

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM

The Honourable MR. JUSTICE M.DURAISWAMY

W.P.No.1336 of 2015
and M.P.No.1 of 2015

Selvinth Gnanesh Joshua ... Petitioner

-vs-

1. Labour Officer - III
(Conciliation Officer)
Kuralagam, Chennai.

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

... Respondents

Writ Petition 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 22.12.2014 issued by the 2nd respondent and consequently direct the 2nd respondent to await the resolution of the said Industrial Dispute before giving effect to the said order of termination.

For Petitioner

: Mr.V.Prakash, Senior Counsel
for Ms.Ramapriya Gopalakrishnan

For Respondents

: Mr.V.Subbiah, SGP (R1)

: Mr.Yashod Varadhan, Senior Counsel
for Mr.Vinod Kumar (R2)

ORDER

The petitioner has filed the above writ petition to issue a writ of mandamus directing the 1st respondent to commence conciliation proceedings forthwith in respect of an Industrial Dispute raised by the petitioner in connection with the order of termination of his service dated 22.12.2014 issued by the 2nd

respondent and consequently direct the 2nd respondent to await the resolution of the said Industrial Dispute before giving effect to the said order of termination.

2. Heard Mr.V.Prakash, learned Senior counsel for the petitioner, Mr.V.Subbiah, learned Special Government Pleader for the 1st respondent and Mr.Yashod Varadhan, learned Senior Counsel for the 2nd respondent.

3.1 It is the case of the petitioner that he joined the service of the respondent Company on 15.09.2005 on the basis of merit. He was designated as Assistant System Engineer. In the year 2007, he was promoted as IT Analyst. Thereafter, in 2011, he was promoted as Assistant Consultant. According to the petitioner, he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), since his main duties and responsibilities are technical in nature. At present, according to the petitioner, his job involves receiving information from the respondent's Company's clients in relation to the software servers to be built and maintained, analysing the requirements and maintaining and building software servers as per the company's client's needs. Further, the petitioner had contended that the 2nd respondent Company is an Industry within the meaning of Section 2(j) of the Act. That apart, according to the petitioner, the 2nd respondent's industrial activity being to develop software and applications as per their clients' business requirements and to provide support and maintenance services as well.

3.2 Further, according to the petitioner, he is honest, sincere and dedicated worker and his work performance has always been very good. He was also given various awards by the respondent Company in recognition of his excellent service and in appreciation of his outstanding contribution to the Organisation. Throughout his service in the Company, he was given 'C' rating and as per the Company's policy 'C' rating refers to "meeting the expectations of the Company".

3.3. In the affidavit filed in support of the writ petition, the petitioner has stated that the respondent Company has taken a decision to terminate the services of 25000 workers who are Assistant Consultants and above and to recruit 55000 persons, predominantly freshers on the basis of campus interviews and other less experienced persons in their place with a view to cut costs. The petitioner contended that there was no valid reason for the respondent Company to terminate the services of experienced workers like the petitioner and to substitute freshers.

3.4 On 22.02.2014, the 2nd respondent Management issued an order of termination and as per the same, the petitioner is to be

relieved on 21.01.2015 i.e., today. According to the petitioner, the termination is unjustified and is in violation of Section 25 of the Act and the principle of last come first go.

3.5 Therefore, the petitioner raised an Industrial Dispute invoking the remedy under Section 2-A of the Act before the 1st respondent and presented a petition on 19.01.2015. In these circumstances, the petitioner has filed the above writ petition.

4. The 2nd respondent Management by filing a counter affidavit contended that the petitioner is not a Workman as defined under the Act and the 2nd respondent Company is not an Industry as per the Act. Therefore, the dispute between the petitioner and the 2nd respondent is not an Industrial Dispute and therefore, the dispute raised before the 1st respondent under Section 2-A of the Act is not maintainable.

