

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2015

DATE OF DECISION : 3.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.99 of 2015

and

M.P.No.1 of 2015

The Management of Tata Consultancy Services Limited
represented by the Vice President-Human Resources
185, Lloyds Road
Chennai-600 086

Appellant/ 2nd Respondent
in W.P.No.1336/15 on the
file of this court

Vs.

1. Selvinth Gnanesh Joshua
2. Labour Officer-III
(Conciliation Officer)
Kuralagam, Chennai

Respondents/ Petitioner and
First Respondent in
W.P.No.1336/15 on the file
of this court

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this Court dated 21.01.2015 made in W.P.No.1336 of 2015.

W.P.No.1336 of 2015:- filed under Article 226 of the constitution of India praying for the issuance of a writ of mandamus to direct the 1st respondent to commence conciliation proceedings forthwith in respect of the Industrial Dispute raised by the petitioner in connection with the order of termination of his service dated 22nd December 2014 issued by the second respondent and consequently direct the second respondent to await the resolution of the said Industrial Dispute before giving effect to the said order of termination.

For appellant Mr.L.Nageswara Rao, Senior Counsel
for Mr.Vinod Kumar

For R1 Mr.V.Prakash, Senior Counsel
for M/s.Ramapriya Gopalakrishnan

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant intra-court appeal arises from the order dated 21.01.2015 passed in W.P.No.1336 of 2015, whereunder, the second respondent herein / Labour Officer-III (Conciliation Officer) was directed to conciliate and decide the question with regard to the status of the writ petitioner /first respondent herein as to whether the writ petitioner is a workman as per the Industrial Disputes Act, 1947 (for short "the I.D. Act") and also whether the second respondent / appellant herein is an industry as per the Act, within a period of two weeks. It was further directed that until then, the writ petitioner can be allowed to continue in employment with the second respondent /appellant herein.

2. For the sake of brevity and convenience, the parties are referred to as per their rank in the writ appeal.

3. The facts in nutshell leading to filing of the writ petition are that the first respondent/employee, while working as Project Manager, claiming to be a workman within the definition of Section 2(s) of the I.D. Act, preferred a dispute under Section 2-A of the I.D. Act before the Labour Officer-III (Conciliation Officer), stating therein that a dispute has arisen on account of the order of termination from service dated 22.12.2014. It was also stated in the application that the first respondent's last drawn monthly wage was Rs.73,011/-, on 19.01.2015. On the same day, the first respondent came up with the instant writ petition under Article 226 of the Constitution of India, seeking an order / direction or writ directing the Labour Officer-III (Conciliation Officer) to commence the conciliation proceedings forthwith and also a direction to the appellant / management not to give affect to the order of termination during the pendency of the conciliation proceedings.

4. The learned Single Judge disposed of the writ petition as aforestated.

5. The case of the first respondent before the Writ Court was that he joined the appellant/management on 15.09.2005 as Assistant Systems Engineer. In the year 2007, he was promoted as IT Analyst. Thereafter, in 2011, further promotion was given to the post of Assistant Consultant. The job of the first respondent was

technical in nature involving maintenance of large databases. Thus, the first respondent is a workman as defined under Section 2(s) of the I.D. Act. It was further averred that the appellant had decided to terminate the service of 25,000 workers and to engage 55,000 Assistant Consultants. The appellant comes within the definition of "industry" within the meaning of Section 2(j) of the I.D. Act. The services of the first respondent have been removed in violation of the provisions of Section 25 of the I.D. Act without following the principles of last come first go. It was further submitted that the salary of the first respondent was protected under Section 33 of the I.D. Act.

6. On the other hand, the appellant, being the second respondent therein, adverted to the pleadings of the employee stating therein that the first respondent employee was in managerial cadre and as such, he was not a workman within the definition of the I.D. Act. A copy of the alleged dispute raised before the Conciliation Officer was not served on the management. The writ petition was not maintainable against the private party and also the Writ Court ought to have dismissed the writ petition on the ground that without waiting for the statutory period available to the Conciliation Officer for completion of the conciliation proceedings, the writ petition has been filed.

7. The learned Writ Court held that the dispute with regard to the status of the employee as to whether he was a workman under the provisions of the I.D. Act may be decided by the Conciliation Officer and also, it was directed to maintain status quo as on date of filing of the writ petition. Further direction was issued to continue the employment of the first respondent employee with the appellant. Being aggrieved, the instant appeal has been preferred by the management.

