

(2004) 09 MAD CK 0163

In the Madras High Court

Case No : Writ Petition No. 15730 of 1997

Spic Employees Union

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Citation : (2005) 2 LLJ 279

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : P.V.S. Giridhar, for the Appellant; R. Chandrasekaran and Karthick, for T.S. Gopalan and Co., for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The petitioner has tiled the above writ petition seeking to issue a writ of certiorarified mandamus, to call for the records relating to the order in G.O. (d) No. 729, Labour and Employment Department, dated August 8, 1996, passed by the first respondent as confirmed by order No. 39888/B1/96-6, June 23, 1997, passed by the second respondent, quash the same and to direct the first respondent to refer the matter for adjudication under the provisions of the Industrial Disputes Act.

2. The case of the petitioner in brief is as follows:

The petitioner is a registered trade union to protect the interests of the employees of SPIC, the second respondent herein and all the employees of SPIC, other than officers are members of the petitioner-union; that in the present pattern of transfers, there is wide scope for abusing the power of transfer on the part of the management; that the employees are often transferred from fertilizer division to SPIC maintenance organisation at Chennai, Baroda and Mumbai in the guise of deputation where the service conditions differ vastly; that though the management agreed to have a suitable transfer policy, to check the mala fide and capricious transfers, no proper action had been taken in that regard. Despite

the settlement, dated May 26, 1983, the management did not evolve a suitable policy. Therefore, strike notice was issued on November 23, 1995. Despite the conciliation efforts, the "management remain adamant and so, the Deputy Commissioner of Labour submitted the failure report on April 18, 1996. However, the first respondent by order dated June 18, 1996 declined to refer the said dispute for adjudication and hence, the petitioner has come forward with the above writ petition with a prayer stated supra.

3. Heard both.

4. In consideration of the facts pleaded, having regard to the materials available on record and upon hearing learned counsel for the petitioner and the respondents as well, this Court is of the considered view that the order of the first respondent had been made in a mechanical manner without offering adequate reasons; that the first respondent also failed to note that the issue of transfer policy has been a long standing demand of the workmen and the management by settlement, dated May 26, 1983, agreeing to evolve a transfer policy did not do the same despite the union's strike notice and conciliation proceedings and the management is very adamant in not framing a, suitable transfer policy which is quite necessary for the welfare and discipline among the employees and hence, it is only desirable to allow the writ petition as prayed for and hence the following order.

5. More over, it is the well settled law that the Government by refusing to refer the case such as that of the petitioner cannot be the deciding authority to the fate of the case nor has it the right to deny the opportunity for the petitioner to be heard and therefore whenever the failure reports are sent by the conciliation officers, the only option left with the first respondent Government is to refer the same which the first respondent has failed to do. It is the Labour Court which is the competent authority to go into the facts and circumstances of the case and decide the same on merits and in accordance with law with due opportunity for parties to be heard and therefore, the order impugned, passed by the first respondent refusing to refer the Industrial Disputes to the Labour Court is erroneous and becomes liable to be quashed and the same is ordered accordingly.

6. In result

(i) the above writ petition succeeds and the same is allowed as prayed for.

(ii) the order, dated August 8, 1996, passed by the first respondent in G.O. (d) No. 729, confirming the order of the second respondent in its Letter No. 39888/B1/96-6, dated June 23, 1997, is hereby quashed.

7. No costs.