

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:31.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.488 of 2015
and
M.P.No.1 of 2015

Thiruvalluvar University Employees' Union,
Reg. No.1505 / VLR/ 2012
Rep. By its General Secretary,
17, Vivekanandan Street,
Thirunagar, Vellore 632 006. ... Appellant/Petitioner

Vs.

1. The Thiruvalluvar University,
Rep. By its Registrar,
Serkadu, Vellore 632 115.
2. The Presiding Officer,
The Principal Labour Court,
Sathuvachari, Vellore 632 009. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order of this Court dated 19.02.2015 made in W.P.No.27043 of 2014 filed under Article 226 of the Constitution of India praying this court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the advertisement given by the first respondent in Proceeding No.DIPR/722.Dis/2014 published in Daily Thanthi on 17.7.2014, quash the same and consequently direct the first respondent University not to alter the conditions of service of the workmen concerned in ID No.161/2014 to their detriment till the dispute is either settled or adjudicated in accordance with law.

For Appellant : Mr.V.Ajoy Khose

For Respondents : Mr.P.H.Aravind Pandian
Senior Counsel
for M/s.S.Yashwanth

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant/Petitioner has focussed the instant intra-Court Appeal as against the order dated 19.02.2015 in W.P.No.27043 of 2014 passed by the Writ Court.

2.The Writ Court, while passing the impugned order in W.P.No. 27043 of 2014 (filed by the Appellant/Petitioner) on 19.02.2015, in paragraphs 16 to 19 & 22 to 26, had observed the following:

"16.The Government of Tamil Nadu vide G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department dated 27.6.2013 passed a revised order, wherein, the services of full time daily wage employees, who have completed 10 years of service after 1.1.2006, shall not be regularised.

17.Admittedly, the dispute with regard to permanency and to extend various other benefits, the petitioner Union raised dispute before the Labour Officer, who had filed the Failure Report on 16.11.2013. Now, after reference, the dispute is pending before the second respondent Principal Labour Court, Vellore for adjudication.

18.When the issue is pending before the Labour Court for adjudication with regard to permanency of the employment of the workers, if an advertisement called for by the first respondent seeking for filling up the 54 posts is quashed, the very functioning of the first respondent University will be affected to a great extent. However, in the event of succeeding in the Industrial Dispute, pending before the second respondent Labour Court, the Petitioner Union can claim their right.

19.That apart, as already stated, the selection process was commenced on 17.7.2014, when, the conciliation proceeding was not pending. The Government received the Conciliation Failure Report on 6.3.2014 and the same was referred to the Labour Court on 21.8.2014. By that time, paper publication was given calling for applications on 17.7.2014 and the applicants had also submitted their applications by

18.8.2014. Therefore, when the selection process had commenced, while the conciliation proceeding was not pending, I am of the considered view that the same need not be set aside.

...

22.The petitioner has filed a petition in MP.No.2/2015 to expunge the remarks made by the second respondent, Labour Court in the orders dated 5.12.2014 and 11.12.2014 passed in I.A.Nos.483 and 491 of 2014 in I.D.No.161 of 2014. Since the orders passed in I.A.Nos.483 and 491 of 2014 in I.D.No.161 of 2014 are not challenged by the petitioner before this Court and also that the same are also not placed before this Court, I do not find any reason to pass any order in this petition. In these circumstances the petition is liable to be rejected.

23.The petitioner has also filed a petition in M.P.No.1 of 2015 to direct the Registry to send back the records pertaining to I.D.No.161 of 2014 to the second respondent Labour Court, Vellore so as to proceed with the adjudication proceedings.

24.Since the writ petition is being disposed of by this order, I direct the Registry to send back the records pertaining to I.D.No.161 of 2014 to the second respondent Labour Court, Vellore at the earliest.

26.In the result,

(i)the writ petition is dismissed and M.P.Nos.2 and 3 of 2014 are closed.

(ii)M.P.No.2 of 2015 is dismissed.

