

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.22446 of 2004

and

WPMP No.27167 of 2004

Axles India Workers' Union

(Regd.No.CPT/952)

3, Kambar Street

Gandhi Nagar

Sreeperumbudur,

Trivellore District .. Petitioner

-Vs-

1. The Government of Tamil Nadu

rep. by its Secretary to

Government

Labour & Employment Department

Fort St. George, Chennai 600 009.

2. The Management of Axles India

Limited

Singaperumal Koil Road

Sreeperumbudur 601 105

Trivellore District .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus as stated therein.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.P.Chandrasekaran

Additional Government Pleader

for R1

Mr.N.balasubramanian for R2

:ORDER

This order shall govern both the W.P. and the W.P.M.P. as stated above.

2. Affidavit in support of the petition and the counter affidavit of the second respondent are perused. Heard the learned Counsel for the petitioner, the learned Additional Government Pleader for the first respondent and the learned Counsel for the second respondent.



3. The petitioner Union, consisting of its members, who were part of the workers under the second respondent management, has brought forth this writ application seeking a writ of mandamus as follows:

"Writ of mandamus directing the first respondent herein to refer the industrial dispute raised by it regarding alteration of existing service condition and consequently directing the second respondent management from implementing its notice dated 21.7.2004 insofar as the members of the petitioner Union are concerned until an Award is passed by the Industrial Tribunal, Tamil Nadu at Chennai."

4. What are all contended by the learned Counsel for the petitioner is that originally, there was a settlement entered into by the management, neglecting the majority and the recognised Union namely the petitioner Union, and thus, complaining of the unfair labour practice, it was taken by the petitioner before the Industrial Tribunal, Chennai, in I.D.No.34 of 2004; that while so, a notice was served on 7.11.20 03 on the members of the petitioner Union, stating that 2 shifts a day would be changed to 3 shifts, and 5 day week would be changed to 6 day week on the expiry of the notice period of 21 days, which would be ending on 21.11.2003; that on receipt of the said notice of change of existing service condition and even before the period was over, the Union raised an industrial dispute objecting to the proposed change; that the industrial dispute was taken up for conciliation by the Assistant Commisssuioner of Labour-I (Conciliation), Madras; that since the proposed change of service condition was taken up for conciliation, the second respondent management could not bring about the change, and thus, the proceedings were over; that at this juncture, the management has been attempting to implement the 3 shifts per day and 6 days a week, and under the circumstances, it has become necessary for filing this writ application before this Court seeking a direction to the first respondent to refer the matter to industrial dispute, apart from restraining the second respondent management from implementing the impugned notice so far as the petitioner Union is concerned.

5. The writ application is opposed by the learned Counsel for the second respondent on the grounds that the subject matter in the writ application is as to the change of the service conditions, and hence, it would not fall within the scope of the writ under Article 226 of the Constitution of India, but would fall under the provisions of the Industrial Disputes Act, welcoming a decision of the concerned forum; that the petitioner has sought for an interim relief, which is outside the scope of the writ petition itself; and that even if the writ petition itself is ordered in toto, that would not cover the interim relief sought for by them. Added further the learned Counsel that majority of the workers pursuant to the notice, are working 3 shifts a day and 6 days a week, while the minority before this Court instead of following the same, have brought forth this writ petition before this Court. It is further added that while the conciliation proceedings failed, if the petitioner Union is really aggrieved, they would have raised an industrial dispute before the concerned forum or if the Court is of the view that it is a fit case to be referred to the industrial dispute, it can be ordered so; but, however, the petitioner is not entitled to any relief in the writ petition, and hence, the writ petition has got to be dismissed.

6. After careful consideration of the rival submissions made and scrutiny of the materials available, the Court is of the considered opinion



that no relief could be granted to the petitioner in this writ petition.

7. Admittedly, the members of the petitioner Union are working under the management, which is the second respondent herein. A notice was served upon them stating that the existing 2 shifts a day would be changed to 3 shifts a day and 5 day week would be changed to 6 day week on the expiry of the notice period. Even before the expiry of the notice period, the matter was taken up for conciliation before the Assistant Commissioner of Labour at the instance of the petitioner Union; but, it failed.

8. As could be well seen from the submissions made and available materials, here is a case where there was a change of the existing service conditions. In such circumstances, it is needless to say that the dispute is one, which would fall within the provisions of the Industrial Disputes Act. Once the dispute relates to the enforcement of a right or an obligation created under the Act, then, the only remedy available to the claimant to get it adjudicated is before a forum, which is meant under the Act. In the instant case, even as per the averments found, the petitioner Union is aggrieved by the change in the service conditions. It has to be further added that it is also the practice established that the Court exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, should always refuse to do, where there are disputed questions of fact. In the case on hand, there is a change of service conditions of the workers including the members of the petitioner Union, which could be adjudicated upon only by the forum meant for the said purpose under the Act.

9. The learned Counsel for the second respondent brought to the notice of the Court two decisions one by the Supreme Court reported in JT 2004 (2) SC 440 (U.P. STATE BRIDGE CORPORATION LTD. & OTHERS V. U.P. RAJYA SETU NIGAM) and the other by the First Bench of this Court reported in 1988 WRIT L.R. 418 (GORDON WOODROFFE EMPLOYEES UNION V. STATE OF TAMIL NADU AND OTHERS). This Court is of the considered opinion that both the decisions are squarely applicable to the present facts of the case. In such circumstances, neither the relief as one asked for in the main writ petition nor the interim relief, which actually stands outside the scope of the writ petition, can be granted. Thus, in consideration of the facts and circumstances of the case, the Court is of the firm view that the first respondent State has got to be directed to refer the matter by way of an industrial dispute within a period of one month herefrom. Accordingly, a direction is issued. The petitioner, if so advised, can move for the reliefs what they could get under the provisions of the law and on the merits of the matter.

10. Therefore, this writ petition is disposed of in the above lines.  
No costs. Consequently, connected WPMP is closed.

Index: yes

Internet: yes

To:

The Government of Tamil Nadu  
rep. by its Secretary to  
Government  
Labour & Employment Department



Fort St. George, Chennai 600 009.

nsv/

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