



W.P. No.23253 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.23253 of 2022
and W.M.P. No.22206 of 2022

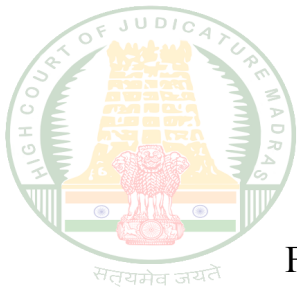
The Management,
Noble Tech Industries Pvt Ltd.
represented by its Authorized Signatory,
14/2A2, Melpakkam Village,
Uthiramerur Taluk,
Kancheepuram District – 603 402. ... Petitioner

Vs.

1.The Additional Chief Secretary,
Labour Welfare & Skill Development Department,
Government of Tamil Nadu,
Fort St. George, Chennai.

2. Kancheepuram Pothu Thozhilalarkal Sangam,
represented by its General Secretary,
Regn. No.526-KPM,
No.21-B, Vilakadi Kovil Street,
Kancheepuram – 631 501. ... Respondents

PRAYER: The Writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in G.O. (D) No. 309 Labour Welfare & Skill Development (A2) and quash the order dated 24.06.2022.



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For petitioner : Mr. S. Ravindran, Senior Counsel
For Mr. S. Bazeer Ahamed

For Respondents :
For R1 : Mr. L.S.M. Hasan Fizal,
Additional Government Pleader.

For R2 : No appearance

ORDER

This Writ petition has been filed to quash the order passed in G.O. (D) No.309 of Labour Welfare and Skill Development Department dated 24.06.2022.

2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is engaged in the manufacture of structural beams, channels and Angels. The 2nd respondent, claiming to represent the workmen of the petitioner during pendency of the conciliation proceedings before the Deputy Commissioner of Labour (Conciliation – I), Sriperumbudur, Kancheepuram District, instigated workmen to strike work from 01.06.2017. During the conciliation proceedings held on 09.06.2017, the Deputy Commissioner of Labour (Conciliation-I) issued Proceedings No.Na.Ka.AA/411/2017 dated 09.06.2017 advising the petitioner and the 2nd respondent to hold negotiations to resolve the issues including the issue

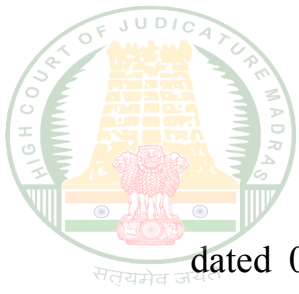


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relating to suspension order of 4 workmen within a period of one month. In spite of best efforts, the issue relating to suspension of four workmen could not be resolved. The petitioner Management proceeded with disciplinary action already initiated against them and dismissed them from service through an order dated 15.02.2019. One of the four workmen, Senthilkumar resolved his non-employment by receiving compensation of Rs.2,40,000/- by entering into a settlement under Section 18(1) of Industrial Disputes Act with the petitioner Management on 02.03.2020. Three workmen C. Shanmugam, K. Elumalai and V. Sivakumar raised Industrial Disputes on their non-employment and it is pending adjudication before the Labour Court, Kancheepuram in I.D. Nos.120/2021, 121/2021 and 123/2021.

2.1. Simultaneously, the 2nd respondent Union filed a petition dated 07.03.2019 before the Deputy Commissioner of Labour (Conciliation – I), Sriperumbudur alleging that the petitioner had dismissed the four workmen contrary to the agreement which would amount to unfair labour practice within the meaning of Section 2(ra) of the Industrial Disputes Act. The petitioner sent reply dated 25.02.2020 and 07.09.2020 stating that the advice of the Deputy Commissioner of Labour (Conciliation -I), Sriperumbudur



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dated 09.06.2017 would not amount to an agreement and no provision of Schedule-V of the Industrial Disputes Act, which enumerated exhaustive nature of unfair labour practices not to be committed by the managements and the trade union is attracted and that therefore, the complaint of the second respondent was without any merit and it should be closed without any further proceedings. While so, after 5 years from the date of advice dated 09.06.2017, issued failure report dated 19.10.2020. Based on the same, the 1st respondent passed a Government Order in G.O.(D) No.309 Labour Welfare & Skill Development Department dated 24.06.2022 referring the issue as to whether the termination of employment of four workmen namely C. Shanmugam, K. Elumalai, V. Sivakumar and V. Senthil Kumar would amount to unfair labour practice and is so, to pass appropriate orders. In pursuance of the above said reference, the industrial dispute in I.D. No.79 of 2022 is pending.

2.2. The above said Government Order is vitiated by errors of law of jurisdiction and the same is liable to be set aside. There is no application of mind by the 1st respondent and there is no reference to the proceedings of the Deputy Commissioner of Labour (Conciliation – I), Sriperumbudur,



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Kancheepuram District dated 09.06.2017 in the impugned order. The advice would not attract any of the list of instances, which would amount to an unfair labour practice as mentioned in Schedule V of the Industrial Disputes Act and the order dated 24.06.2022 suffers from delay and laches and already one workman had entered into Settlement and other three workmen raised Industrial Disputes and the same are pending. Therefore, the order passed by the 1st respondent is liable to be quashed.