(iii)M.P.No.1 of 2015 is allowed. The Principal Labour Court is directed to dispose of I.D.No.161 of 2014, on merits and in accordance with law, uninfluenced by any of the observation given in this writ petition, within a period of four months from the date of receipt of copy of this order."

and consequently, dismissed the Writ Petition.

The Contentions of the Appellant/Union:

3.According to the Learned Counsel for the Appellant/Union, the Writ Court, having held that as per the Judgments cited on behalf of the Appellant/Union, an employer has to seek prior permission in regard to alteration of conditions of service, had committed an error

in not applying the ratio laid down in those cases in so far as the Appellant is concerned.

4.The Learned Counsel for the Appellant urges before this Court that though the decision was taken by the 1st Respondent/University on 25.06.2014 to fill up the 54 vacancies through Direct Recruitment and pursuant to the said decision, the advertisement was issued on 17.07.2014 fixing the last date for receiving the filled in applications as 08.08.2014 and in fact, the 1st Respondent constituted a Committee to scrutinise the applications received, at that stage, on 21.08.2014 the Government of Tamil Nadu issued the Reference in G.O.(D).No.379 and it was taken on file by the 2nd Respondent/Labour Court as I.D.No.161 of 2014.

5.Advancing his arguments, the Learned Counsel for the Appellant submits that the adjudication process in I.D.No.161 of 2014 on the file of 2nd Respondent/Labour Court is deemed to have commenced from the date of Reference in G.O.(D).No.379 dated 21.08.2014 as per Section 20(3) of the Industrial Disputes Act, 1947.

6.The Learned Counsel for the Appellant projects an argument that as per Sections 33(1)(a) and 20(3) of the Industrial Disputes Act, the 1st Respondent/University is bound to keep the conditions of service of the workmen concerned in I.D.No.161 of 2014 in the same position which was prevailing as on the date of Reference i.e. on 21.08.2014 'unaltered'.

7.In this connection, the Learned Counsel for the Appellant contends that the position as on 21.08.2014 was that the 1st Respondent/University had only received the applications and only appointed a Committee for scrutinising the applications. As such, the 1st Respondent/University is bound to keep the status quo and the conditions of service 'unaltered' as on 21.08.2014.

8.The Learned Counsel for the Appellant submits that the Writ Court had failed to appreciate that if vacancies were allowed to be filled up by the 1st Respondent/University, the Workmen concerned would be denied permanency even if they were able to establish that they were legally entitled to get permanency on the ground of non-availability of vacancies.

9.On behalf of the Appellant, a plea is taken that the Writ Court was not correct in holding that if the vacancies were not allowed to be filled up by the 1st Respondent/University, its functioning would get affected to a great extent. Also, it is contended on behalf of the Appellant that even assuming without admitting that the

functioning of the 1st Respondent/University would get affected if vacancies were not filled up, the Writ Court should have held and directed the 1st Respondent/University that it can fill up the vacancies only after obtaining permission from the 2nd Respondent/Labour Court.

10.Finally, it is the submission of the Learned Counsel for the Appellant/Union that the Writ Court failed to see that all the contentions raised by the 1st Respondent/University opposing the Appellant's claim for permanency are to be agitated only in the Industrial Dispute and the same cannot be a ground to absolve them from seeking permission in accordance with law.

11.The Learned Counsel for the Appellant cites the decision of this Court in Arasu Viraivu Pokkuvarathu Oozhiyar Sangam (represented by its General Secretary) V. State Express Transport Corporation Limited (represented by its Managing Director) and others, 2006 (3) L.L.N. 916, at special page 917, whereby and whereunder, it is held as follows:

"Sub-section (1) of S. 20 of the Industrial Disputes Act, 1947, fixes the date of commencement of conciliation proceeding as the date on which a notice of strike or lockout under S. 22 is received by the Conciliation Officer. As far as the non-public utility undertakings are concerned, the conciliation proceeding shall be deemed to have commenced on the date of the order referring the dispute to a Board. The provisions of Sub-sec.(2) apply to all conciliation proceedings, whether in regard to public utility service or otherwise. A conciliation proceeding under this sub-section shall be deemed to have concluded in the manner aforesaid. The conciliation proceedings therefore do not end when the report under S. 12(4) is submitted by the Conciliation Officer, but it ends when that report is received by an appropriate Government. The word "received" in Sub-sec.2(b) obviously implies actual receipt of the report by the appropriate Government where no settlement is arrived at."

