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W.P. No.30209 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.30209 of 2022

All India Forum for IT / ITES Employees

Represented by its General Secretary .. Petitioner

vs.

1. The Government of Tamilnadu

Represented by its Secretary

Labour and Employment Department,

Fort St. George, Chennai – 600 009.

2. The Assistant Commissioner of Labour-3,

Labour Office, Kuralagam, 3rd Floor,

Chennai – 600 108.

3. The Management,

Nelco Limited,

Plot No.1/53 A, 2nd Street, Sripuram Colony,

St. Thomas Mount, Chennai-600 016.

.. Respondents

PRAYER: This Writ petition has been filed under Article 226 of the

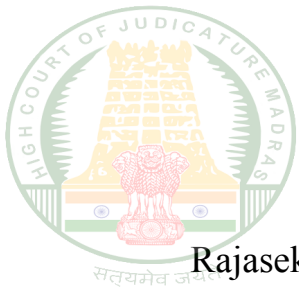
Constitution of India praying to issue a Writ of Certiorarified Mandamus

calling for the records pertaining to the order dated 09.10.2020 passed by the

respondent in G.Os. (Pa) No.508 and 509 Labour and Employment (D1)

Department and to quash the same and consequently direct the 1st respondent

to refer the dispute relating to the 7 demands pertaining to the member R.



W.P. No.30209 of 2022

Rajasekar and also to refer the dispute with regard to his non-employment for adjudication to the competent Labour Court, Award costs.

For petitioner : Mr. V. Ajay Khose
For Respondents : Mr. L.S.M. Hasan Fizal,
Additional Government Pleader
[for R1 & R2]
Mr. Sanjay Mohan,
For M/s. S. Ramasubramaniam
Associates [for R3]

ORDER

This Writ petition has been filed by the petitioner to quash the order passed by the 1st respondent in G.Os. (Pa) No.508 and 509 Labour and Employment (D1) Department dated 09.10.2020.

2. The learned counsel appearing for the petitioner would submit that the petitioner Union is a Trade Union registered under the Trade Unions Act, 1926 and the member of the petitioner Union namely R. Rajasekar joined service of the 3rd respondent as a Technical Assistant Cell on 29.09.2007. The 3rd respondent company is engaged in the business of providing VSAT connectivity solution and service to the customers and in the course of its business had entered into a contract with ONGC, to carry out VSAT installation, service & maintenance work at their site in Chennai. The said Rajasekar was assigned work in the above project. He completed the work



W.P. No.30209 of 2022

WEB COPY

assigned to him from 2011 to 2018 without any deficiency. The 3rd respondent did not extend any earned leave, over time wages and there was no proper accounting and remittance of Provident Fund and ESI etc., The said Rajasekar was not given any promotion, whereas his juniors were paid higher salary than him. Therefore, the Union raised an industrial dispute before the Assistant Commissioner of Labour, Chennai and demanded the 3rd respondent to extend all the benefits to the said Rajasekar. The petitioner Union made totally 7 demands. The conciliation proceedings were initiated. During the pendency, the 3rd respondent issued a transfer order to the said Rajasekar on 22.03.2019 and transferred him from Chennai office to New Delhi Office. Therefore, he made a representation before the 3rd respondent and requested not to transfer him from Chennai to Delhi. While so, without getting any prior permission or any approval before 2nd respondent Labour Commissioner, the workman concerned was terminated from service by the 3rd respondent by an order dated 22.05.2019. Therefore, the Union made a request and representation to the 3rd respondent and to set aside the order of termination. No reply was given by the 3rd respondent. The Union also filed a complaint before the 2nd respondent under Section 33(1) and 33(A) of the Industrial Disputes Act. The 3rd respondent contended that the said Rajasekar was not a



W.P. No.30209 of 2022

workman within the meaning of Section 2(s) of the Industrial Disputes Act.

Therefore, the matter was not settled and failure report was submitted to the 1st respondent. The 1st respondent, without referring the matter to the Labour Court, simply declined to refer the dispute and passed Government Orders in G.Os.(Pa) Nos.508 and 509 through orders dated 09.10.2020. The Government has no authority to decline the matter and it is the duty of the Government to verify whether any industrial dispute exists or is apprehended and cannot adjudicate the matter by exercising power under Section 10(1) of the Industrial Disputes Act. Therefore, the orders passed by the 1st respondent are liable to be quashed.

