

In the High Court of Judicature at Madras

Dated: 31/10/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.11631 of 2003

and

WPMP.No.14645 & WVMP.No.1233 of 2003

The Tamil Nadu Co.op. Milk Producers'
Federation Ltd., Staff Association
rep. by its General Secretary
S. Deivanayagam. .. Petitioner

-Vs-

The Managing Director
The Tamil Nadu Co.op. Milk
Producers' Federation Ltd.,
"Aavin Illam"
Chennai 600 051. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of writ of certiorari as stated therein.

For petitioner : Mr. K.S. Viswanathan

For respondent : Mr. N.R. Chandran
Advocate General
for Mr. P. Narayanamoorthy

:ORDER

By consent of both parties, writ petition itself is taken up
for disposal.

2. Aggrieved by the order of the respondent dated 05.04.2003,
revising Five days week schedule as Six days week schedule with Second
Saturday and all Sundays in the month as holidays and with daily working hours
from 9.45 a.m. to 5.00 p.m. with half-an-hour lunch break in respect of the
employees working in all the Administrative offices, the Tamil Nadu
Co-operative Milk Producers' Federation Limited Staff Association, has filed
the above writ petition to quash the same on various grounds.

3. The case of the petitioner Association is briefly stated
hereunder:

The petitioner Association is a registered Association,

bearing Registration No.779/CPT/85, registered under the Trade Union Act. The respondent - Federation was originally known as "Tamil Nadu Dairy Development Corporation" and thereafter, reconstituted as "Tamil Nadu Co-operative Milk Producers' Federation" with effect from 01.02.1981 and it is registered as Co-operative Society formed for the purpose of procurement and supply of milk and milk products through out the State of Tamil Nadu. The petitioner Association consists of various members, including Ministerial staff from the cadre of Office Assistants upto the level of Deputy Managers. Since its formation in the year 19 81, the Federation has been following the foot steps of the State Government as regards pay structure, working hours etc., while introducing Five days a week system in 1985, the petitioner Association and other staff Unions were consulted. In respect of marketing Zonal offices, Control Room and Customer service, Six days working system has been followed. This system has been in vogue for the last 18 years. While so, all of a sudden, by the impugned order dated 05.04.2003, the respondent has introduced Six days a week schedule, without any notice whatsoever to the employees of the Federation. The respondent also announced by the said order that it will come into force with effect from 07.04.2003. By the present order, the working hours per week have been increased from 38 hours and 45 minutes to 43 hours and 3 0 minutes in a week, thus increasing 4 hours and 45 minutes in a week, and second Saturday of every month has been declared as a holiday. All other Saturdays have been made as working days. However, casual leave has not been increased correspondingly. The additional implication regarding consumption of water, electricity and fuel and other operations costs have not been taken into account while passing the impugned order. The present order is violative of Section 9-A of the Industrial Disputes Act (in short "the I.D. Act"). No notice in the prescribed manner of the nature of the change proposed to be effected was served on the petitioner. The impugned order fail to consider the difficulties of the employees. The respondent - Federation does not fall within the ambit of definition of Public Utility Service as mentioned in Section 2 (n) of the I.D. A ct, since it involves in commercial production, marketing, distribution, supply of milk and milk products and competing with the private Dairies involved in the same business.

4. The Managing Director of Tamil Nadu Co-operative Milk Producers' Federation Ltd., has filed a counter affidavit, wherein it is stated that the respondent is not amenable to writ jurisdiction, hence the writ petition is liable to be dismissed. The Tamil Nadu Co. operative Milk Producers' Federation was formed under the Tamil Nadu Co. operative Societies Act with effect from 01.02.1981. Prior to the formation of the respondent - Federation, the commercial activities now being carried on by the respondent was carried on by the Tamil Nadu Dairy Development Corporation. The Service Rules existing then with regard to the service conditions has specifically stipulated that the Ministerial staff's discharging administrative functions are governed by the Service Rules of the Tamil Nadu Dairy Development Corporation. Administrative instructions were also issued that the service conditions laid down in the Service Rules would be applicable only to the Ministerial employees of the respondent - Federation. Clause 3 of the Service Rules specifically stipulate that the Service Rules shall not apply where standing orders framed under Industrial Employment (Standing Orders) Act govern specific conditions of service of workman. The employees working in