12.Facts of the Writ Petition:

(i) It is the version of the Appellant that with a view to carry out the work of the 1st Respondent/University, it appointed number of persons from the year 2002, on various dates between 2002 and 2011

and initially all the employees were paid salary on a daily rate basis. However, in the year 2007, the employees numbering 58, who were employed on daily rate basis, were converted into consolidated pay employees. Also, the consolidated pay was fixed based on their educational and technical qualifications and the nature of work, they were performing.

(ii) It is to be noted that the case of the Appellant is that as on 2012, in all there were 91 employees who were working on consolidated/daily rate wages. Further, all the 91 non-teaching/Administrative Staff employed on consolidated/daily rate wages were enrolled as members of the Employees Provident Fund.

(iii) Also, it is the stand of the Appellant that the said 91 employees had been working continuously without any break on all working days and holidays of the 1st Respondent/University ranging from 2 to 10 years and they were not made permanent and also they were not extended with the benefits as available to permanent staff. Moreover, the work which was carried out by each of the 91 consolidated pay/daily rate employees was permanent and perennial in nature.

(iv) It is to be pertinently pointed out that the Appellant/Union placed a 'Charter of Demands' demanding permanency and to extend numerous other benefits through their letters dated 01.08.2012, 25.09.2012, 25.10.2012, 29.11.2012 and 16.08.2013. However, the 1st Respondent/University had not given any reply and hence, the Appellant raised an Industrial Dispute before the Labour Officer-I, Vellore on 26.08.2013, on the Charter of Demands. In fact, the Appellant made 19 demands (including the demand for permanency).

(v) The 1st Respondent/University took a plea in the reply filed on 30.09.2013 that neither the employees nor the Appellant/Union can compel them to regularise an employees services and also they came out with a plea that since the employees were not issued with any appointment order and also not appointed in accordance with the recruitment rules, they could not seek regularisation of their services.

(vi) It transpires that the Appellant/Union raised another Industrial Dispute against the illegal and vindictive action of the 1st Respondent/University with four additional demands on 30.09.2013 and the said dispute was also taken up for Conciliation by the Labour Officer-I, Vellore along with the aforesaid main dispute.

(vii) In reality, the 1st Respondent/University projected their reply on 30.09.2013 and took a stand that it was not an 'Industry' within the meaning of Section 2(j) of the Industrial Disputes Act and contended that the dispute raised by the Union was not maintainable. Added further, they also took a plea that just because the employees were enrolled as members of the Provident Fund and they had also completed 480 days, they could not claim and seek permanency particularly when they were not issued with any appointment orders and besides their appointments were not made in accordance with the recruitment rules.

(viii) As a matter of fact, the Appellant filed rejoinder to the reply of the 1st Respondent/University on 18.10.2013 refuting all the allegations made by the University in the reply dated 30.09.2013 and pointed out that the 1st Respondent/University was an Industry in so far as the 'non teaching staffs' are concerned.

(ix) Apart from the above, the stand of the Appellant is that when it issued a strike notice on 03.10.2013 to the 1st Respondent/University in regard to its proposes to go on indefinite strike on and from 21.10.2013, if the University was not willing to negotiate with them and settle the demands amicably. Since the 1st Respondent/Management had not attended the Conciliation Proceedings before the Labour Officer, the Labour Officer-I, Vellore informed the Appellant that he was concluding the Conciliation meeting on 24.10.2013 and that he would submit a 'Failure Report' later.