3. In support of his contention, the learned counsel appearing for the petitioner has relied upon the judgment in ***Shaw Wallaco & Co., Ltd., v. State of Tamil Nadu (by Commissioner and Secretary, Labour Department) and another reported in (1988) 1 LLN 172.***

4. The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that there was a dispute between the



W.P. No.30209 of 2022

WEB COPY

workman and the Management as the petitioner Union raised demands, for which, the 3rd respondent objected, thereby, the matter was conciliated by the 2nd respondent and no settlement was arrived at between the parties. Thereafter, the 1st respondent after perusing the records, came to a conclusion that there is no any industrial dispute exists or is apprehended, thereby refused to refer the matter for adjudication by invoking power under Section 10(1) of the Industrial Disputes Act. Since the said workman Rajasekar was removed from service for his misconduct, the same cannot be considered as retrenchment. He also received the compensation and encashed the cheque amount. Therefore, the same cannot be referred for adjudication. Therefore, the Authority / 1st respondent passed orders through G.Os.(Pa) Nos.508 and 509 dated 09.10.2020. Therefore, the orders passed by the 1st respondent is within his power under Section 10 of the Industrial Disputes Act and therefore, the present Writ petition is liable to be dismissed.

5. he learned counsel appearing for the 3rd respondent would submit that the Member of the petitioner's Union namely Rajasekar was working in the 3rd respondent's Chennai Office and he was transferred to Delhi office and due to his misconduct, he was removed from service and the same was



W.P. No.30209 of 2022

WEB COPY

challenged by the petitioner's Union and there is no any amicable settlement during the conciliation proceedings. The Government, after considering the materials that there is no industrial dispute exists or is apprehended and the workman already received the compensation amount and came to a conclusion that the matter need not to be referred for adjudication. Therefore, the 1st respondent has passed a reasoned order by invoking powers under Section 10 of the Industrial Disputes Act. Therefore, the present Writ petition is liable to be dismissed.

6. Heard both sides and perused all the materials available on record.

7. In this case, the petitioner's Union made demands as against the 3rd respondent and the same were conciliated by the 2nd respondent and since no amicable settlement was arrived at between the parties, a failure report was submitted by the 2nd respondent before the 1st respondent. The Government refused to refer the matter to the appropriate Forum for adjudication on the ground that the workman was removed from service due to retrenchment and already he had encashed the cheque issued for compensation, thereby the workman accepted the removal from service by the Management. Therefore

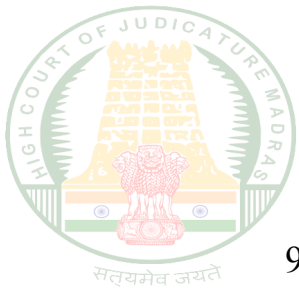


W.P. No.30209 of 2022

it is clear that the Management already paid retrenchment compensation.

Therefore, the matter need not be referred for adjudication.

8. It is well settled law that the Government, by exercising power under Section 10(1) of the Industrial Disputes Act, cannot adjudicate the matter as if having power under Section 11(A) of the Act. The question of formation of opinion by the Government under Section 10(1) of the Industrial Disputes Act, that an industrial dispute exists or is apprehended. The appropriate Government is given a discretion to decide whether or not the dispute between the employer and his employees should be referred to the Board, Court or Tribunal. Section 10(1) of the Act provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a Tribunal or Labour Court for adjudication. The condition precedent for the reference to the Industrial Tribunal or Labour Court is that the appropriate Government must be satisfied that an industrial exists or is apprehended. The appropriate Government has to consider prima facie merits of the dispute. At the same time, the Government should not purport to reach final conclusions on disputed questions of fact.



W.P. No.30209 of 2022

WEB COPY

9. At this juncture, it is relevant to refer the judgment of *Shaw Wallaco & Co., Ltd., v. State of Tamil Nadu (by Commissioner and Secretary, Labour Department) and another reported in (1988) 1 LLN 172.*

On a careful perusal of the above said judgment, it is clear that the Government would normally refer the dispute for adjudication, the Government should not act on irrelevant and extraneous considerations, the Government should act honestly and Bonafide, the Government should not embark on adjudication of the dispute, the Government should not refuse reference on the ground that domestic enquiry was fairly and properly held and punishment awarded was appropriate and also 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.

10. In the case on hand also, the Government without referring the matter for adjudication in a matter of termination of service, has gone into the merits of the case and decided that since the compensation was awarded, it



W.P. No.30209 of 2022

cannot be taken as 'termination' and it is only 'retrenchment' and already compensation paid through Cheque. therefore, the Government adjudicated the case without having such power of adjudication. Therefore, the order passed by the 1st respondent declining to refer the matter for adjudication is liable to be set aside.

11. In the result, this Writ petition is allowed and the order passed by the 1st respondent in G.Os. (Pa) No.508 and 509 Labour and Employment (D1) Department dated 09.10.2020 declining to refer the matter for adjudication is set aside and the 1st respondent is directed to refer the matter for adjudication in accordance with law. There shall be no order as to costs.

02.07.2025

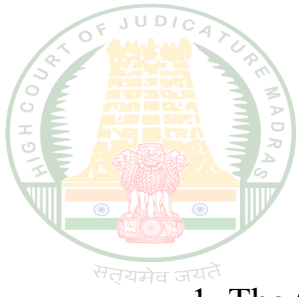
Index : Yes/No
Speaking order/non-speaking order
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P. DHANABAL, J.,

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To

9/10



W.P. No.30209 of 2022

WEB COPY

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