
(2012) 02 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No. 3294 of 2010 and M.P. No's. 1 and 2 of 2010

NLC Workers' Progressive Union

APPELLANT

Vs

Chairman and Managing Director, Neyveli Lignite Corporation
Limited, Cuddalore District and Another

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2012) 3 LLJ 756

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : S.S. Ravi, for the Appellant; N.A.K. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Justice Chitra Venkataraman

1. The petitioner union herein seeks writ of certiorari to challenge the circular dated August 4, 2009 issued by the second respondent. The

respondents herein is a Public Sector Undertaking wholly owned by the Government of India, an instrumentality of the State as defined in Article

12 of the Constitution of India. The petitioner's contention herein is that in discharge of the legal obligation to provide medical benefits to its

employees, the Neyveli Lignite Corporation has framed a set of Rules called Neyveli Lignite Corporation Ltd. (Medical Benefit Rules). The said

Rules entitle all classes of employees of the Corporation to medical benefits. The said Rules in clauses 2.4 and 4.1 define ""Family"" and ""Criteria of

Family Members to be a dependant"" as under:

2.4 "Family" means an employee's spouse, his or her legitimate children and step children, and legally adopted children wholly dependant on him

and his/her dependant parents (includes adoptive parents also as the case may be

4.1 "Son and Daughter"

4.1.1 All the children, step children and legally adopted children of employee

4.1.2 In case of Hindu employee the children through first wife

4.1.3 Children born in case of failure of family planning sterilization or recanalisation operation of employee/ spouse after withdrawing the benefits

extended as per the conditions governing sanction of family planning increment.

4.1.4 In case of sons ages 28 years and above, they should be unemployed and unmarried. In case of unmarried daughters, she should be

unemployed. Married/employed sons and daughters cannot be considered as wholly dependant on the employee.

2. The grievance of the petitioner is that by reason of the circular dated August 4, 2009, there has been a radical modification to the definition of

"family" by reducing the age of the children eligible for the medical benefit to 25 years or below and restricting the member of children to two.

Quite apart, the adopted children of the employee were not included in the revised circular. In fairness to the claim, the petitioner submits that such

modification without notice to the petitioner is illegal and violative of Section 9A of the Industrial Disputes Act, 1947. Taking the view that such

medical benefit is a condition of service and the benefit had been given as a customary concession, the restriction of benefits through circular is

arbitrary and illegal. Hence, the same has to be rejected.

3. Learned Counsel appearing for the petitioner drew the attention of this Court to Section 9A of the Industrial Disputes Act, 1947 and submitted

that the respondent ought not to have brought change in the conditions of service without giving notice to the workmen as regards the nature of

effect by such change. In the absence of such notice in compliance of Section 9A, the original scheme has to be restored.

4. Per contra, Learned Counsel appearing for the Corporation submitted that medical benefit given to the petitioner has nothing to do with the

conditions of service. It is a policy decision taken to extend the benefits to the members of the family. In the circumstances, when the subject does

not fall in under any of the specified service conditions under IV Schedule of the Industrial Disputes Act, the question of granting relief to the

petitioner does not arise. In the event of the petitioner raising industrial dispute, it is open to the petitioner to go before the appropriate forum and

therefore, petition under Article 226 of the Constitution of India is not a legally sustainable one. In this regard, Learned Counsel placed reliance on

the decision of this Court in the case of Steel Plant Employees Union, Salem, Salem Irumbalai Anna Thozhir Sangam, Salem Steel National

Employees' Union, Salem Steel Ministerial Staff Association, Salem Steel Plant Pattali Thozhil Sangam, Salem Steel SC/ST Employees Integrity

Association, Salem Steel SC/ST Employees' Welfare and Officers Association and SC/ST Employees Trade Union Vs. Steel Authority of India

Limited, The Executive Director, Salem Steel Plant, Salem and The Chief Town Administrator, (Town Administration Department), Salem Steel

Plant, Salem, .

5. Per contra, in respect of the contention raised, Learned Counsel for the petitioner placed reliance on the decision of the Apex Court in the case

of The Management of Indian Oil Corporation Ltd. Vs. Its Workmen, that the medical benefits given is part of the conditions of service. Hence, it

has to be treated as implied condition. Accordingly, prayed for relief.

6. Heard Learned Counsel on either side and perused the materials available on record.

7. Before going into the rival contentions, it is necessary to have a look at Section 9A and Schedule IV. The relevant portion of Section 9A reads

as under:

9-A. 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 effect in pursuance of any (settlement or award) or

(b) where the workmen likely to be affected by the change are persons to whom the 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.

8. Schedule 4 of the Industrial Disputes Act reads as under:

The Fourth Schedule

(See Section 9A)

Conditions of Service for Change of Which Notice is to be Given

1. Wages, including the period and mode of payment;
 2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
 3. Compensatory and other allowances;
 4. Hours of work and rest intervals;
 5. Leave with wages and holidays;
 6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
 7. Classification by grades;
 8. Withdrawal of any customary concession or privilege or change in usage;
 9. Introduction of new rules of discipline, or alteration of existing rules, except insofar as they are provided in standing orders;
 10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;
 11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control).
9. A perusal of the above Section with the above Schedule shows that wherever changes in conditions of service applicable to workman as enunciated under the Schedule, is brought about or proposed by the employer, it being the change affecting the conditions of service, notice has to

be given mandatorily u/s 9A of the Industrial Disputes Act, 1947. As far as IV Schedule is concerned, a perusal of the Schedule shows the heads

under which a claim could be considered as a condition of service for change of which notice has to be given.

