

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.1567 of 2011

Workman of KMF Automotive Private Limited,
Through United Labour Federation,
Rep. by its President,
No.149, IV Floor, C.J.Complex,
Thambu Chetty Street,
Chennai-600 001.

.. Appellant/Petitioner

Vs.

1. The Superintendent of Police,
Thiruvallur District, Thiruvallur.
2. The Inspector of Police,
Mappedu Police Station,
Kadambattur Taluk, Thiruvallur District.
3. KMF Automotive Private Limited,
rep. by its Managing Director,
Thiruvallur Main Road,
Thiruvallur District, Sriperumbudur.
4. Upshot Utility Services Private Limited,
H.20, Jeevanandham Salai,
13th Sector, K.K.Nagar,
Chennai-600 078.

.. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against
the order dated 05.04.2011 made in W.P.No.30146 of 2010 on the
file of this Court.

Writ Petition filed under Article 226 of the Constitution of India
for the relief of issuance of writ of mandamus directing the
respondents 1 and 2 not to aid the third respondent management to
bring in outsiders to work in the place of regular workers of the
factory at No.136, Thodukadu Village and Post, Thiruvallur Main
Road, Thiruvallur District, Sriperumbudur 602 105 namely the
members of the petitioner union.

For appellant : Mr.V.Prakash, Senior Counsel for
M/s.K.Sudalaikannu

For respondents: Mr.R.Rajeswaran, Spl.G.P. for RR-1 & 2
Mr.R.Prabhakaran for R-3
No appearance for R-4

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

This Writ Appeal is directed against the order made in W.P.No.30146 of 2011, dated 05.04.2011, whereby the learned single Judge dismissed the Writ Petition, by observing as follows:

"6. Though the submission of the learned Senior Counsel appearing for the petitioner appears to be fascinating, this Court as a matter of fact cannot entertain the writ petition for the relief sought for by the petitioner since the statement made by the learned Government Advocate would go to show that the respondents 1 and 2 have not till date assisted the third respondent for bringing in outsiders to work in the place of regular workers of the factory. In other words, the prayer made by the petitioner to direct the respondents 1 and 2 not to aid the third respondent Management to bring in outsiders to work in the place of regular workers of the factory, cannot be granted for the reason that it is the duty of the police and the State to maintain law and order not only for the Management but also equally to protect the other staff members working in the company. The learned Government Advocate making submissions on behalf of respondents 1 and 2 / Police Department emphatically stated the said respondents never assisted the third respondent company to bring in outsiders to work in the place of regular workers of the factory and such emphatic submission could not be controverted or disputed by the learned counsel for the petitioner. This Court has also taken note of the statement in the counter affidavit that one of the top officials of the company was murdered by the workers in PRICOL and Noida. In such a situation, it may not be appropriate to issue the direction as prayed for. Because, such a direction may even backfire not only the members of the petitioner's Association but also the other staff working under the Management in not timely assisting either of them by respondents 1 and 2 in the event of any odd situation arising in the campus of the company.

7. For the foregoing reasons, the writ petition is liable to be dismissed and accordingly the same is dismissed. Consequently, the connected M.P. is closed. No costs."

2. Challenging the said order of the learned single Judge, the writ petitioner has filed the above Writ Appeal. When the Writ Appeal came up for hearing on 14.02.2012, this Court passed the following order:

"After hearing all the parties, we are given to understand that there is possibility of arriving at an amicable settlement by the rival parties.

Therefore, to facilitate the parties to settle the dispute between themselves, this matter is adjourned to two weeks, as requested by the learned counsel for the parties.

If no settlement is arrived at by the parties within the time granted, this Court will consider the question of grant of interim injunction, as prayed for in M.P.No.1 of 2011, on the date of next hearing.

Post after two weeks."

3. As against the above order dated 14.02.2012, the matter was taken on appeal to the Supreme Court in S.L.P.(Civil).No.7816 of 2012 and the Supreme Court confirmed the above order of this Court, dated 14.02.2012 and dismissed the said S.L.P. on 01.03.2012 by observing as follows:

"Taken on Board.

After having gone through the impugned order, we do not find any ground to interfere against the same. The special leave petition is accordingly dismissed."

4. Subsequently, this Court, by order dated 24.04.2012, while admitting the Writ Appeal, granted interim injunction in M.P.No.1 of 2011, by observing as follows:

"In view of the order passed by the Hon'ble Supreme Court in dismissing the petition in S.L.P.(Civil).No.7816 of 2012, dated 01.03.2012, which was filed against the order, dated 14.02.2012, in M.P.No.1 of 2011 in W.A.No.1567 of 2011 and in view of the fact that the counsel for the respondents is not co-operating with the Court for the early disposal of the writ appeal, we consider it

appropriate, to meet the ends of justice and also for the survival of the petitioner/employees, to grant interim injunction.

Accordingly, there shall be an order of interim injunction as prayed for.

Notice.

Post on 04.06.2012 for counter."