8. Shri L.Nageswara Rao, learned Senior Counsel, assisted by Mr.Vinod Kumar, learned counsel appearing for the appellant management, would submit that the Conciliation Officer, while exercising power under the provisions of Section 12 of the I.D. Act, has no adjudicatory power and as such, the question with regard to the status of the employee in respect of his claim to be a workman could not be decided by the Conciliation Officer. Thus, the direction of the learned Single Bench is contrary to the statutory provisions.

9. It is next contended that in the writ, a direction was sought against the appellant / management to grant the relief under Section 33-A of the I.D. Act, which could not have been granted by the High Court, while directing the Conciliation Officer to complete the conciliation proceedings within the specified period. Thirdly, it is urged by the learned Senior Counsel that when Section 12 of the I.D. Act specifically provides to conclude the proceedings within a period of two weeks, the employee ought not to

have been permitted to move the High Court on the same day when the dispute was referred to the Conciliation Officer by the employee without giving reasonable time to consider and take a decision. The writ petition ought to have been thrown at the threshold.

10. Per contra, Shri V.Prakash, learned Senior Counsel appearing for the first respondent/employee would submit that the employee falls within the definition of "workman". By giving the designation of Project Manager, the employee cannot be taken out of the ambit of the definition of "workman". It is next contended that it is a well settled proposition of law that the status of the workman has to be decided, keeping in view, the duties and works of the employee concerned and not on the basis of the designation of the post.

11. It was further contended that Section 12 of the I.D. Act, which provides for duties of Conciliation Officers, clearly provides that 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. The word "investigate" encompasses the dispute with regard to the nature of the status of the employee also and as such, the Conciliation Officer is fully competent to investigate and decide the status of the employee.

12. The learned Senior Counsel further relies on Rule 39 of the Tamil Nadu Industrial Disputes Rules, 1958, to garner support to his contention, that under Rule 39, the Conciliation Officer may call for, admit or accept any evidence at any stage and in any manner, which in equity and good conscience, he thinks fit. Thus, to determine the status of the employee, the Conciliation Officer is competent to admit and examine the evidence in the proceedings. It is lastly urged that the learned Writ Court has directed to continue the employee in employment, keeping in view, the urgency required in the matter exercising the power under Section 33-A of the I.D. Act. The employee may be given liberty to make an application under Sections 33 or 33-A of the I.D. Act for appropriate relief.

13. We have considered the rival submissions of the learned Senior Counsel appearing for the parties, perused the pleadings and documents appended thereto.

14. It is useful and beneficial for convenience to refer to certain relevant provisions of the I.D. Act and Tamil Nadu Industrial Disputes Rules.

"14. Sections 2 (j), 2(k) and 2(s) of the I.D. Act reads as under :

"2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen."

(k) "industrial dispute" means any dispute or difference between employers and employees, 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;

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

15. Section 12 of the I.D. Act reads as under :

12. Duties of conciliation officers.-(1) Where an 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 for 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 [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, 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: [Provided that, [subject to the approval of the conciliation officer,] the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.]

16. Section 33 of the I.D. Act reads as under :

[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a 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,—

(a) in regard to any matter connected with the dispute, 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; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in subsection (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.—For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being [a member of the executive or other officer-bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

[Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]

17. Rule 39 of the Tamil Nadu Industrial Disputes Rules, 1958 reads as under :

"39.Evidence. -- A [Conciliation Officer], Board, Court, Labour Court or Tribunal, or an Arbitrator may call for, admit or accept any evidence at any stage and in any manner, which in equity and good conscience he thinks fit."

18. The indisputable facts are that the first respondent joined the appellant as Assistant Systems Engineer. Thereafter, he was promoted to the present post and designated as Project Manager. The question as to whether he was involved in managerial cadre or he was a workman, is to be decided by the appropriate adjudicating authority.

19. The I.D. Act was enacted with the purpose for investigation and settlement of industrial dispute and other incidental purposes. The industrial dispute has been defined under Section 2(k) as "any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen." Thus, any dispute between the employer and the employee, who is not a workman does not fall within the ambit of resolution of dispute under the provisions of the I.D. Act.

20. There is no dispute that status of an employee as to whether one is a workman or an employee other than a workman, is to be decided not on the basis of designation, but, on the basis of the work performed by the employee. A bare perusal of the definition clause of "workman" makes it clear that "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. The issue is no longer res integra.

