IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

W.P.A.8602 of 2023

Tata Steel Limited (Hooghly Met Coke Division) Haldia Contractors' Mazdoor Sangh and Another
Vs.
State of West Bengal and Ors.

For the petitioner	:Mr. Soumya Majumder, Ms. Sanjukta Dutta
For the State	:Mr. Sirsanya Bandyopadhyay, Ms. Tapati Samanta
Judgment on	: 21 November, 2024

Ravi Krishan Kapur, J.:

1. The petitioners assail a Notification dated 27 June 2022 issued by the respondent State.

2. For convenience, the notification is set out below:

Government of West Bengal
Labour Department
Establishment Branch (LC)
New Secretariat Buildings, 12th Floor
1, K.S. Roy Road, Kolkata – 700001

Memo: Labr/638/LC-Estt., Dated: 27/06/2022

NOTIFICATION

It has been observed that, engagement of employees is being made in different industrial establishments without apprising the State Government and several anomalies have been reported in this regard. Moreover, Charter of Demands are being raised from time to time by different trade unions and sometimes settlements are arrived at, keeping the State Government in the dark.

As a result, the State Government being unaware of such engagements does not have any updated database regarding the vacancy position, employment generation and industrial relation prevailing in that area. With a view to streamline the recruitment/engagement process, in different industrial establishments and to maintain the industrial peace and harmony, the following Committee for Employment and Finalization of Charter of Demands is proposed to be constituted in respect of Haldia and Kolaghat Industrial Area of PurbaMedinipur District and Kharagpur Industrial Area of PaschimMedinipur District:

PurbaMedinipur
Haldia and Kolaghat Industrial Area
Chairman: District Magistrate
Secretary: Deputy Labour Commissioner
Members:
Chairman, Haldia Development Authority
SDO, Haldia
Additional Labour Commissioner (From State Labour Department)
2 Assistant Labour Commissioner
2 Representatives of concerned management
Factory Inspector
Joint Director of Employment
Additional Director of Employment

PaschimMedinipur
Kharagpur Industrial Area
Chairman: District Magistrate
Secretary: Deputy Labour Commissioner
Members:
Additional Labour Commissioner (From State Labour Department)
2 Assistant Labour Commissioner
2 Representatives of concerned management
Factory Inspector
Joint Director of Employment
Additional Director of Employment

The function of the Committee will be as follows:

1. *The committee will maintain and supervise the recruitment of contractual/permanent workers/employees in each and every industrial/commercial establishment.* ***No recruitment will take place without the knowledge of this Committee.*** (emphasis added)
2. *The Joint/Deputy/Assistant Labour Commissioner concerned will act as Conciliation Officer in respect of the industrial disputes raised in that area but the above noted Committee should be apprised of such disputes and settlements arrived at.*
3. *The committee will also supervise the finalization of Charter of Demands with a view to maintain the industrial relation in a harmonious manner.*

This is issued in the interest of public service.

By order of the Governor,
Principal Secretary,
Government of West Bengal.

Memo: Labr/638/LC-Estt.,
Copy forwarded for information and necessary action to:

1. P S to MOS(IC), Labour Department,
2. Labour Commissioner, WB,
3. Director of Employment, WB, Dated: 27/06/2022
4. Chief Inspector of Factories, WB,
5. Chief Inspector of Boiler, WB,
6. District Magistrate, PaschimMedinipur
7. District Magistrate, PurbaMedinipur
8. Officer copy Special Secretary.

3. On behalf of the petitioners, it is contended that the notification has been issued without authority of law and *dehors* any statutory powers. The notification is also contrary to and in violation of the mechanism for settlement of industrial disputes under the Industrial Disputes Act 1947 (the Act). On a combined reading of sections 2(p), 3, 4, 12 of the Act, it would be evident that the Act and Rules framed thereunder contemplate resolution of disputes by way of bipartite settlement whereas the impugned notification has introduced a mechanism of tripartite settlement with the active participation of the State. The notification also makes serious inroads into private industry. Additionally, in view of section 4 of the Employment Exchange Compulsory Notification of Vacancy (1959) Act, the impugned notification is an indirect attempt to bypass an existing statutory mechanism. As such, the impugned notification is *ex facie* arbitrary, illegal, unreasonable and has been issued in colourable exercise of power. In support of such contentions, reliance is placed on the decisions in *Asha Sharma vs. Chandigarh Administration & Anr. (2011) 10 SCC 86, M.P. Power Management Company Limited, Jabalpur vs. SKY Power Southeast Solar India Private Limited & Ors.(2023) 2 SCC 703, Titaghar Paper Mills Company Ltd. vs. 1st Industrial Tribunal, West Bengal & Ors.1982 Lab IC 307* and *Union of India & Anr. vs. Ashok Kumar Aggarwal (2013) 16 SCC 147*.