(x) In the meanwhile, when the 1st Respondent/University made an attempt to outsource the work which were carried out by the employees, to outside contractors, the Appellant filed a complaint under Section 25(T) of the Industrial Disputes Act before the Labour Officer-I, Vellore on 04.11.2013 with a request to take action against the University. In the meantime, the 1st Respondent/University published a notice in Newspaper on 30.10.2013 requiring the employees to call off the strike and to resume duty immediately and they threatened with termination, if they failed to call off their duty and to resume duty. When the Conciliation Proceedings before the Labour Officer-I, Vellore, on the Charter of Demands as well as the Additional Demands were pending, the 1st Respondent/University, by individual orders dated 05.11.2013, terminating the employees services. Therefore, the Appellant/Union made a complaint under Section 33A of the Industrial Disputes Act, 1947 before the Labour Officer-I, Vellore on 07.11.2013, against the illegal termination of the services of the 66 workers made by the 1st Respondent/University without seeking prior permission from the Labour Officer.

(xi) Added further, the Appellant/Union filed another complaint under Section 25 (T) of the Act on 08.11.2013, since the University had called for tenders to the work. Ultimately, the 1st Respondent/University terminated the services of 66 employees during the pendency of Conciliation Proceedings and since it would amount to alteration in conditions of service and termination of their services for misconduct in connection with the dispute and inasmuch as the University had not sought prior permission from the Conciliation Officer under Sections 33(1)(a) and 33(1)(b) of the Industrial Disputes Act, the employees are deemed to be continued in service as if they were never terminated from their service. Also, they filed a Computation Petition in C.P.No.11 of 2014 under Section 33(C)(2) of the Industrial Disputes Act read with Section 33(C)(5) of the I.D. Act jointly and claimed wages from the date of their termination. When the Appellant/ Union came to know that the 1st Respondent/University decided to fill up 54 non-teaching ministerial and technical posts by Direct Recruitment, in the Syndicate Meeting held on 26.06.2014, it made a complaint to the Labour Officer, Vellore on 07.07.2014 under Section 25 (T) of the Industrial Disputes Act.

(xii) However, the 1st Respondent/University did not appear on the date fixed for Conciliation Meeting to be held on 15.07.2014 and they sought one month time through their letter to submit their reply/remarks. But the 1st Respondent/University issued an advertisement in Daily Thanthi on 17.08.2014 and called for applications from the eligible candidates to fill up 54 permanent posts of non-teaching staff (ministerial and technical), by Direct Recruitment etc. The Government of Tamil Nadu, by its G.O.(D).No.379, Labour and Employment, dated 21.08.2014, had referred the issue relating to the demand of Union for permanency relating to all the 91 consolidated/daily rated employees. The Reference was taken on file as I.D.No.161 of 2014 by the 2nd Respondent/Labour Court.

13.Counter Affidavit of the 1st Respondent/University:

(i) In the counter filed by the 1st Respondent/University before the Writ Court, it was clearly mentioned that the employees were directly engaged to work in the University on temporary basis and without following any regular procedure for appointments and none of the employees were appointed through open advertisement and Selection Committee nor sponsored by the Employment Exchange. Further, the reservation policy of the Government in public employment was also not followed. All these appointments were only on Ad hoc basis on daily wages, payable only for the number of days they worked and they were not paid the time scale of pay and were also not extended any benefits as he is applicable to permanent/ regular employees of the

University. Moreover, their appointments were not regularised and that no time they were promised any permanent appointment in the University. That apart, the employees were either paid the consolidated wages or daily wages as admitted by them and in fact, they were not made permanent or paid the time scale payment.

(ii) Continuing further, it is the stand of the 1st Respondent/University that the then Registrar in charge of the University sought for creation of 74 non-teaching posts in 13 different categories of employment right from Office Assistants, Drivers to Deputy Registrar and the Government of Tamil Nadu, vide G.O.(Ms).No.201, dated 25.06.2007, in Clause 3 stated as under:

"The Government have examined the proposal of the Registrar i/c., Thiruvalluvar University, Vellore for sanction of teaching and non-teaching posts to the Thiruvalluvar University, Vellore and accordingly sanction the creation of 22 non-teaching posts to Thiruvalluvar University, Vellore as indicated in the annexure to this order subject to the condition that corresponding posts on consultant / daily wages shall be reduced proportionate to the above creation of posts on time scales of pay."