21 In TELCO Convoy Driver's Mazdoor Sangh vs. State of Bihar¹, while interpreting the provisions of Section 10(1) of the I.D. Act, the Supreme Court discussed the adjudication in respect of status of the workman and held as under:

"13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that in performing this

¹ (1989) 3 SCC 271

administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See Ram Avtar Sharma v. State of Haryana; M.P. Irrigation Karamchari Sangh v. State of M.P.; Shambhu Nath Goyal v. Bank of Baroda, Jullundur.

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh case, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory."

22. Yet in another decision in Sharad Kumar vs. Govt. of NCT of Delhi and Others², referring to and relying on several earlier decisions rendered by the Supreme Court, the Supreme Court observed as under:

"19. On a fair reading of the provisions in Section 2(s) of the Act it is clear that "workman" means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including any such person who has been dismissed, discharged or retrenched.

20. The latter part of the section excludes 4 classes of employees including a person employed mainly in a managerial or administrative capacity, or a person employed in a supervisory capacity drawing wages exceeding Rs 1600 per month or exercises functions mainly of a managerial nature. It has to be taken as an accepted principle that in order to come within the meaning of the expression "workman" in Section 2(s) the person has to be discharging any one of the types of works enumerated in

the first portion of the section. If the person does not come within the first portion of the section then it is not necessary to consider the further question whether he comes within any of the classes of workmen excluded under the latter part of the section. The question whether the person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing order or the appointment order or in any other material in which the duties assigned to him may be found. When the employee is assigned a particular type of duty and has been discharging the same till the date of the dispute then there may not be any difficulty in coming to a conclusion whether he is a workman within the meaning of Section 2(s). If on the other hand the nature of duties discharged by the employee is multifarious then the further question that may arise for consideration is which of them is his principal duty and which are the ancillary duties performed by him. In such a case determination of the question is not easy at the stage when the State Government is exercising the administrative jurisdiction vested in it for the limited purpose of satisfying itself whether the dispute raised is an industrial dispute within the meaning of Section 2 (k) of the Act. While deciding the question, designation of the employee is not of much importance and certainly not conclusive in the matter as to whether or not he is a workman under Section 2(s) of the Act.

31. x x x x x x x x x x x We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."

Thus, now, it is well settled that the dispute with regard to status of an employee as to whether one is workman or an employee other than a workman, has to be decided only by the Industrial Tribunal or the Labour Court, having adjudicatory power.

23. The second question is as to whether the Conciliation Officer is competent to determine the status of an employee in the light of definition under Section 2(s) of the I.D. Act. Section 12 prescribes for duties of a Conciliation Officer. On a bare perusal of the said provision, it is crystal clear that the Conciliation Officer is obliged to consider only 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 adjudication is involved in conciliation process, as, conciliation can be achieved only by inducing the parties to come to a fair and amicable settlement. If a party to the dispute questions the status of the complainant that the employee is not a workman under the definition of Section 2(s) of the I.D. Act, the Conciliation Officer may not proceed with the matter for adjudicating the issue of status of the employee. The Conciliation Officer can proceed with the reference for settlement, only in the event, both the parties are in agreement with the status of the employee making the reference that he is a workman. Thus, the contention of the learned Senior Counsel appearing for the first respondent that a conjoint reading of provisions of Section 12 of the I.D. Act and Rule 39 of Rules empowers the Conciliation Officer to examine the evidence for the purpose of adjudicating the status of an employee, cannot be countenanced.

24. The issue in regard to the competence of the Conciliation Officer came up for consideration in *Triveni Engineering and Industries Ltd. vs. Jaswant Singh and another*³, relied on by the learned Senior Counsel appearing for the appellant, wherein, it was held as under:

"20. x x x x x x x x x x The issue of whether or not a person is a "workman" within the meaning of the U.P. Industrial Disputes Act, 1947 is a matter to be decided by a competent court, after allowing the parties to lead evidence. Thereafter, on proper appreciation of the materials on record including the oral evidence, a decision could be rendered and the issue could be determined. The enquiry before the Labour Commissioner is of a summary nature and while exercising such a power of summary nature, the Labour Commissioner cannot decide and examine factual matters relating to an issue as to whether or not the person concerned is a workman or not."

25. In *Rajasthan State Road Transport Corpn. and others Vs. Zakir Hussain*⁴, while considering the jurisdiction of the Civil court, the Supreme Court held as under :

3 (2010) 9 SCC 151

4 (2005) 7 SCC 447

21. It is a well-settled principle of law as laid down by this Court that if the court has no jurisdiction, the jurisdiction cannot be conferred by any order of court. This Court in the case of A.R. Antulay v. R.S. Nayak¹¹, AIR paras 40 to 42 wherein it is, inter alia, held and observed as under: (SCC pp. 650-51, paras 38-40)

"38[40]. ... This Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case which it did not possess such jurisdiction....