the administrative sections are being governed by the Service Rules. Therefore, the petitioners being Ministerial and Supervisory cadre employees, the Factories Act and the Tamil Nadu Shop and Establishment Act are not applicable to them, in view of the Division Bench decision in the case of Justine L vs. The Registrar of Co-operative Societies, Chennai 10 reported in 2002 (4) C.T.C. 385. Even otherwise, remedy lies by way of dispute before the Conciliation Officer.

5. The members of the petitioner Association being employees of the respondent - Federation, are governed by the Service Rules and administrative instructions issued from time to time. Therefore, the petitioner Association is estopped from invoking Section 9-A of the I.D. Act, which is in-applicable in so far as the members of the petitioner Association are concerned. On 21.06.1989, the working days from Five days a week was implemented and thereafter Six days a week was effected to Five days with effect from 19.03.1990, after necessary resolution of the Board. Now, an emergent need was felt in the face of stiff competition from private dairies to increase the office productivity with the purpose of increasing the over all performance of the Federation. Hence, a resolution was passed by the Special Officer to suitably implement the working days from Five days to Six days a week with the office timings of 9.45 a.m. to 5.00 p.m. In respect of administrative / Ministerial employees. Introduction of working days had been effected after necessary resolution by the Board / Special Officer. In accordance with Rule 17 of the Federation Service Rules, the order has been issued to give effect to the same for providing Six days a week. The said Rule does not per-se require issuance of notice. The Rule speaks of notification alone, which has been duly complied with.

6. The Federation is a Public Utility Service, engaged in the process of procuring, pasteurizing and distribution of milk and milk products to the consuming public of towns and cities and primarily in the City of Chennai. The implementation of Six days working from Five days effected in 19.03.1990 was only a relaxation of the conditions of service and the above said relaxation has been cancelled by the respondent - Federation by order dated 05.04.2003. This does not require precedence of a notice much less a notice under Section 9-A of the I.D. Act, as the service conditions stipulated in Rule 17 has not been changed. Further, the membership has included a number of employees who have since retired. Similarly, the names of several Assistant Managers / Superintendents numbering 67 have been shown as members of the Association out of 386 members. There are about 2994 employees in the respondent - Federation. Service Rule 16 enable the Board to prescribe working hours for office of administrative staff from time to time. The respondent - Federation is a Public Utility Service and recommendation of Six days week system is necessary for increasing the over all performance and productivity in the face of stiff competition from private dairies.

7. In the light of the above pleadings, I have heard Mr. K.S. Viswanathan, learned counsel for the petitioner and Mr. N.R. Chandran, learned Advocate General for the respondent.

8. The main ground of attack with regard to impugned order of the respondent dated 05.04.2003, switching over to Six days week with

modification in the working hours, is violative of Section 9-A of the I. D. Act, since prior notice was not issued to the petitioner Association.

9. I have already referred to the fact that the Tamil Nadu Co. operative Milk Producers' Federation is formed and registered under the Tamil Nadu Co.operative Societies Act with effect from 01.02.1981. Clause 3 of the Service Rules of the respondent specifically stipulate that the Service Rules shall not apply where Standing Orders framed under Industrial Employment (Standing Orders) Act govern specific conditions of service of workman. It is the claim of the respondent that the employees working in the administrative sections are being governed by the Service Rules. It is also the claim of the respondent that the members of the petitioner Association are in the cadre of Superintendents and Assistant Managers, which are of Supervisory and Managerial in nature and shown as Junior Management and Middle Management cadre under the Service Rules, the petitioner cannot invoke Section 9 -A of the I.D. Act in respect of those categories of employees. In this regard, it is relevant to refer the petitioner staff Association members list, which find place at page 2 to 22 of the typed of papers filed by the petitioner. The petitioner Association consists of Junior Assistants, Telephone Operators, Milk Inspectors, Milk Recorder Grade III, Checking Assistants, Typists, Steno Typists, Assistants, Superintendents, Milk Marketing Officers, Field Officers, Assistant Managers, Office Assistants etc.,