(iii) As sanctioned by the Government of Tamil Nadu in terms of the aforesaid G.O., the 1st Respondent/University appointed one Deputy Registrar, two Assistant Registrars, one Superintendent, one Personal Clerk to Vice-Chancellor and four Lab Technicians during the year 2010 and one System Administrator, seven Assistant-cum- Computer Operator during the year 2014 from the 22 non-teaching posts sanctioned by the Government of Tamil Nadu by duly following the University norms and adopting Government procedures.

(iv) In the meanwhile, the temporary employees of the 1st Respondent/University formed a Trade Union in the name of 'Thiruvallur University Employees Union' under the Trade Unions Act, 1926 and approached the Labour Officer-I, Vellore claiming permanency and to obtain all benefits as applicable to permanent employees. A reply was submitted by the University on 30.09.2013 before the Labour Officer-I, Vellore stating that the University had taken steps to regularise the temporary employees by following University Rules and Regulations and adopting Government procedures and that a Committee was constituted for creation of posts and modalities for recruitment of non-teaching staff.

(v) When that being the fact situation, on 24.07.2013, without prior notice to the 1st Respondent/University, the temporary non-teaching staff staged demonstration in front of the University main gate demanding regularisation of their services and distributed pamphlets containing derogatory statements on the officers of the University and on 03.10.2013, the temporary non-teaching staff Union President issued a resolution indicating that the non-teaching staffs were going for an indefinite strike from 21.10.2013. The strike notice dated 03.10.2013 as well as the commencement of strike from 21.10.2013 were in clear violation of Section 22 of the Industrial Disputes Act, 1947 and consequently, the strike was termed to be illegal as per Section 24 of the I.D. Act.

(vi) The sum and substance of the plea of the 1st Respondent/University is that the appointments of the concerned employees are not merely irregular but illegal inasmuch as no procedure for appointments particularly in public employment were followed. Further, the Government of Tamil Nadu, vide G.O.Ms.No.74, Personnel and Administrative Reforms (F) Department, dated 27.06.2013, passed a revised order, the services of full time daily wage employees who have completed 10 years of service after 01.01.2006 shall not be regularised. As such, the Writ Petition is devoid of merits.

(vii) As a matter of fact, C.P.No.11 of 2014 before the Principal Labour Court, Vellore was dismissed on 08.10.2014. Besides these, the concerned employees being back-door entrants are not entitled to protection of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947. Even assuming without admitting while their claim under the Industrial Disputes Act is pending before the appropriate forum, the present Writ Petition is premature and not maintainable since they are seeking a parallel remedy.

Discussions:

14. There is no two opinion of an important fact that the Industrial Disputes Act, 1947 was enacted with an avowed object for investigation and settlement of industrial dispute and other incidental purposes. An industrial dispute is defined under Section 2 (k) of the I.D. Act which runs as under:

“any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen.”

Therefore, it is candidly clear that any dispute between an Employer and Employee, who is not a workman does not fall within the purview of resolution of dispute in terms of the ingredients of Industrial Disputes Act.

15. In so far as the Conciliation Officer is concerned, Section 12 contemplates duties of a Conciliation Officer. It cannot be gainsaid that the Conciliation Officer is to consider in bringing about settlement of the dispute after proper investigation and also examining other matters necessary for settlement of the dispute, by inducing the parties to come to a fair and amicable settlement. No wonder, in a conciliation process, no adjudication is involved. To put it succinctly, if one party to the dispute questions the status of an Employee to the effect that he/she is not a workman in terms of Section 2(s) of the Industrial Disputes Act, then, the Conciliation Officer may not proceed with the matter pertaining to the adjudication of an issue of a status of the Employee.