5. Thereafter, the third respondent-Company has filed a vacate-injunction petition in M.P.No.1 of 2012 and while disposing of the injunction petition in M.P.No.1 of 2011 and vacate-injunction petition in M.P.No.1 of 2012, this Court passed the following order on 22.06.2012:

"The writ appeal is at the instance of workmen of KMF Automobile Private Ltd., through its President, United Labour Federation on the ground that when an industrial dispute relating to wage revision, status of the workmen and wages for the strike period was pending, the management rejected the request of the committee and some of the workmen were dismissed from service and in their place, outsiders were brought to work in the respondent company. According to the appellants, the outsiders were brought with the help of the police. This led the Federation to file a writ petition seeking for a direction to the Superintendent of Police, Tiruvallur District and the Inspector of Police, Mappedu Police Station not to aid the company to bring outsiders to work in the place of regular workers in the company. After hearing either side, the learned Judge dismissed the writ petition. Hence the present appeal by the Federation.

2.This Court by order dated 24.04.2012, granted interim injunction restraining the company from bringing outsiders with the aid of police. At the instance of the company, an application was taken out seeking to vacate the said order.

3. We have heard both the counsel.

4. Our attention is brought to the minutes of the meeting dated 11.06.2012 arrived at between the Company and some of the representatives of the employees. The minutes reads as under:-

1. All the workers are agreed to report to duty from today 11.06.2012.

2. Employment of all Company workers who have

completed 480 days as on 21.12.2010 should be made as a confirmed operator. The workers who have not completed 480 days will be made as Company's trainee. The letter of employment should be given to all workers by this week;

3. 50% of back wages from 21.12.2010 to 31.05.2012 to be given to all workers as per the calculation of their last drawn salary (Net Salary) within two weeks as compensation. The rest of the 50% of back wages compensation can be given along with their monthly salary gradually every month till December 2012. The back wages of workers who are not able to come to work, will be given to them in person or through Bank.

4. Increment of salary should be given at the rate of 25% to all workers. However, 30% increment only to six workers who were confirmed earlier, on the basis of their gross salary they had drawn as on 21.12.2010. This salary increment will come into effect from June 2012.

5. Uniforms, Shoes, Identity card, ESI Card, should be given to all workers immediately.

6. Mr. Vasudev Patel should be terminated immediately by end of this week, as he was involved in sexual harassment with a female worker.

7. The management will not take revenge on workers who were involved in strike and vice versa.

8. As of now presence of Labour Union is not required to our Company. So the workers must not have any relationship with any Labour Union. Hence the management is agreed to form a five member committee among the workers to represent on behalf of workers. If any disputes or grievances are arising; it will be solved through five member works committee.

9. All operators should obey company rule as per the company Act, 1948, and standing order after all workers are agreed to put signature on standing order.

10. All workers will be deployed in respective department like earlier where they were.

5. Mr.V.Prakash, learned Senior Counsel, would submit that in terms of the said minutes of Company, workers who have completed 480 days as on 21.12.2010 had been confirmed and those workers who have not completed 480 days on the date when the minutes were drawn has been treated as Company's trainees and the letter of issuance is under process. The other contention relating to payment of back wages and compensation is also duly complied with. However, the learned senior counsel has two objections to the said minutes in respect of clauses 6 and 8.

6. The learned counsel appearing for the respondent Company on the other hand would submit that the minutes had been duly given effect to and the workers are now allowed to enter the company premises and they are working and peace has been restored. He also submitted that as of today, the Company has no proposal to bring in outsiders. Insofar as clause 6 of the minutes is concerned, the Company is always entitled to take disciplinary proceedings against an employee for the alleged misconduct. As far as clause 8 is concerned, the same is outside the scope of the writ petition and need not be considered for the disposal of the present application.

7. At the time when the writ petition came to be filed, the members of the appellant Federation were out of employment and their grievance was that in their place, outsiders were brought with the aid of police and only for that reason, the application came to be filed for a direction to respondents 1 and 2 in the writ petition viz., police officials, not to aid the Company by bringing outsiders to work in the place of other employees. Now the entire scenario has changed in view of the minutes dated 11.06.2012. The fact remains that the employees are now working and as of today, there is no proposal for the Company to bring outsiders. We hope that this will continue and peace shall prevail in that place and for that reason, the request for direction to the police not to aid the Company from bringing outsiders does not survive. That does not mean that in the event of any eventuality, when a complaint is made by the Company, police should not entertain such a complaint and investigate. Equally, it is also open to the employees that in the event a law and order situation is created at the instance of the management, they would also be entitled to approach the police with appropriate complaint. But that does not mean that as of today, aid by the police to the Company to bring outsiders could be allowed. In view of the above, we

clarify that though grant of injunction would finally amount to allowing the writ petition, it is only observed that in view of the subsequent minutes incorporating certain terms and conditions and those employees on whose behalf writ petition came to be filed are working and particularly, the stand of the Company that they are not going to bring any outsiders as of now, the petition for interim injunction is disposed of with a direction to both the appellant as well as the Company to abide by their agreed terms and conditions. With the above observation, the petitions are disposed of.

8. As far as the writ appeal is concerned, liberty is given to both parties to take out an application for early hearing."

6. In the light of the above stated position, what is seen in the matter of this Writ Appeal of the year 2011, what is the arrangement made between the parties and the terms and conditions agreed by them, have all been obligated upon till date. When that is the position, nothing survives for consideration in this appeal. We record whatever the orders that have been passed above and accordingly close this Writ Appeal in terms thereof. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. The Superintendent of Police,
Thiruvallur District, Thiruvallur.
2. The Inspector of Police,
Mappedu Police Station,
Kadambattur Taluk, Thiruvallur District.

1 cc to Government Pleader, Sr.No3146/2015

W.A.No.1567 of 2011

sr(co)

pmk.3.2.2015