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W.P.No. 25503 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No. 25503 of 2021

North Arcot District General Workers Federation

Rep. By its Vice President,

Mr.A.Sureshbabu,

Reg.No.285/NAT/80,

Old No.18, New No.5,

Amirdhalingasamy Sannathi Street,

Kosapet, Vellore.

.....Petitioner

Vs.

1.The State of Tamil Nadu,

Rep. By its Additional Principal Secretary,

Labour and Employment Department,

Chennai – 600 009.

2. The Management,

The Vellore District Government Employees

Cooperative Society Limited, C.3858,

No.49, Round Fort, Vellore.

....Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order of declining to refer the dispute for adjudication vide G.O.Ms(D) No.65, Labour and Employment (P2 Department) dated 10.02.2021 passed by the 1st respondent and quash the same and direct the 1st respondent to refer the dispute for adjudication on the basis of the failure

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report by the 2nd respondent in letter Na.Ka.No.307/2019 dated 15.11.2019.

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For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.R.L.Karthika for R1
Government Advocate
No appearance for R2

ORDER

This writ petition has been filed to challenge the impugned order dated 10.02.2021 passed by the 1st respondent, declining to refer the dispute for adjudication vide G.O.Ms(D) No.65, Labour and Employment (P2 Department) and consequently, to direct the 1st respondent to refer the dispute for adjudication on the basis of the failure Report by the 2nd respondent in letter Na.Ka.No.307/2019 dated 15.11.2019.

2. Learned counsel appearing for the petitioner-Union would submit that the workman- Mr.A.Ragu, member of the petitioner's Union, joined as salesman in the 2nd respondent-Society on 06.07.1992 and he was promoted as Cashier on 23.01.2014. While so, the Deputy Registrar of Cooperative Societies vide proceedings dated 15.07.2014, re-classified the 2nd respondent Society from class 'C' to class 'B' Society. Once, the 2nd



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respondent-Management was declared as Class 'B' Society, they were entitled for one sanctioned post of Assistant Secretary. Even after reclassification and several representations from Mr.A.Ragu, the said post was not given to him. Hence, the said workman raised the dispute under Section 2(A) of the Industrial Disputes Act, before the Assistant Labour Commissioner-I, Vellore in Dispute number 196/2017- 18, on 16.01.2018. Subsequently, the said workman withdrew his complaint on 24.09.2018 and raised the 2(k) dispute before the Assistant Labour Commissioner-I, seeking promotion as Assistant Secretary from 01.04.2013, as per the circular of the Registrar of the Cooperative Societies and wages for the post of Assistant Secretary with effect from 01.01.2017 as per Clause 12(3) of settlement dated 07.03.2019.

3. Pending dispute, as per the Resolution dated 18.03.2019 of the 2nd respondent society, the workman Mr.A.Raghu was promoted as Assistant Secretary. Meanwhile, the conciliation failed. While so, the 1st respondent instead of referring the dispute for adjudication vide impugned order in G.O.(D).No.65, Labour and Employment Department dated 10.02.2021, delved into the facts of the case and declined reference. Aggrieved by the same, the petitioner has filed the present writ petition.

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4. The learned counsel for the petitioner submits that reference of dispute is the rule and the government has no jurisdiction to decide the lis. In support of his submission, the learned counsel for the petitioner relied on the Judgment of this Court in the case of ***Shaw Wallace & Co. Ltd. And State of Tamil Nadu (by Commissioner and Secretary, Labour Department) and another.***

5. Learned Government Advocate appearing for the first respondent submits that the impugned order passed by the 1st respondent was infallible. According to the counsel, mere reclassification of the society from 'C' class to 'B' class was not the only criteria for sanction of the Post of Assistant Secretary. The concerned society had to necessarily disburse loans between 25 crores to 50 crores to be eligible for the Post of Assistant Secretary. The counsel submits that though the Deputy Registrar of Co-operative society reclassified the society as 'B' class society vide proceedings dated 15.07.2014, it was only after 2017-2018, that the 2nd respondent society crossed the limit of 24 crores. The counsel further submits that soon after the Society surpassed the limit, for sanction of the post of Assistant Secretary, the said Mr. A.Raghu was promoted with revised pay



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Scale of Rs.47,600/- -- 1,51,100/- from 18.03.2019. The counsel therefore submits that the claim for benefits with retrospective effect from the year 2013 has no factual or legal basis. Hence, according to the counsel, the impugned order declining reference was unassailable.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent and this Court perused the materials available on record.

7. According to the petitioner/Union, the Society is a 'B' class society and therefore, entitled for a post of Assistant Secretary, whereas, the contention of the first respondent is that during the relevant period, even though the society was classified as 'B' class society, it did not disburse loans between Rs.25 crores to 50 crores and hence was not entitled to a post of Assistant Secretary. The respondent claims that as the society became eligible for the post of Assistant Secretary only in the year 2017-2018, the claim for benefits with retrospective effect from 2013 was rightly negated and reference declined.



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8. As rightly pointed out by the petitioner, the 1st respondent could not embark on an adjudication of the dispute. In Shaw Wallace case in Paragraph No.32, this Court held as follows:

“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 region 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 Bonafide.

(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



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punishment awarded was appropriate.”

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9. From the above Judgment, it is clear that the Government cannot adjudicate on the merits of the dispute.

10. In my view, the dispute whether the society was eligible for the Post of Assistant Secretary from the date of its reclassification as 'B' class society or on later date is a matter for adjudication by the Labour Court on the basis of evidence. Hence, the first respondent could not have gone into the dispute and declined to refer the matter for adjudication before the Labour Court. Accordingly, the impugned order dated 10.02.2021 is set aside and the first respondent is directed to refer the dispute for adjudication before the appropriate Labour Court within a period of four(4) weeks from the date of receipt of a copy of this order.

11. With the above direction, this writ petition is allowed.

No costs.

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Internet: Yes/No
Neutral Citation: Yes/No
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To

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Labour and Employment Department,
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2. The Management,
The Vellore District Government Employees
Cooperative Society Limited, C.3858,
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N.Mala,J.

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