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W.P.No.35637 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.35637 of 2019

Workmen of Kwang Sung Brake (India) Private Limited
Represented by United Labour Federation
through its Secretary Regn.No.2657/CNI
No.149, Thambu Chetty Street
Chennai - 600 001.

... Petitioner

Vs

1.The Government of Tamil Nadu
Rep by its Principal Secretary to Government
Labour & Employment (A2) Department
Fort St.George, Chennai - 600 009.

2.The Management of Kwang Sung Brake
(India) Private Limited
No.49, Sengattu Village
Sriperumbudur Taluk
Kancheepuram District - 602 106.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with G.O.(D) No.567 dated 14.09.2017 and quash the same and direct the first respondent to refer the disputes / demands decline to refer under G.O(D) No.567 dated 14.09.2017



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expeditiously and issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case.

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For Petitioner : Mr.V.Prakash, Senior Counsel
for Ms.M.Karthikeyani

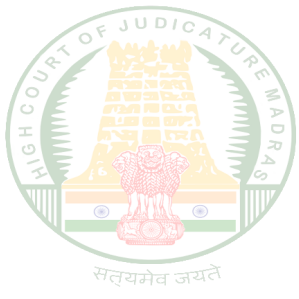
For Respondents : Ms.M.Jayanthi
Additional Government Pleader for R1
Mr.S.Muthuraman for R2

ORDER

The petitioner-Union of the second respondent has filed this writ petition for a certiorari mandamus calling for the records of the first respondent in G.O(D) No.567 dated 14.09.2017 and to quash the same and to direct the first respondent to refer the disputes/demands, which the first respondent had declined to refer.

2. The brief facts which has given rise to the above writ petition are herein below set out :

- a) The second respondent is a factory which is engaged in the business of manufacturing automobile components such as steering systems and brake systems, is located at Sengattu Village, Thiruperumbudur Taluk, Kancheepuram District, and its Union is



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the petitioner herein. The second respondent had employed 212 workers directly in its factory, of whom, 19 are treated as permanent workers. Apart from them, there are also 350 workers who are called Contract Labourers are working under the second respondent, and these contract labourers are also employed in the direct manufacturing process, as in the case of the permanent workers. Out of a total number of 562 workers, only 19 workers were considered as permanent workers.

- b) The workers had joined the petitioner-Union in the year 2015 on account of such exploitation and poor wages that they have received, the petitioner-Union had raised number of disputes and charter of demands before the Industrial Tribunal, and the same is pending in I.D.No.42 of 2017.
- c) The petitioner-Union had made certain demands before the first respondent to refer the same to Industrial Tribunal. The first respondent by G.O.(D) No.566 dated 14.09.2017 had referred only the Demand Nos.1 to 4, 7 to 9, 12, 16 and 20, of Annexure-II. However they declined to refer the demands 1 to 6 set out in Annexure-I and Demand Nos.5,6,10,11, 13 to 15, 17 to 19, 21 &



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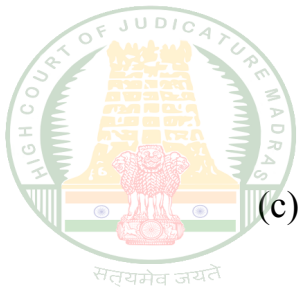
22 in Annexure-II, in G.O.(D) No.567 dated 14.09.2017.

- d) The petitioner would submit that demands in Annexure-I pertains to recognizing the petitioner-Union as sole bargaining agent. This has been declined stating that there is no provision under the Trade Union Act, 1926 for recognition. Similarly, other demands have also been turned down, stating that they do not relate to an industrial dispute.

This G.O.(D) No.567 dated 14.09.2017 has been challenged by the petitioner-Union.

3. A counter has been filed by the first respondent wherein the first respondent has sought to justify the order declining to refer Demand Nos.1 to 6 in Annexure-I by stating as follows :

- (a) The Demand No.1 is pertaining to recognition of Trade Union and the same does not fall within the ambit of Industrial Disputes. Hence, the 1st respondent rejected the same for adjudication.
- (b) Demand No.2, in view of non-existence of any agreement relating to the said demand for payment of arrears etc., the 1st respondent not considered the same for reference.



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(c) Demand No.3, the petitioner not produced any details in respect of alleged sufferance by the workmen employed. Hence, the same was not referred.

(d) Demand Nos.4,5 and 6 in view of existence of alternative remedy under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (Tamil Nadu Act 46 of 1981) the Demand Nos.4 to 6 were not recommended for adjudication.

The first respondent would further submit that sufficient reasons have been given for rejecting the demands in Annexure-II, which has been set out in the counter. Therefore, they would pray for a dismissal of the writ petition.

4. Mr.V.Prakash, learned senior counsel appearing on behalf of the writ petitioner would concede that refusal to refer the Demand No.2 in Annexure-I is correct. He would submit that as regards the Demand Nos.1, 3 to 6 in Annexure-I, the same relate to service conditions, status of the workman etc., Therefore, they would squarely fall within the provisions of the Industrial Dispute Act. He would also rely upon the judgment of this Court in *Shaw Wallace & Co., Ltd., Vs. State of Tamil Nadu* (by



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Commissioner and Secretary, Labour Department) reported in 1998 I

L.L.N. 172, where a Division Bench has set out the circumstances in which the Government may refuse to make a reference. He would contend that the impugned order does not come within any of these circumstances. Therefore, he would pray that the writ petition be allowed.

5. The counsel for the respondents on the other hand would submit that the workers in petitioner-Union are seeking permanent status, which may be granted only by the authority constituted under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

6. A perusal of the impugned order would clearly show that the first respondent has totally overlooked the fact that while making a reference, the Government is not bound to consider the merits of the dispute. The Government cannot decide the questions of law finally nor reach a final conclusion on disputed question of facts but should refer these issues to the Court. In the judgment in **Shaw Wallace case**, the Bench had observed that the Government would normally refer the dispute for adjudication and it is



only in the six circumstances set out in paragraph No.32 therein, which are set out herein below that a refusal can be made:

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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 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 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."*



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7. The perusal of the annexures to the impugned order would show that the Demand No.1 in Annexure-I, for which reference is sought for, would come within the parameters of service. The observation that the recommendation of a Trade Union cannot be considered as industrial dispute, is absolutely incorrect. With reference to Demand Nos.3 to 6 in Annexure-I, it all relates to the status of the employees which squarely falls within the provisions of the Industrial Dispute Act. Likewise, the demand in Annexure-II also deals with the same. Such being a case, the refusal on the part of the first respondent to refer the matter, is without any legal basis.

8. In view of the above, the writ petition is allowed and the order of the first respondent is set aside. The first respondent is directed to refer the matter to the Industrial Tribunal within a period of one month from the date of receipt of a copy of this order. No costs.

18.06.2025

Index : Yes / No

Neutral Citation : Yes / No

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To:

The Government of Tamil Nadu

Rep by its Principal Secretary to Government

Labour & Employment (A2) Department

Fort St.George, Chennai - 600 009.

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