10. It is not the claim of the petitioners that all the above referred members are workmen, entitled to invoke Section 9-A of the I.D. Act. It is also not disputed that the respondent - Federation has separate Service Rules. Rule 17 speaks about Holidays, which says that "every employee shall ordinarily have a weekly holiday and such other holidays as prescribed and notified by the Corporation." By the administrative instructions of the erstwhile TNDDC dated 19.03.1980, it was notified to all the persons concerned that the Corporation Leave Rules in Rule 18 to 25 of the Corporation Service Rules will apply only to the administrative and managerial cadre of staff to whom the Corporation Services Rules will apply and it will not apply to those workmen, who are governed by the Factories Act, who come under the Industrial Establishment (Standing Orders) Act, as they are governed by the leave provisions as per the Factories Act, Employees State Insurance Act etc., By proceedings dated 12.06.1985, based on the holidays / working days being followed by the State Government, the Board in its meeting held on 05.06.1985 has passed a resolution to the effect that the change in weekly schedule and timings will be applicable only to the Head Office (Aavin Illam), Madhavaram Milk Colony. The said proceedings further shows that in pursuance of the Board's resolution dated 12.06.1985, the Head Office (Aavin Illam) will function Five days in a week, i.e., from Monday to Friday with Saturdays and Sundays as Holidays with half-an-hour lunch break. It was clarified that the other Unit Offices will however function as usual for Six days in a week. By Circular dated 21.06.1989, in order to bring uniform days of working, the respondent Board instructed that all the Unit Offices and Head Office of the Federation and District Unions will have Six days week as stipulated in G.O.Ms.No.342 / P&AR (Pers-A) Department dated 15.06.1989 with effect from 01.07.1989 with holidays on II Saturdays and Sundays. By Circular dated 13.03.1990, based on the resolution passed by the Board dated 01.03.1990, it

was ordered, all Administrative Offices in TCMPF Ltd., will function with a Five days week schedule with daily working hours from 9.30 a.m. to 5.30 p.m. with half-an-hour lunch break with Saturdays and Sundays as holidays. It was also clarified that Five days a week system will not be applicable to Zonal Offices, Dairies, Plants, A.I. Centers, Chilling Centers etc., and they will function as usual with the existing timings. The said order came into force with effect from 19.03.1990. By the order impugned dated 05.04.2003, taking note of the fact that the respondent - Federation is a Public Utility Service engaged in the activities of procurement, transportation, processing, packing, distribution and sale of milk and milk products to the public and the customers and to increase the productivity and keeping in mind the need to improve the over all performance of the Federation and also taking into consideration the quantum of holidays / the leave entitlement being enjoyed by the employees in a year, the Federation felt it necessary to change the existing pattern of working days and working hours in respect of employees working in the Administrative Offices, in the interest of the Organisation.

11. The above details show that first of all the members of the petitioner Association, including 67 Officers in the cadre of Superintendents and Assistant Managers, who are of the Junior Management and Middle Management cadre Officers as mentioned in the Service Rules. As rightly argued by the learned Advocate General, they being the managerial cadre, invocation of Section 9-A of the I.D. Act does not arise. If the members of the petitioner Association are below the cadre of Superintendents, they may be justified in alleging that nonissuance of notice is in violation of Section 9-A of the I.D. Act. Both the petitioner Association as well as the respondent Federation furnished the list of members, which admittedly show not only the lower cadre persons like Office Assistants, but also other Officers in the managerial cadre are members, hence the petitioner cannot raise a contention that the impugned order is in violation of Section 9-A of the I. D. Act.

