

(2004) 01 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No's. 7844 and 7845 of 1999

Dhanasekaran K. and Another

APPELLANT

Vs

Bobba Aviation Service (Private) Ltd., General Sales Agent
Lufthansa Cargo Airlines and Others

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2004) 3 LLJ 177

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Gowardhan, for the Appellant; A.J. Jawad and K. Mahendran, for the Respondent

Judgement

P.D. Dinakaran, J.—Heard.

2. The petitioners, who were temporary employees in the first respondent/management, raised an industrial dispute against the first respondent,

with regard to their non-employment from December 15, 1997. The fifth respondent, by proceedings even, dated August 5, 1998, u/s 12(4) of the

Industrial Disputes Act (for brevity the Act) of course after calling for the remark of the management and considering their comments submitted a

failure report and the same was forwarded to the fourth respondent, who by independent proceedings even, dated December 17, 1999, refused to

refer the matter for adjudication holding that:

(i) the petitioners have been reportedly retrenched from service as the management had no work to offer them;

(ii) there was no violation of the provisions of the Act; and

(iii) the management was willing to give compensation.

Hence the petitioners have preferred these writ petitions for issue of a writ of mandamus to direct the Government to refer the dispute relating to

their non-employment with effect from December 15, 1997 to the Industrial Tribunal, Chennai for adjudication.

3. It is no doubt true that before passing a failure report u/s 12(4) of the Act, the fifth respondent sought for comments of the first respondent

management and also considered the same. But, however, the fourth respondent acting on the basis of the failure report submitted by the fifth

respondent came to the conclusion that:

(i) the petitioners have been reportedly retrenched from service as the management had no work to offer them;

(ii) there was no violation of the provisions of the Act; and

(iii) the management was willing to give compensation, merely on the ground that the first respondent/management was willing to give

compensation.

4. It is trite law that it is not open to refuse to refer the matter for adjudication by eschewing the powers of the authorities conferred under the Act

for such adjudication, vide *Cheran Transport Employees' Union Vs. Government of Tamil Nadu and Another*, .

5. A cursory reading of the proceedings even, dated February 17, 1999, makes it clear that the said proceedings were passed by the fourth

respondent without going into the merits of the dispute, which in my considered opinion, is impermissible in law. Therefore, satisfied that the refusal

to refer the dispute for adjudication by the Government is per se illegal, I hereby direct the fourth respondent to refer the matter for adjudication

within sixty days from the date of receipt of copy of this order in order to avoid any further delay in rendering justice.

6. These writ petitions are ordered accordingly. No costs.