16. As regards the ingredients of Section 25(T) of the Industrial Disputes Act, 1947 relating to 'Prohibition of Unfair Labour Practice'. It is to be significantly pointed out that it is impermissible to ascribe 'Unfair Labour Practice' to something done or omitted in connection with an issue which has nothing to do with the relationship of an Employer and Employee. However, whether an act would constitute an 'Unfair Labour Practice or not' is purely a question of fact dependant upon the circumstances of each case. Also, it is to be remembered that a promise being violated or an undertaking or assurance given by an Employer was not followed, whatever other consequences may flow, in this regard, could not be characterised as 'Unfair Labour Practice'.

17. At this juncture, this Court cites the decision in Resident Engineer, Rajasthan State Bridge & Construction Corporation Limited, Bikaner V. Om Prakash and another, 1999 (1) L.L.J. 1225 (Rajasthan) wherein it is observed as follows:

'It is well-settled that if the work is not of a perennial nature and the project is likely to be finished after some time then it cannot be held that giving tenure postings amounts to unfair labour practice and does not fall within the ambit of provisions of Section 2(oo) (bb) of the Act.'

18. It is true that Section 33 of the Industrial Disputes Act enjoins that during the pendency of any Conciliation Proceedings before the Conciliation Officer or a Board or of any proceeding before an Arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an Industrial Dispute, no employer shall alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding.

19.It is to be borne in mind that if a subject matter of dispute falls under Section 10 of the Industrial Disputes Act, it cannot be dealt with by a Labour Court under Section 33(C)(2) of the I.D. Act as per decision Harnam Chand and others V. The Management, Punjab University Printing Press, 1994-III-L.L.J. (Suppl.) 85. Also that, for invoking Section 33(C)(2) of the I.D. Act, there must be an existing right. It is to be pointed out that the purpose of Reference of a dispute is to keep industrial peace in an establishment. Further, the object of Section 33 of the I.D. Act is to soften the rigour of unemployment.

20.At this stage, this Court worth recalls and recollects the decision in Engineering and Ancillary Manufacturers, a Partnership firm V. Salim Khan, 2004 (102) FLR 194, wherein it is held that 'Notice of change under Section 9A of the Industrial Disputes Act will not be necessary when retrenchment is not because of rationalisation'.

21.Also, this Court aptly points out the decision of the Hon'ble Supreme Court in M/s.Lokmat Newspapers Private Limited V. Shankarprasad, AIR 1999 Supreme Court 2423, at special page 2424, whereby and whereunder, it is observed and laid down as follows:

"Section 12 (4) provides that if the Conciliation Officer finds during conciliation proceedings that no settlement is arrived at between the disputing parties, then after closing the investigation he has, as soon as practicable, to 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 has also to mention all other details as required to be mentioned in the report under Section 12(4) of the I.D. Act. The aforesaid statutory requirements leave no room for doubt that after closing the investigation and after having arrived at the conclusion that no settlement is possible between the parties, the Conciliation Officer has to spend some more time before submitting his detailed written report. In the very nature of things, therefore, such requirement will take at least a couple of days, if not more, for the conciliator after closing the investigation to enable him to send an appropriate report to the State Government. It is, therefore, obvious that the statutory function of the Conciliation Officer would not

come to an end the moment he closed the investigation. He remains very much seized of the proceedings till at least the time the report leaves his end apart from the further question whether conciliation proceedings could be said to have continued till the report reached the State Government. Thus, on the express language of Section 12(4) the conclusion is inevitable that closer of investigation does not amount to termination of conciliation proceedings by that very time. By S.20(2), the legislature has introduced by way of legal fiction an

irrebutable presumption as per sub-clause (b) of Section 20(2) that when during conciliation proceedings no settlement is arrived at between the parties, the conciliation proceedings shall be deemed to have concluded when the failure report of the Conciliation Officer is received by the appropriate Government. Consequently, the legislative intention becomes clear that conciliation proceedings initiated under Section 12(1) whether of a discretionary nature or of a mandatory nature shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government."

