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The Management vs the General Secretary

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Court : Chennai Orders

Decided On : Feb-27-2025

Judge : Honourable Mr Justice M.Dhandapani

Appeal No. : WP/33550/2013

Appellant : The Management

Respondent : The General Secretary

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

The Management, Tamil Nadu Civil Supplies Corporation Ltd., No.12, Thambusamy Salai, Kilpauk, Chennai - 600 010. ... Petitioner Vs. 1.The General Secretary, Tamil Nadu Civil Supplies Corporation Pattali Thozhil Sangam, No.29/11, Kannagi Theru, M.G.R. Nagar, Chennai - 600 078. 2.The Presiding Officer, Industrial Tribunal, Chennai - 600 104. ... Respondents Prayer: Writ Petition filed under Article 226 of the

Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the

order made in I.D.No.2 of 2009 dated 07.04.2011 on the file of the 2nd

respondent/Industrial Tribunal, Chennai and quash the same. For Petitioner : Mr.C.Selvaraj For Respondents : Not Ready Notice [R1] Tribunal [R2] ***** Page No.1 of 10

ORDER

Whether a model employer could bring about change in promotion rules without taking the workers' unions into confidence, is the core issue to be decided in this writ petition.

2. Short facts are as follows:

The petitioner Corporation is an undertaking of Government of Tamil Nadu and they issued a circular dated 15.09.2004 bearing Procs.No.AE9/62130/2000 by which new rules were incorporated regarding drawal of panel for promotion to the various post in the Corporation which is challenged by the first respondent/Tribunal before the second respondent on the sole ground that no notice u/s 9A of the Industrial Disputes Act, 1947 (in short 'the ID Act') was given. The entire transaction of the Corporation are based on the policy decision taken by the Government from time to time and as per the directions given by the Government all matters including service matters. There are 12490 employees working in the TNCSC and are covered by TNCSC Employees' Service Regulation, 1989 which is more or less on par with Government guidelines from time to time. However, the employees working in Modern Rice Mills, below the category of supervisory staff Page No.2 of 10

totalling about 1300 are covered by certified standing orders under the

Industrial Employment Standing Orders Act, 1946. Since the guidelines

regarding the drawal of panel as communicated in the Procs.No.AE9/62130/2000 dated 15.09.2004 is based on the Government directions and it was adopted and made applicable to the TNCSC by way of proceedings, the objections raised by the Union are not acceptable and baseless. Further, the said proceedings does not attract Section 9A of the ID Act and it will not violate the service conditions as contended by the Union. Since the guidelines were issued only pursuant to the resolution of the Board resolving to adopt the new guidelines, the contention of the first respondent is not sustainable. Further, the guidelines issued in the impugned proceedings is only updating the existing guidelines regarding drawal of panel on par with Government guidelines, it cannot be held to be a change in the conditions of service and as such it will not fall within the ambit of Section 9A of the ID Act. However, the second respondent, without considering the factual and legal positions and the rules and regulations of the Corporation, set aside the said proceedings dated 15.09.2004, which is nothing but arbitrary and capricious. Challenging the same, the petitioner has filed the present writ petition before this Court. Page No.3 of 10

3. Learned counsel for the petitioner contended that the Tribunal

failed to consider that Section 9A of the ID Act is not applicable to the case on hand since there is no material alternation or change in the service conditions. He drew the attention of this Court to the various exhibits marked on the side of the petitioner to drive home his point that due procedure was followed before the impugned proceedings was issued. He further submitted that the petitioner is owned by the State Government and right from recruitment till pension, every aspects of governance is under the control of State Government. Therefore, the present proceedings was also issued only with the blessings of the State

Government by considering every aspect of the likely impact that would be caused to the employers and therefore, there is absolutely no illegality or irregularity in the said proceedings. Hence, he submitted that the second respondent/Tribunal was in great error in setting aside the same, which deserves to be interfered with by this Court by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

4. Though this writ petition has been filed in the year 2013, however, the petitioner has not taken any effective to serve notice on the Page No.4 of 10

1st respondent. Considering the pendency of this writ petition, this Court is inclined to dispose of this writ petition based on the materials available on record.

5. Heard the learned counsel for the petitioner and also perused the materials available on record.

6. Section 9A of the ID Act is a pivotal Section to be discussed in

this writ petition. The said Section reads as follows: 9A. Notice of change. - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,- (a)without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or (b)within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change- (a)where the change is effected in pursuance of any [settlement or award] or (b)where the workmen likely to be affected by the change are persons to whom the Page No.5 of 10

Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway

Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

7. A reading of Section 9A would show that whenever there is any change in the condition of service, the workmen should be given 21 days notice.

8. In this case, the petitioner themselves have admitted before the

Tribunal that 21 days notice as mandated u/s 9A of the ID Act, has not been issued to any of the unions, including the 1st respondent. This admission clearly shows that Section 9A of the ID Act was not followed in its letter and spirit, which is fatal to the case putforth by the petitioner.

9. M.W.1, who was working as the Deputy Manager of the Tamil Nadu Civil Supplies Corporation, Head Office, Chennai, in his cross Page No.6 of 10

examination has admitted that it is true that no notice under Section 9A of the ID Act was given to any of the unions. He has also categorically admitted that the proposed change would certainly affect employees with their future promotion.

10. The crux of the proposed amendment is that if an employee faced any charged within the past five years from the date of consideration for promotion, he would not be promoted till he cleared his name.

11. The proposed change would become a weapon at the hands of

the authorities and they could easily upset the promotional chances of any person by simply framing a charge. Till the employee proves his innocence, which may take a few years, he has to remain in the same post, while his juniors may get promoted. By the time an employee comes clean, he has to again challenge the promotion of his juniors which would upset the promotions given earlier.

12. A welfare State ought not to have issued such a proceeding.

Therefore, I do not have any hesitation to reject the arguments advanced Page No.7 of 10 by the learned counsel for petitioner and sustain the award passed by the Tribunal.

13. In the result, the Writ Petition is dismissed. There will be no

order as to costs.

27.02.2025 Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No sp Page No.8 of 10 To The Presiding Officer, Industrial Tribunal, Chennai - 600 104. Page No.9 of 10

M.DHANDAPANI, J.

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