



WP(MD)No.21777 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 29.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.21777 of 2022

and

WMP(MD)Nos.15937 of 2022 & 12910 and 14311 of 2023

M/s.DCW Ltd,
Sahpuram – 628 229,
Tuticorin District,
Represented by its Manager HR (Legal)

... Petitioner

Vs

1.The Government of Tamil Nadu,
represented by its Secretary to Government,
Labour Welfare and Skill
Development (B1) Department,
Fort St George,
Chennai – 600 009.

2.The Assistant Commissioner of Labour,
(Conciliation),
Sowisipuram, Tuticorin.

3.DCW Anaithu Paniyalargal Nala Sangam,
34/94A, Gandhi Street,
Arumuganeri – 628 202,
Tuticorin District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records of the



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impugned GO(D)No.328, Labour and Welfare and Skill Development (B1) Department dated 30.06.2022 issued by the 1st respondent and the consequential industrial dispute in ID No.99 of 2022 pending on the file of the Labour Court, Tirunelveli and quash the same as illegal.

For Petitioner : Mr.ME.Ilango
For Respondent : Mr.S.Vinodh,
Nos.1 and 2 Government Advocate
For Respondent : Mr.S.Balamurugan
No.3

ORDER

The management has filed this writ petition as against the government order issued by the 1st respondent in GO(D)No.328, Labour and Welfare and Skill Development (B1) Department dated 30.06.2022 and the consequential industrial dispute taken on file by the Labour Court, Tirunelveli in ID No.99 of 2022 that these proceedings are as against the provisions under the Industrial Disputes Act (in short 'ID Act').

2.The cause of action for this writ petition is that the 3rd respondent trade union has lodged a complaint before the 2nd respondent conciliation officer alleging that the petitioner management has indulged in unfair



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labour practice and prayed for necessary action by filing an application under Section 2(ra) of the ID Act and the 2nd respondent sent a failure report under Section 12(4) of the ID Act to the government. The government by considering the report of the 2nd respondent has referred the issue to the Labour Court for adjudication vide the impugned government order dated 30.06.2022 and the Labour Court has also taken the reference on file in ID No.99 of 2022 and fixed the date for hearing. Therefore, the management has filed this writ petition challenging the said government order and the proceedings in ID.No.99 of 2022 by the Labour Court.

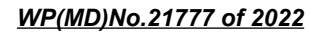
3.The learned counsel by referring to the provisions under Sections 25 T and 25 U of the ID Act submits that if there is any unfair labour practice, the complaint ought to have been made only before the government as required under Subsection (1) of Section 34 of the ID Act. The government / the competent authority to decide the unfair labour practice has to satisfy itself and has to take a decision for prosecuting the employer under Section 25 U r/w 34 of the ID Act. However in this case, the complaint has been lodged by referring to the definition clause under



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Section 2(ra) of the ID Act, it was treated as industrial dispute under Section 2(k) of the ID Act, failure report was sent to the government and the government has also passed the order, without any application of mind, by referring it to the Labour Court for adjudication. The Labour Court has also taken the dispute on file in ID No.99 of 2022. Therefore, the entire proceedings and the consequential proceedings are liable to be set aside. In support of his contention he has also relied on the decision of the Hon'ble Supreme Court in *Hindustan Lever Ltd Vs Ashok Vishnu Kate and Others* (1999 AIR (SC) 285) and decision of the Division Bench of this court in WA.No.1609 of 2018, dated 03.06.2019.

4.The learned counsel for the 3rd respondent fairly submits that the procedure adopted by the 2nd and 1st respondents by treating the complaint of the 3rd respondent, as a dispute under Section 2(k) of the ID Act and by referring the complaint to the Labour Court by government order, is not correct and therefore, the learned counsel submits that liberty may be granted to the 3rd respondent to make an application to the appropriate authority / government under Section 34 of the ID Act for prosecution for the unfair labour practice adopted by the management.



5.This court considered the rival submissions made and perused

6.The application filed by the 3rd respondent under Section 2(ra) of

7. Section 2(ra) of the ID Act is a definition clause for unfair labour

“25T. Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trader Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.



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25U. Penalty for committing unfair labour practices.—Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.]”

8.The prosecution for unfair labour practice can be made only by way of a complaint by or order under the authority of the appropriate government as specified in Sub Section (1) of Section 4 of the ID Act, which reads as follows:

“34. Cognizance of offences.—(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.”

9.The Hon'ble Supreme Court in Hindustan Lever Ltd's case referred to supra has clarified that the allegation of unfair labour practice by itself cannot be an industrial dispute. The Division Bench of this court



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in a similar issue in WA.No.1609 of 2018, dated 03.06.2019 has held as under:

“5. Having heard the learned counsel on both sides, we are of the opinion that the requirement of any finding by the competent Court or authority about the unfair labour practice as a pre-requisite for deciding the representation or application under Section 34(1) is not called for. If such an application or representation is filed before the concerned authority of the Government, he has to decide the same and decide whether to initiate the prosecution under Section 34(1) of the Act or not. The writ petition was filed before this Court only seeking a mandamus direction to the concerned Secretary to decide the same expeditiously, but in that process, it appears that certain observations have been made by the learned Single Judge, which were not called for.

6. Therefore, in our opinion, the present writ appeal deserves to be allowed and the same is allowed, and setting aside the order passed by the learned single Judge dated 10.04.2018 in W.P.No.14181 of 2017, the first respondent viz., Secretary to Government, Department of Labour and Employment, is directed to decide the said complaint or representation filed by the appellants Union on 08.03.2017 in accordance with



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Section 34(1) of the Industrial Disputes Act, as expeditiously as possible, preferably within three months from today.”

10. In view of the above discussion and decisions cited supra, this writ petition is allowed. The impugned government order and the proceedings in ID No.99 of 2022 on the file of the Labour Court are hereby quashed.

11. The 3rd respondent is at liberty to prefer a complaint before the appropriate authority / the government as required under Section 34(1) of the ID Act. It is made clear that this court has not expressed anything on the merits on the complaint of the 3rd respondent in respect of the unfair labour practice and on such complaint, the appropriate authority shall take a decision after providing opportunity to the petitioner management and shall take a decision. No costs. Consequently connected miscellaneous petitions are closed

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Internet : Yes / No

DSK

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- To
- 1.The Presiding Officer,
Labour Court,
Tirunelveli.
 - 2.The Secretary to Government,
Labour Welfare and Skill
Development (B1) Department,
Fort St George,
Chennai – 600 009.
 - 3.The Assistant Commissioner of Labour,
(Conciliation),
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B.PUGALENDHI, J.

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