

In the High Court of Judicature at Madras

Reserved on : 11.06.2015

Pronounced on : 16.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.777 of 2015
and M.P.Nos.1 and 2 of 2015

Thyagi Jeevanandam Kattidam Matrum
Udaluzhaippu Thozhilalargal Munnetra Sangam,
(Regd. No.347/CNI)
Rep. By its General Secretary,
No.1, Sarma Nagar, First Street,
Quarters, Chennai - 600 039 ...Appellant

Vs

- 1.State of Tamilnadu
rep. By Secretary to Government,
Department of Labour & Employment,
Fort St. George, Chennai - 600 009
2. The Commissioner of Labour,
DMS Compound,
Annasalai, Chennai - 600 006
3. Labour Officer,
Labour Welfare Department,
Chintamani Campus,
Annanagar East,
Chennai - 600 042 ...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the Order dated 30.08.2012 made in W.P.No.21783 of 2012 by the Writ Court..

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandaus calling for the records from the second respondent relating to his order dated 17.07.2012 in so far as the petitioner union is concerned and quash the same and direct the respondents 2 and 3 and

all his subordinates in the State to accept the application forms from workers in the unorganized sectors through the petitioner union for enrollment, renewal, claiming social security benefits offered by the Government of Tamil Nadu under various social security schemes.

For Appellant : Mr.S.Ayyathurai
For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

J U D G M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Sangam has preferred the instant intra Court Writ Appeal as against the Order dated 30.08.2012 in W.P.No.21783 of 2012 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the Impugned Order dated 30.08.2012 in W.P.No.21783 of 2012 in Paragraph Nos.8 to 10 had observed the following and resultantly dismissed the Writ Petition without costs.

"8.A perusal of the Government letter dated 31.10.2008 (vide page No.2 of the typed set of papers) would go to show that the application forms have to be submitted by each workman directly to the Labour Officer. It does not provide for submission of application forms through the trade unions. The learned counsel for the petitioner would rely on Clause 3.7 of the said letter wherein, it is stated that if any certificate is issued by a trade union to the effect that the individual workman is involved in the said sector, the trade union shall affix its registration number, its seal and address on the said certificate. Relying on this, the learned counsel would submit that the trade union has got right to collect the application forms from the workmen and to fill up the same and to submit the same to the Labour Officer.

9.In my considered opinion, the said provision cannot be read and understood in such a way. It only states that as and when a certificate is issued by a trade union stating that a particular workman is involved in the said sector, to have authenticity for the same, the certificate should bear the registration number, its seal and office address of the trade union. Therefore, it cannot be said that it gives right to the trade union to collect application forms; to fill up the same on behalf of the

workmen and to submit the same to the Labour Officer. Thus, the contention of the learned counsel for the petitioner that the trade unions have got right to receive the application forms from the workmen to fill up the same and to submit the same to the Labour Officer cannot be countenanced at all. I only say that unless the Government permits the trade unions to receive the application forms; to fill up the same and to submit the same to the Labour Officer, it is not for this court to compel the authorities to permit the trade unions to do the same. In such view of the matter, the order of the second respondent dated 17.07.2012 does not require any interference at the hands of this Court.

10. Now, coming to the representation made by the petitioner trade union to the second respondent, I have to state that it is for the second respondent to consider the same. I do not want to express any opinion regarding the request made by the petitioner, in the representation. The Commissioner may consider the request of the petitioner and if he finds that the earlier procedure followed will be beneficial for the workmen then it is for him to decide as to whether to restore the earlier practice. Except making this observation, this Court cannot grant any more relief to the petitioner in this writ petition..."

3. Assailing the correctness of the Order dated 30.08.2012 in W.P.No.21783 of 2012 passed by the Learned Single Judge, the Learned Counsel for the Appellant contends that the Impugned Order passed by the Learned Single Judge in the Writ petition is Contrary to Law and Facts and Circumstances of the instant case. As such, the same is not a valid one in the Eye of Law.

4. According to the Learned Counsel for the Appellant, the Learned Single Judge failed to approve the ground taken by the Appellant in the Writ Petition to the effect that the Impugned Order passed by the 2nd Respondent/Commissioner of Labour, Chennai - 6, which was reduced into writing and displayed by the 3rd Respondent/Labour Officer of the Labour Welfare Department, Chennai is violative of Article 19(1) (C) and 21 of the Constitution of India.

5. The Learned Counsel for the Appellant proceeds to take a plea that the Learned Single Judge had failed to consider that unorganised workers are entitled to formation of 'Trade Union' to act on their behalf for enrolment and renewal of membership under Social Welfare Schemes of the Government, which right is guaranteed under the Constitution of India.

6.The Learned Counsel for the Appellant proceeds to take a stand that the Learned Single Judge had committed an error in holding that Trade Union had no rights to receive and submit applications on behalf of their members for getting enrolled and renewed of their memberships for Welfare Schemes.

7.The Learned Counsel for the Appellant submits that the Impugned Order is not in the interest of unorganised workers, who are all illiterate, ununiformed and ignorant of their rights and who need most of the services of their Union for availing the benefits under the Social Welfare Schemes meant for them.