3. The learned Additional Government Pleader appearing for the 1st respondent would submit that the 2nd respondent raised an industrial dispute stating that during the conciliation proceedings, the Conciliation Officer advised the parties to settle the matter in respect of suspension of 4 employees within one month. However, without considering the above said advice, the Management terminated the service of the employees and thereby, the workmen raised Industrial Disputes and based on the failure report, the 1st respondent passed a Government Order by referring the matter to the Labour Court for adjudication. Therefore, the order passed by the 1st respondent is within its jurisdiction and already based on the above reference, the Industrial Dispute was raised in I.D. No.79 of 2022 and the same is pending. Therefore,



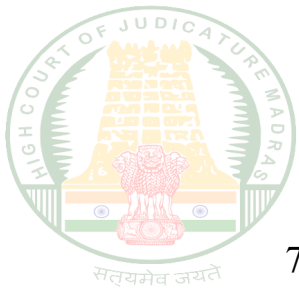
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the petitioner can raise its objection before the Labour Court and get remedy from the Labour Court. Therefore, the present Writ petition is liable to dismissed.

4. On behalf of the 2nd respondent, none appeared.

5. Heard both sides and perused the entire materials available on record.

6. In this case, there is no dispute that the petitioner Management suspended four employees namely C. Shanmugam, K. Elumalai, V. Sivakumar and Senthilkumar. While Conciliation proceedings, the Deputy Commissioner of Labour, on 09.06.2017, advised the parties to have negotiations in respect of suspension of 4 employees within one month. There is no any amicable settlement arrived at between the parties. Thereby, the disciplinary proceedings were continued and thereafter, the petitioner Management passed a dismissal order against the 4 employees and the same was challenged by raising industrial disputes and the same are pending before the Labour Court, Kancheepuram in I.D. Nos.120, 121 and 123 of 2021 in respect of the workmen namely C. Shanmugam, K. Elumalai and V. Sivakumar.



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7. As far as the employee Senthilkumar is concerned, the matter has been settled between the parties by paying compensation of Rs.2,40,000/- through a Settlement under Section 18(1) of the Industrial Disputes Act. The above said industrial dispute has been raised in the year 2021 itself. Thereafter, the impugned order was passed by the Authority for the dispute arose in the year 2017. There is no explanation as to why such delay caused in referring the matter. Moreover in the order passed by the Authority / 1st respondent, there is no reference about the advice dated 09.06.2017. Even as per the advice, within one month, the parties have to resolve the dispute through negotiations. But no amicable settlement was arrived at between the parties. Therefore, the disciplinary proceedings were continued and the final order was passed by dismissing the workmen from service. Challenging the same, separate industrial disputes have been raised by the respective workmen. While so, after five years, the reference was made by the 1st respondent without applying mind and not even referring about the advice of the Deputy Commissioner of Labour.

7. The advice of the Conciliation Officer is dated 09.06.2017. The employees were dismissed on 15.02.2019. The advice of the Conciliation



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Officer regarding the suspension was not settled and thereafter, the workmen were dismissed from service and the same is under challenge before the Labour Court. Therefore, once again for the same issue, the matter cannot be referred for adjudication.

8. As far as the unfair Labour practice is concerned, as per Schedule-V of the Industrial Disputes Act, which contains unfair labour practice, the advice of the Deputy Commissioner of Labour would not amount to an agreement and the same cannot be termed as unfair labour practice as per the Schedule -V of the Industrial Disputes Act. Therefore, the 1st respondent without applying mind, passed the impugned order and the same is liable to be quashed.

9. The learned Senior Counsel appearing for the petitioner has relied upon judgment of Hon'ble Supreme Court in ***ANZ Grindlays Bank Ltd., vs. Union of India and others reported in 2006 (1) L.L.N. 21***, wherein Para No.13, it has been held as follows:-

“13..... It is true that normally a Writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim



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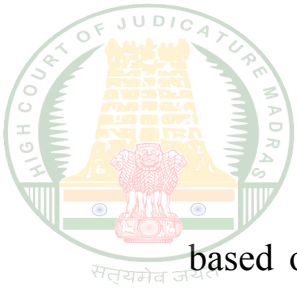


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made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised”.

10. On a careful perusal of the above said judgment, it is clear that normally a Writ petition under Article 226 of the Constitution of India should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. It is clear that futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised.

11. In the case on hand also, it is admitted that a reference was made



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based on the advice of the Conciliation Officer and non-compliance of the above said advice of the Conciliation Officer would not amounts to unfair labour practice as per Schedule-V of the Industrial Disputes Act. Moreover, the 1st respondent has not applied its mind while referring the matter and there is a delay of 5 years and thereby, this Court can invoke jurisdiction of Article 226 of the Constitution of India and the order passed by the 1st respondent in G.O. (D) No.309 of Labour Welfare and Skill Development is liable to be quashed.

12. Accordingly, the Writ petition is allowed. The order passed in G.O. (D) No.309 of Labour Welfare and Skill Development is quashed.

There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

29.07.2025

Index : Yes/No.
Speaking order/non-speaking order
mjs

P. DHANABAL, J.,



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mjs

To

1.The Additional Chief Secretary,
Labour Welfare & Skill Development Department,
Government of Tamil Nadu,
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2. Kancheepuram Pothu Thozhilalarkal Sangam,
represented by its General Secretary,
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