4. On behalf of the State respondents, it is submitted that the petitioners have no locus to challenge the impugned notification. The petitioners claim to be a Trade Union representing the cause of workmen in the Haldia and Kolaghat

Industrial Area of Purba Medinipur and are affiliated to a rival political party. There is nothing to suggest that any of the members of the petitioner have been affected by the impugned notification. Neither does the impugned notification threaten the rights of the workers to agitate their grievances. The primary objective of the impugned notification is to aid in the recruitment process. The impugned notification has been issued to maintain transparency in the process of recruitment in private establishment and also assists in the working of the portal created by the State namely *Karma Sanghabad*. Initially, the notification was caused to be published as a pilot notification. Thereafter, different notifications for the entire State have been issued by the respondent State. On a combined reading of the different provisions of the Act, the participatory role of the State in employee welfare under the Act is recognized. In such view of the matter, the writ petition has no merit and is liable to be dismissed.

5. For convenience, the relevant provisions of the Act and Rules are set out hereinbelow:

> Section 2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;
> Section 2[(p): "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to 5 [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]
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> Section 3:Works Committee.—(1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the

prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

Section 4:Conciliation officers.—(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.
(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Section 10: Reference of disputes to Boards, Courts or Tribunals.—(1) 1 [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,— (a) refer the dispute to a Board for promoting a settlement thereof; or (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or 2 [(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Section 12:Duties of conciliation officers.—(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.
(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government 2 [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.
(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.
(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, 3 [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.
(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government:

Section 18. Persons on whom settlements and awards are binding.—
[(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding
shall be binding on the parties to the agreement.
(2)[Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]
[(3)] A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—

(a) all parties to the industrial dispute;
(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

6. A plain reading of the impugned notification suggests that the same has been issued with the object of streamlining the recruitment and engagement process of employees in different industrial establishments in a particular locality with the alleged aim of maintaining industrial peace and harmony through settlement and finalization of the Charter of demands. By the notification, a Committee comprising of the following members has been constituted in the Haldia and Kolaghat Industrial area of Purba Medinipur and Kharagpur Industrial area of Paschim Medinipur Body Industrial Areas comprising of the following:

a. District Magistrate
b. Deputy Labour Commissioner/Assistant Labour Commissioner
c. Representative from Directorate of Employment
d. Factory Inspector
e. Representatives of "concerned management" (unidentified)
f. Chairman, Haldia Development Authority
g. SDO, Haldia
[(f) and (g) for Haldia and Kolaghat Industrial area]

The functions of the Committee are to allegedly maintain and supervise recruitment of contractual and permanent workers in every industrial establishment and *prohibit* recruitment if it takes place without the knowledge of the Committee.

7. Section 4 of the Act provides for appointment of Conciliation Officers in various areas and types of industries. There is also a provision for Works Committee to settle disputes which operates only at a bilateral level contrary to the tripartite arrangement which the notification aims to achieve and promote. It is true that section 10 of the Act authorizes the State to ascertain the existence or apprehension of an industrial dispute and upon ascertaining such disputes follow the mechanism stipulated under the Act. However, this procedure has not been adhered to in the impugned notification. Section 12 of the Act enumerates the duties of a Conciliation Officer which assists parties to arrive at a settlement. The Act expressly encourages bilateral settlement instead of escalating every situation into a tripartite level. The duty to conciliate and the powers of the Conciliation Officers under the Act cannot be encroached upon through any extraneous Committee at the instance of the State. The conciliatory machinery contemplated under the Act cannot be circumvented in such a circuitous manner. It is apparent that by way of the impugned notification, the State is trying to arbitrarily regulate employment and in doing so is in violation of the legislative mandate under the Act. The impugned notification is in violation and *ultra vires* the provisions of the Act. The involvement of the State machinery in the form of high ranking officials for the purpose of settling every industrial dispute is unnecessary and is also a wastage of administrative machinery and resources. In every dispute between a master and servant, the State need not become necessarily involved. Nor is conciliation a pre-condition to a reference under the Act *(Titaghur Paper*

Mills Company Ltd. vs. 1st Industrial Tribunal, West Bengal and others 1982 Lab IC 307). It is obvious that by the notification, the State is aiming at indirect control of employment in private trade and industry. Significantly, there is no representation of employees or workmen in the proposed Committee under the impugned notification. The principal object of the notification is that no recruitment can take place without the knowledge of the Committee and this *per se* is excessive and disproportionate. The Act enumerates the supervision and role of the State Government in employee welfare. In the light of the existing and prevalent position, the impugned notification is unnecessary, unreasonable, excessive and without any rational basis. In the garb of getting a *foothold*, the State may ultimately *strangulate* industry and this is an unreasonable restriction on the guarantee enshrined under Article 19(1(g) of the Constitution. The long term effect of such measures may end up causing incalculable damage to industry and commerce. The real danger lies in the uncanalised, unguided and unfettered discretion which is sought to be vested with the State insofar as employee recruitment is concerned and the far reaching ramifications of the impugned notification which makes it *unconstitutional* and violative of Articles 14 and 19(1)(g).