8.Lastly, it is the contention of the Learned Counsel for the Appellant that the Learned Single Judge should have held that the 2nd Respondent/ Commissioner of Labour, Chennai had no jurisdiction nor Authority to pass the Impugned Order, when the Government had not chosen to pass any such order.

9.It comes to be known that the 3rd Respondent/Labour Welfare Officer had issued an advisory that in the Appraisal Work of Labour Officers (Social Security Meeting) that took place on 17.07.2012, the 2nd Respondent/Commissioner of Labour had orally directed that from 18.07.2012, 'Registration', 'Renewal' and for getting 'Financial Assistance', the concerned Card holder was instructed to appear in person and to tender the same in Labour Office.

10. It transpires that the Appellant/Sangam had submitted an undated representation in writing (which was received on 20.07.2012) before the 2nd Respondent/Commissioner of Labour, Chennai requesting him to restore the old procedure. Inasmuch as the same was not considered, the Appellant/Sangam filed the Writ Petition praying to quash the Oral Order of the 2nd Respondent dated 17.07.2012.

11.The prime contention of the Learned Counsel for the Appellant/Sangam is that it is very difficult for each and every worker to go all the way to the Office of the Labour Officer to project an application in connection with 'Registration', 'Renewal' and for obtaining 'Financial Aid/Assistance' sum, since majority of them are illiterates. Further, the Order of the 2nd Respondent had caused great inconvenience and hardship to the individual workers and therefore, the said Order is to be set aside by this Court in furtherance of Substantial Cause of Justice.

12. There is no dispute in regard to the fact that there exists a Board called as 'Construction Workers Board' and the said Board aids the construction workers in an unorganised sector to get them registered.

13. The real grievance of the Appellant/Sangam is that Clause 3.7 of Lr.No.W1/12875/08-1 dated 31.10.2008 addressed by the 2nd Respondent to the Secretary, Tamilnadu Construction Workers Welfare Board, Chennai - 34 and three others in a crystalline fashion indicates that "if the certificate for the work done by the worker is given in the application by the 'Trade Union', the registration number of trade union and the address along with seal should be found" and therefore the Appellant/Sangam has every right to collect the application forms from the workers by filling up and to submit the same to the 3rd Respondent/ Labour Officer.

14. It is to be noted that a 'Trade Union' is not a superfluous entity. However, it is to be pertinently pointed out that there is no 'Common Law Right' on a 'Trade Union' to represent its members, whether for the purposes of collective bargaining or in respect of an individual grievance redressal of its members as per decision of Hon'ble Supreme Court, Chairman, State Bank of India and Another V. All Orissa State Bank Officers Association and Another reported in 2003 (3) L.L.N. at Page 784. Furthermore, it cannot be lost sight of that formation of a 'Trade Union' is a recognised fundamental right under Article 19(1)(C) of the Constitution of India.

15. At this stage, this Court very pertinently points out that mere running of the eye over the contents of the Clause 3.7 of the Letter dated 31.10.2008 of the 2nd respondent as stated supra nowhere overtly or covertly enjoins the Government in permitting the 'Trade Union' to receive the application forms, to fillup the same and to submit it to the 3rd Respondent/Labour Officer.

16. Suffice it for this Court to state that in the absence of express permission from the Government to permit the 'Trade Union' to receive application forms, to fillup the same and to submit to the 3rd Respondent etc., this Court opines that it cannot accede to the plea of the Appellant/Sangam to permit them to do the same.

17. Viewed in that perspective, this Court holds that the conclusion of the Learned Single Judge in observing that the order of the 2nd Respondent/ dated 17.07.2012 does not require any interference is flawless one.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Before parting with the case, this Court relevantly points out that the Appellant /Sangam had made an undated representation which was received on 20.07.2012 in the office of the 2nd Respondent and it is needless to state it is for the 2nd Respondent/Commissioner of Labour, Chennai - 6 to look into the same and take a final call in the subject matter in issue in a free, fair and dispassionate manner as opined by this Court.

Therefore, to prevent an aberration of justice and to promote substantial cause of justice, this Court directs the 2nd Respondent /Commission of Labour, Chennai - 6 to look into the contents of the undated Representation in a wholesome and threadbare fashion and to dispose of the same by passing a speaking order by outlining a process of reasoning in a practical, pragmatic, qualitative and quantitative fashion, ofcourse, after adhering to the Principles of natural of justice by providing adequate opportunities to the Appellant/Sangam (including the aspect of Personal Hearing, if situation so warrants), within a period four weeks from the date of receipt of copy of this Order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

ssd

To

- 1.The Secretary to Government,
Department of Labour & Employment,
Fort St. George, Chennai - 600 009
2. The Commissioner of Labour,
DMS Compound,
Annasalai, Chennai - 600 006
3. Labour Officer,
Labour Welfare Department,
Chintamani Campus,
Annanagar East,
Chennai - 600 042.

1 cc to Mr. .S.Ayyathurai, Advocate Sr.No.29304

1 cc to Government Pleader.Sr.No.29379

WEB COPY

W.A.No.777 of 2015
and M.P.Nos.1 and 2 of 2015

SVI (CO)
PMK.23.6.2015