VS

To

- 1.The Secretary,
Government of India, Ministry of Defence,
Department of Defence Production,
South Block, New Delhi-110 001.
- 2.The Secretary,
Ordinance Factory Board, Ayudh Bhavan,
10-A, S.K.Bose Road,
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