39[41]. ... The power to create or enlarge jurisdiction is legislative in character... Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal. ...

40[42]. ... But the superior court can always correct its own error brought to its notice either by way of petition or ex debito justitiae. See Rubinstein's Jurisdiction and Illegality."

33. It is settled law that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner.

26. Under sub-section (3) of Section 12 of the I.D. Act, the Conciliation Officer is required to send a settlement report to the appropriate Government for further action. Under sub-section (4) of Section 12, in the event of failure, a failure report may be sent to the appropriate Government. On consideration of the report so submitted under sub-section (4), the appropriate Government, after having been satisfied, is entitled to refer the case to the Labour Court, Tribunal or National Tribunal, as the case may be, for adjudication under the provisions of sub-section 5.

27. In order to have expeditious conciliation, sub-section 6 of Section 22 of the I.D. Act makes it mandatory to submit a report within a period of 14 days of the commencement of the conciliation proceedings, though the period may be further extended with consent of the parties to the Board.

28. The next issue that arises for consideration is as to whether the High Court, while exercising its power under Article 226 of the Constitution of India, can pass an order to maintain status quo under Section 33 or 33-A of the I.D. Act.

29. Section 33 of the I.D. Act prescribes 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.

30. Section 33-A of the I.D. Act prescribes that where an employer contravenes the provisions of Section 33 during the pendency or proceedings before a Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, to such Conciliation Officer or Board, arbitrator, Labour Tribunal or National Tribunal, as the case may be.

31. In the aforesaid conspectus of the facts, the authority competent to consider the dispute in respect of provisions of Section 33 and also to grant relief in case of contravention, is the authority before whom the dispute is pending consideration. Our view, in this respect, is fortified by an observation of the Supreme Court in *Straw Board Manufacturing Company Ltd., Saharanpur vs. Govind*⁵ (See para 3). There was no occasion to seek the second relief, i.e., maintaining status quo as required under Section 33 of the I.D. Act and as such, the second prayer for maintaining status quo as required under Section 33 of the I.D. Act, is also not maintainable, when the first respondent has not approached the Conciliation Officer, making a complaint in writing, that there was a contravention of the requirement of Section 33 by the employer. There was no grievance of non-action or wrong action by the Conciliation Officer, in the writ petition. The Writ Court ought to have restrained itself from considering the issue and passing an order. In such view of the matter, we are of the considered opinion that the learned Single Judge has over-stepped in passing the order to maintain status quo, without referring the matter back to the authority, wherein, the dispute was pending consideration.

32 The last issue that arises for our consideration is whether the writ petition was maintainable, as pleaded by the learned Senior Counsel appearing for the appellant, firstly, at the stage, when the first respondent, without waiting for the statutory period of two weeks or further time extended with the consent of the parties, has approached this Court under Article 226 of the Constitution of India and secondly, the relief sought by the first respondent, seeking a direction, is against the appellant, a private party.

5 AIR 1962 SC 1500.

33. On a perusal of the relief sought in the writ petition, it appears that the relief is in two-fold. Firstly, a mandamus is sought to the Conciliation Officer to conciliate and decide the question with regard to status of the first respondent and secondly, a direction to allow him to continue in employment with the appellant.

34. The first respondent has made a reference for conciliation on 19.01.2015 and on the same day, has come up with the instant writ petition. Thus, the writ petition ought not to have been entertained without knowing the steps taken by the Conciliation Officer. At that stage, there was no cause or cause of action which impelled the first respondent to take recourse to writ jurisdiction under Article 226 of the Constitution of India.

35. The contention of the appellant with regard to maintainability of the writ petition against the appellant, a private party, predicated on the ground that the appellant was not performing a public function and as such, no writ petition is maintainable, is not necessary to be decided in the facts of the case, at this juncture, leaving the question of law open, to be decided in an appropriate case.

36. Resultantly, the impugned order dated 21.01.2015 passed in W.P.No.1336 of 2015 is set aside, the writ petition is dismissed and the writ appeal is allowed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vvk/cad

To

The Labour Officer-III
(Conciliation Officer)
Kuralagam, Chennai

1 cc to Mr.P.Vinod Kumar, Advocate, sr. 11478

1 cc to Mr.Ramapriya Gopalakrishnan, advocate, sr. 11679

W.A.No.99 of 2015

JP (CO)

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