22. In the decision of the Hon'ble Supreme Court in Secretary, State of Karnataka & others V. Umadevi & others, AIR 2006 Supreme Court 1806 at special page 1814 & 1815, wherein in paragraph 14, it is held as follows:

"14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the

appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different

concept and cannot be equated with regularization."

23. In the decision of the Hon'ble Supreme Court in Union of India and others V. A.S. Pillai and others, (2010) 13 Supreme Court Cases 448, at special page 451 & 452, whereby and whereunder, in paragraphs 15 & 16, it is observed as follows:

"15. It is true that the petitioners have been working for several years under the respondents as part timers and they are not getting salary which is given to regular employees but it is also pertinent to note that working conditions of the petitioners and other Bandsmen appointed by the respondents are not same. The petitioners are not in regular employment. They are only part timers, who perform their duties twice or thrice in a week and they are paid daily wages whenever they perform their duties. In addition to the daily wages, they are also paid certain monthly amount by way of incentive and they are also given allowances for haircut, washing of uniform and at times they are also provided breakfast or lunch.

16. The petitioners were never given regular appointment in any regular cadre. In our opinion, the petitioners do not have any right to get absorbed in any cadre to which they do not belong. In our opinion, the High Court was in error when it expressed its view to the effect that the petitioners were exploited by the respondent-authorities, because 80% of the amount received from the civilians was retained by the respondents whereas only 20% of the amount was given to the petitioners. It is pertinent to note that the petitioners are daily wagers and in addition to the daily wages and other allowances referred to hereinabove, the afore-stated amount is paid to them whenever they perform show at a function organised by civilians. The respondent-authorities have imparted training to the petitioners as musicians and uniform is also provided to them by the respondents."

24. In the decision of the Hon'ble Supreme Court in State of Rajasthan & others V. Daya Lal & others, AIR 2011 Supreme Court 1193, at special page 1198 & 1199, wherein, in paragraphs 10 & 11, it is

laid down as follows:

"10. It is thus evident that insofar as aided hostels were concerned, the Government was liable only to extend aid by way of a grant to students of 6 to 8 standards and students of 8 to 11 standards, staying in such hostels, to meet the expenditure of food, water, electricity, clothes, hair-cutting, soap, oil and shoes and another grant for books and stationery of such students. The Government was not liable to bear the expenses of salary and allowances of the employees of the aided hostels and it was for the private organizations which ran the aided hostels to meet the salaries of employees from their own resources. The persons employed in the aided hostels were the employees of the respective organizations running those hostels and not the employees of the Government. The Government has merely prescribed the eligibility conditions to be fulfilled by the private organizations to get grants to meet the food and education expenses of students staying in such hostels. Therefore under no stretch of imagination persons employed by the aided hostels could be termed as persons employed by the State Government. Nor could the Government be held liable for their service conditions, absorption, regularisation or salary of employees of private hostels. If the employees (either permanent or temporary) of the aided hostels are not the employees of the Government, but of the aided private charitable organizations which run such aided hostels, they could not obviously maintain any writ petition claiming the status or salary on par with the corresponding post-holders in State Government service, nor claim regularization of service under the state government. Hence, the writ petitions by persons employed in aided hostels for relief of regularization or parity in pay, were not maintainable and the decision of the High Court granting any relief to them cannot be sustained. Re : Question (ii) - The other appeals relating to part-time cooks/chowkidars in government hostels.

11. The part-time cooks and chowkidars were

employed on temporary basis in the Government hostels in the years 1995, 1996, 1997 and 1998. They approached the High court in the year 1999 (except Madan Lal Yogi who approached in the year 1997). The services of some of them had been terminated within one or two years from the date of temporary appointment. Though the State had taken a decision to terminate all those who were appointed on consolidated wage basis, the other respondents continued because of the interim orders by courts. Service for a period of one or two years or continuation for some more years by virtue of final orders under challenge, or interim orders, will not entitle them to any kind of relief either with reference to regularization nor for payment of salary on par with regular employees of the Department."