12. The terms and conditions of the appointment order clearly show that the appointment is governed by Service Rules and Regulations. The respondent - Federation has produced copy of the appointment order in respect of several persons, which show that there is a specific Clause mentioning that "Appointment in the Federation will be governed by the Federation Service Rules and Instruction and Regulations of the Federation issued thereunder from time to time. " I have already referred to Rule 17 of the Service Rules of the respondent - Federation. In accordance with Rule 17 of the Federation's Service Rules, the impugned order has been issued to give effect to the said Rule for providing Six days a week. As rightly contended on the side of the respondent, the above said Rule does not per-se require issuance of notice. The Rule speaks of notification alone, which has been duly complied with.

13. The learned Advocate General appearing for the respondent has also produced a copy of the notification issued by the Government of Tamil Nadu, showing that the Milk and Milk Products Industry have been declared as Public Utility Service for the purpose of the Industrial Disputes Act, 1947. G.O.Rt.No.487 Labour and Employment Department dated 16.07.2003, show that the Milk and Milk Products Industry continue to be a Public Utility Service on the

date of the impugned order as well as as on date.

14. The learned counsel for the petitioner has very much relied on the Division Bench decision of this Court in the case of Voltas Volkart Employees Union etc., vs. Voltas Limited etc., reported in 2000 W.L.R. 569. No doubt, in that decision, after referring the Tamil Nadu Industrial Establishments (National Festival Holidays) Act, 1956, the Division Bench after holding that in the absence of notice or discussion with the employees concerned prior to alter the number of holidays is violation of Section 9-A, 11 and 11-A of the I.D. Act. The said judgment is distinguishable and not to be applied to the case on hand, since in the case before the Division Bench, the circumstances relating to the execution of Memorandum of Understanding dated 28.12.1984 and the admitted position of the process of declaration of the holidays prevalent for considerable length of past period and considered in the light of the protective clause under Section 11 of the Tamil Nadu Act, are sufficient to hold that the said long practice had assumed the character of a regular condition of service. In that factual details and of the fact that the employees Union are represented by workmen and also taking note of the fact that the Tamil Nadu Industrial Establishments (National Festival Holidays) Act are applicable, arrived at a conclusion that non-compliance of Section 9-A of the I.D. Act infringes the statutory provision and ultimately accepted the case of the Union. Here, I have already referred to the fact that even according to the petitioner Association, it consists of not only the persons like Office Assistants and below the cadre of Superintendents, but also Officers in the cadre Junior Management and Middle Management and the staff of the Federation are governed by Federation's Service Rules as well as the Milk and Milk Products Industry is declared as a Public Utility Service by the Government of Tamil Nadu by proper notification, I am satisfied that the dictum laid down in the Division Bench is not applicable to the case on hand.

15. Further, in the counter affidavit, the respondent has explained that they merely implemented the existing Rule, i.e., Rule 17 of the Federation's Service Rules and therefore consideration of the Staff Association is not mandatory. The Six days working system has already been made applicable to about 2200 employees working in the marketing / zonal offices / control room / customer services and other areas. The petitioner Association is aware of the provision available in the Service Rules with regard to the number of working days. Further, the Five days working system for a handful of employees, namely around 386 members for the petitioner Association covering 12.89% of the total number of employees of the Federation is purely a relaxation extended. It is also relevant to note that number of working days and hours have being changed in the past years, i.e., in 1985, 1989 and 1990, no one challenged the same.

16. In the light of what is stated above, more particularly in view of the factual details, I do not find any merit in the claim made by the petitioner Association. Consequently, the writ petition fails and the same is dismissed. No costs.

In view of the dismissal of the main writ petition, connected WPMP., and WVMP., are also dismissed.

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Internet:Yes

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The Managing Director
The Tamil Nadu Co.op. Milk
Producers' Federation Ltd.,
"Aavin Illam"
Chennai 600 051.

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