8. The impugned notification does not supplement the existing mechanism contemplated under the Act or the Rules framed thereunder but is an attempt to *supplant* the same. The impugned notification is also an encroachment on an already occupied legislative field and in conflict with the same. It is well

settled that executive instructions can only be issued to supplement the law and not to *supplant* the same. In *Union of India & Anr. vs. Ashok Kumar Agarwal (Supra)*, it has been held as follows:

> *59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya [(1977) 1 SCC 606 : 1977 SCC (L&S) 191] , P.D. Aggarwal v. State of U.P. [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272] , Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : AIR 1990 SC 166] , C. Rangaswamaiah v. Karnataka Lokayukta [(1998) 6 SCC 66 : 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [(2011) 5 SCC 435 : AIR 2011 SC 2220].*

9. The impugned notification has also not been issued in exercise any statutory powers. There is simply no source of power which can be traced to any legislation authorizing the issuance of the notification. There is no power conferred under any Act permitting the State to issue the impugned notification. As such, the impugned notification is an administrative or executive act of the State which does not have the authority of law.

10. It is well settled that every act of the State must have the authority of law. The object which the notification aims to achieve is pervasive control in the recruitment of employees and this smacks of unreasonableness, irrationality and gross arbitrariness. It is also well settled that any action by the State whether administrative or executive has to be fair and in consonance with the applicable statutory provisions. Article 14 has been extensively interpreted in

several decisions by the Hon'ble Supreme Court. In *Asha Sharma v. Chandigarh Admn. (2011) 10 SCC 86,* it has been held as follows:

> *12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision-making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as "arbitrary". Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the prerequisites of proper decision making. The concept of transparency in the decision-making process of the State has also become an essential part of our administrative law.*

11. In *East Coast Railway v. MahadevAppa Rao, (2010) 7 SCC 678,* it has been held as follows:

> *23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.*

12. Similarly, in *M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703*, it has been held as follows:

> *75. We would, therefore, sum up as to when an act is to be treated as arbitrary. The Court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action. A wholly unreasonable decision which is little different from a perverse decision*

under the Wednesbury doctrine would qualify as an arbitrary decision under Article 14. Ordinarily visiting a party with the consequences of its breach under a contract may not be an arbitrary decision.

13. This notification is also contrary to the existing machinery provided under the Employment Exchange Compulsory Notification of Vacancies Act 1959 and is thus also wholly unnecessary and redundant. There is already an existing mechanism which requires every employer in any industry or establishment to file returns and information in relation to vacancies which have occurred or are about to occur under the Employees Exchanges (Compulsory Notification of Vacancies) Act, 1959. Thereafter, it is for the concerned management to make necessary appointments by fixing the terms and conditions for service. In this background, an alternative mechanism as contemplated under the impugned notification is redundant and contrary to the provisions of the 1959 Act.

14. The foundational basis of the notification is that employees are being employed without informing the State which is impermissible. Similarly, the State is not being informed of private settlements between employer and employee and this is not acceptable to the State. Article 19(1)(g) guarantees to all citizens the right to practise any profession, or to carry on any occupation, trade or business. Any restriction on a trade or business is unreasonable if it is arbitrary or drastic and has no relation to, or goes much in excess of, the objective of the law which seeks to impose it. In determining the infringement of the rights guaranteed under Article 19(1)(g), the nature of right alleged to have been infringed, the underlying purpose of the restriction

imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time have to be taken into consideration. The object of Article 19(1)(g) is that the freedom of carrying on a profession should be enjoyed by the citizen to the fullest possible extent without putting "shackles" of avoidable cobwebs of Rules and Regulations putting restrictions in the enjoyment of such freedoms. There is now a Committee under the impugned notification which is beyond the scope of a central legislation and contrary thereto. In short, the notification is an example of administrative highhandedness, palpably unreasonable, irrational and an antithesis to the Rule of Law. The right of industry to grant employment or seek employment cannot be regulated in such a circuitous manner as contemplated by the impugned notification. The executive cannot arbitrarily interfere with the rights of industry.

15. Insofar as the objection of locus standi is concerned, it is fashionable to give a political twist to each and every dispute which may be unpalatable to any party. Admittedly, the petitioner is a registered trade union under the Trade Union Act 1926. The petitioner represents workmen of industries in two districts and in a representative capacity and has a right to raise an *industrial dispute* as defined under the Act. Similarly, the plea that the State is targeting a particular industrial belt in the State is immaterial and irrelevant. Regardless of the political flavour, which either of the parties may suggest, the legality and constitutionality of the notification is all which ought to be taken into consideration.

16. Similarly, there is no merit nor substance in any of the records relied on by the State. The media reports are immaterial and inconsequential. The reliance on data to substantiate that State guaranteed employment is equally misleading. This is not an example of employment having been generated but one of employment allegedly having been *coerced*. In any event, all these factors are not germane in adjudicating upon the constitutionality of the notification.

17. In summary, the notification is excessive, manifestly arbitrary and contravenes the provisions of the Constitution and the Rule of Law and also contrary to the Industrial Disputes Act 1947.

18. In view of the above, WPA 8602 of 2023 stands allowed. There shall be an order in terms of prayer (b) of the writ petition. The impugned notification is quashed. All steps taken pursuant to and in furtherance of the impugned notification are declared to be null and void.

(Ravi Krishan Kapur, J.)