25. In the decision *Chennai Port and Dock Workers Congress (INTUC) V. Union of India*, reported in 2002 (101) FJR 148, this Court has held that 'The High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot by any stretch of imagination be construed as an authority under the Industrial Disputes Act' and further observed that the Petitioners are entitled to work out their remedies provided under the Industrial Disputes Act.

26. In the decision *Alarsin & Alarsin Marketing Employees' Union v. M/s. Alarsin Pharmaceuticals & M/s. Alarsin Marketing Private Limited and another*, 2004 Vol.106 (3) Bom. L.R. 853 at special page 861 & 862, in paragraph 19, it is observed as follows:

"19. Mr. Pai has also submitted that there is a breach of Section 33(1) of the Act because the services were terminated despite the continuation of the conciliation proceedings, in the Statement of Claim filed by the petitioner, it is stated that the matter was closed by the Conciliation Officer on 8th April 1987. This being so, the question is whether the action of the Company in terminating the services of the workmen on 22nd April 1987 after the closure of the conciliation proceedings would amount to a breach of Section 33(1). By placing reliance on the judgment in *Lokmat (supra)*, Mr. Pai for the petitioner, submits that the Conciliation Officer does not become functus officio and the proceedings must

be considered to be continued till such time as a failure report is submitted by the Conciliation Officer to the State Government. In the present case, there is no evidence on record to demonstrate that the failure report had not been submitted by the Conciliation Officer. In fact, the Company has disputed the contention that the demands were actually admitted in conciliation. According to the Company, the demands were not admitted in conciliation and the proceedings were at a preliminary stage before the Conciliation Officer. If the demands were not admitted in conciliation, then the provisions of Section 33 (1) of the Act would not be applicable, the section is very clear that it is during the pendency of conciliation proceedings before a Conciliation Officer that an employer shall not alter to the prejudice of the workmen concerned in the dispute the conditions of service applicable to them immediately before commencement of such proceedings. While considering the submission made on behalf of the petitioner regarding Section 33(1), the Labour Court has concluded that there is no breach of Section 33(1). The Labour Court has, therefore, rightly concluded that the workmen were not entitled to any relief except for the three workmen mentioned in the Award."

27. Admittedly, I.D.No.161 of 2014 on the file of 2nd Respondent/Labour Court concerning an issue relating to permanency of employment of 91 employees is pending for adjudication. Also that, the other allied matters are pending for adjudication before the concerned authorities. When the said industrial dispute is pending on the file of the 2nd Respondent, then, it will not be appropriate for the Appellant/Union to file the present Writ Petition alleging violation of Section 9A of the Industrial Disputes Act, 1947. Also that, a categorical stand of the 1st Respondent/University is that the employees concerned were directly engaged to work in the University on temporary basis and that too without following any regular procedure for appointments and also that, they were not appointed through open advertisement and Selection Committee nor sponsored by the Employment Exchange. Moreover, reservation policy of the Government in public employment was not followed. Their appointments were not regularised and also at no point of time, they were promised any permanent appointment in the University. It cannot be disputed

that the paper advertisement calling for applications to fill up 54 posts of non-teaching staff was issued in Daily Thanthi on 17.07.2014 and the applicants submitted their applications on 18.08.2014. As a matter of fact, the selection process had commenced on 17.07.2014 and in reality, the Conciliation Failure Report was received by the State Government only on 06.03.2014 and the same was referred to the 2nd Respondent/Labour Court, Vellore on 21.08.2014 as per G.O.(D).No.379. As such, the Appellant/Union is not entitled to claim the reliefs sought for in the Writ Petition, because of the prime reason that the Writ Petition filed by it, is not per se maintainable before this Court. Consequently, the Writ Appeal fails.

28.In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Thiruvalluvar University,
Rep. By its Registrar,
Serkadu, Vellore 632 115.
2. The Presiding Officer,
The Principal Labour Court,
Sathuvachari, Vellore 632 009.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.18009
+1cc to Mr.S.Yashwanth, Advocate, S.R.No.18475

W.A.No.488 of 2015

EV(CO)
CA(20/04/2015)

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