10. Learned Counsel for the petitioner placed reliance on Sl. No. 8, which relates to withdrawal of any customary concession or privilege or

change in usage. Thus, the privilege granted to the petitioner being relating to the medical benefits and considering the circumstances under which

the workers have to work and ill effects of the same, the management rightly drew the scheme to cover the family members and there is no reason

assigned for reducing the age of 28 years to 25 years, apart from excluding the adopted children.

11. On the question as to whether the benefit given is by way of customary concession or privilege or change so as to be part of the service

conditions, which requires notice u/s 9A of the Industrial Disputes Act, absolutely it is a matter of proof that the petitioner may have to discharge.

As rightly pointed out by the Learned Counsel for the respondents, such matters being purely one of factual aspect, the same has to be proved in

the manner known to law and the proper course for the petitioner is to go by the provisions of the Industrial Disputes Act to raise a dispute therein.

The writ petition being one of summary jurisdiction under Article 226 of the Constitution, this Court cannot go into the question of granting medical

benefit notified in the circular as customary concession or privilege or to become part of the conditions of service. As far as this aspect is

concerned, the decision of this Court Steel Plant Employees Union, Salem represented by its General Secretary, Salem and Others v. Steel

Authority of India Limited, represented by its Chairman, New Delhi and Others (supra) has to be seen.

12. The said case relates to the guidelines given by the Steel Authority of India for allotment of quarters to various categories of employees. About

40% of the employees in Salem Steel Plant alone had been allotted quarters. The allotment of quarters was brought in as part of the memorandum

of settlement dated August 1, 2011, signed between the Management and the Union. By Circular dated December 28, 2001, the Chief Town

Administration, Salem Steel Plant, put forth a Scheme called Sail Scheme for Leasing of Houses to Employees, 2001. The Scheme enabled the

employees/ex employees to acquire company's houses/flats on long-term basis. It is stated that as per the Scheme, even employees of Public

Sector Undertakings, Nationalised Banks, Insurance Companies and educational institutions, having their own establishment in Salem Steel

Township, were covered by this Scheme. Contending that the policy of allotment of quarters to the employees of the; Salem Steel Plant is a part of

the service conditions and hence protected u/s 9A of the Industrial Disputes Act, the High Court was moved through a writ petition. In considering

the challenge made, this Court considered the decision in W.A. No. 218 of 1992 dated July 28, 1998, wherein, the circular of 1981, giving the

guidelines for allotment of quarters to various categories of employees, was considered. this Court held that the; guidelines of the company in the

form of circular, for allotment of quarters to various categories of employees, is a matter to be left to the discretion of the employer and the circular

was framed by the company for its own administrative purpose. Referring to the said decision, this Court pointed out that the house allotment,

being non-statutory in character, working priorities should be left to the discretion of the employer and no interference; should be made to the

scheme devised by the employer. Pointing out to Clause 8 which enabled the persons working in public sector undertakings, nationalised banks,

Insurance Companies and educational institutions having their establishment in Salem Steel Plant Township, alone as eligible, it was held that the

guidelines of 2001 could not be characterised as unfair or unreasonable. Thus, in rejecting the prayer, this Court pointed out to the decision

BALCO Employees Union (Regd.) Vs. Union of India and Others, and Punjab Communications Ltd. Vs. Union of India and Others, and held that

a change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury principle of reasonableness. Holding that the

choice of the policy is a matter for the decision-maker to make and not for the Court, this Court held that the scope of interference under Article

226 being very limited, the Court should be very circumspect in investigating into a policy decision and it is not for the Court to consider the

relative merits of the policy to hold that a wiser policy or a better one could be evolved; that in the absence of any perversity or irrationality, there

could be no interference in such policy matters.

13. As rightly pointed out by the Learned Counsel for the respondents, if the petitioner contends that such a policy modification brought about a change or interfered with the conditions of service, it is always open to the petitioner to work out their remedy under the Industrial Disputes Act. A reading of the said proceedings under challenge before this Court shows that the benefit Rules are Medical Benefit Rules for the family. It is not shown that the same are part of the conditions of service to invoke Section 9A of the Industrial Disputes Act to accept the contention that the working conditions necessarily have to be taken note of. In the absence of any material to substantiate the contention that the extension of such legal benefit to the family members is also part of the conditions of service to fall under any of the enumeration in Serial Numbers in Schedule IV, I do not find any justification to accept the plea of the petitioner to quash the circular issued by the respondents herein. In the circumstances, I reject the writ petition. However, it is always open to the petitioner to work out their remedy in the manner known to law and certainly not under Article 226 of the Constitution of India. The writ petition stands dismissed with the above observation. No costs. Consequently connected MPs closed.