5. The petitioner in the rejoinder affidavit has stated that he has aged parents to support being the only son in the family and that his father had undergone an open heart surgery and if he is thrown out of employment, he will be put to very great hardship and prejudice.

6. Mr.V.Prakash, learned Senior Counsel appearing for the petitioner submitted that the dispute raised by the petitioner under Section 2-A of the Act is very much maintainable for the reason that the petitioner can be construed as a "Workman" and the 2nd respondent Company is an "Industry" as defined under the Act. The learned Senior Counsel further submitted that as per Section 2 (s) of the Act, "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 who is employed mainly in a managerial or administrative capacity. According to learned Senior Counsel, since the petitioner is not in the managerial or administrative capacity, he can only be termed as "workman" under the Act.

7. The learned Senior Counsel for the petitioner also relied upon Section 33 of the Act, wherein it has been mentioned that 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 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, 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 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.

8. After hearing the submissions made by the learned Senior Counsel for the petitioner, Mr. Yashod Varadhan, learned Senior Counsel for the 2nd respondent submitted that the petitioner is employed as Project Manager and therefore, he cannot be termed as a Workman under the Act. That apart, the learned Senior Counsel also submitted that the 2nd respondent shall not come within the definition of "Industry" under the Act. Besides, the learned Senior Counsel further submitted that the writ petition itself is not maintainable for the reason that the writ cannot be maintained as against a private company.

9. In support of the above contentions, the learned Senior Counsel for the 2nd respondent has relied upon the following Judgments:-

(1) reported in (2000) 3 Supreme Court Cases 93 (Secretary, Indian Tea Association vs. Ajit Kumar Barat and Others) wherein, the Hon'ble Apex Court held that for making or not making the reference, only the State Government has to decide the same and the High Court cannot direct the State Government to make a reference of the dispute between the employer and the employee.

(2) reported in (2005) 6 Supreme Court Cases 657 (Binny Ltd., and another vs. V. Sadasivan and others) In this Judgment, the Hon'ble Supreme Court held that the remedy available to the employees is to seek redressal of their grievance in Civil Law or under the Labour Law enactments especially in view of the disputes questions involved as regards the status of employees and other matters and there is no public law element and the remedy open to the employee is to seek appropriate relief other than judicial review of the action taken by the Company.

(3) reported in (2007) 5 Supreme Court Cases 273 (Rashtriya Chemicals & Fertilizers Ltd., and Another vs.

General Employees' Association and Others, wherein, the Hon'ble Apex Court held that the High Courts will not straightaway direct the appropriate Government to refer the dispute and it is for the appropriate Government to apply its mind to relevant factors and satisfy itself as to the existence of a dispute before deciding to refer the dispute.

(4) reported in MANU/GJ/0379/1998 (Union of India (UOI) vs. Manubhai Parmar Divl Secretary, wherein the Gujarat High Court in paragraph No.9 has held as follows:-

"9. In our opinion, in the facts and circumstances of the case, when the period for which, interim relief was continued is over, and now the competent court (Industrial Tribunal) is seized of the matter, it is not necessary for us to interfere with the order passed by CAT. We are, however, constrained to observe that it is indeed doubtful whether such order could have been passed by CAT. In our judgment, it is well settled principle of law that interim relief can only be granted in the aid of and as an ancillary to the principal and main relief which may be granted by the Court/Tribunal at the time of final disposal of the proceeding. Therefore, where a Court/Tribunal refuses to entertain a proceeding either because it is not maintainable at law or on any other ground whatsoever and leaves the parties to approach an appropriate forum without considering and deciding the (SIC) lis, it cannot grant or continue interim relief till such parties obtain appropriate relief from appropriate forum".

10. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and Mr.V.Subbiah, learned Special Government Pleader for the 1st respondent, it is not in dispute that the petitioner is employed with the 2nd respondent Company. He joined the services of the 2nd respondent in the year 2005. On 22.12.2014, the 2nd respondent sent a letter to the petitioner relieving him from the employment from the 30th day of the letter that is 21.01.2015. The main contention now raised in this writ petition is with regard to the status of the petitioner and the 2nd respondent Company. However, the petitioner raised a dispute with regard to the letter dated 22.12.2014 before the 1st respondent Labour Officer under Section 2-A of the Act. The said dispute was raised on 19.01.2015. When a serious dispute has arisen as to the status of the petitioner and the 2nd respondent and when the issue is pending

before the 1st respondent, I do not find any reason to give a finding in this writ petition as to whether the petitioner is a Workman as defined under the Act or whether the 2nd respondent is an Industry as defined under the Act. The said questions can be decided by the 1st respondent Labour Officer in the dispute raised by the petitioner.

11. Since the main relief sought for in the writ petition is only against the 1st respondent, I am of the view that the present writ petition is maintainable.

12. Since the issue involved in this writ petition is only with regard to the status of the petitioner and the 2nd respondent and the applicability of the Industrial Disputes Act, the Judgments relied upon by the learned Senior Counsel for the 2nd respondent are not helpful to the contentions raised by the 2nd respondent.

13. Though the writ petitioner sought for a direction to the 1st respondent to commence conciliation proceedings forthwith, since there is a serious dispute with regard to the status of the petitioner and the 2nd respondent, if a direction is given to the 1st respondent to commence the conciliation proceedings, it may impliedly prejudice the contentions raised by the 2nd respondent Management. It is the clear stand of the 2nd respondent Company that the Industrial Disputes Act has no application to the petitioner. Therefore, I refrain from giving any finding with regard to the status of the petitioner and the 2nd respondent in this writ petition.

14. That apart, the present writ petition has been filed by the petitioner, who has raised a dispute under Section 2-A of the Act, seeking a direction to the Labour Officer to commence conciliation proceedings forthwith. As already stated, since there is a dispute as to the status of the petitioner and the 2nd respondent Management, I am of the considered view that the status of the petitioner and the 2nd respondent can be conciliated and decided by the 1st respondent Labour Officer and it would not be proper to give any finding with regard to the status in this writ petition.

15. Since the 2nd respondent had issued the letter dated 22.12.2014, relieving the petitioner from the employment from today i.e., 21.01.2015, if he is relieved from the employment today and if the 1st respondent Labour Officer comes to the conclusion that he is a workman and the 2nd respondent is an Industry under the Act, the petitioner would be unnecessarily put to hardship and prejudice. Therefore, the petitioner should be allowed to continue in the employment till the 1st respondent Labour Officer conciliates and decides the said questions. On the other hand, if the petitioner is not relieved from the employment, the 2nd

respondent would not be prejudiced for the reason that the petitioner has been working with the 2nd respondent for more than 9 years. That apart, there are no serious allegations or averments stated as against the petitioner by the 2nd respondent Company.

16. In these circumstances, I am of the considered view that the 1st respondent can be directed to conciliate and decide the questions within a stipulated time and until then, the petitioner can be allowed to continue in employment with the 2nd respondent.

17. In the result, I direct the 1st respondent to conciliate and decide the questions with regard to the status of the petitioner and the 2nd respondent i.e., whether the petitioner is a workman as per the Act and whether the 2nd respondent is an Industry as per the Act, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order and the 2nd respondent is directed to maintain status-quo as on the date of filing of the writ petition till the 1st respondent Labour Officer decides the above questions.

18. Since the issues stated above have to be decided prior to proceeding with the dispute raised by the petitioner before the 1st respondent, the 1st respondent shall conciliate and decide the said issues prior to proceeding with the conciliation proceedings. In case, if the 1st respondent Labour Officer comes to the conclusion that the petitioner is not a workman and that the 2nd respondent Company is not an Industry under the Act, he may file a failure report under Section 12(4) of the Act. On the other hand, if the Labour Officer comes to the conclusion that the petitioner is a workman and that the 2nd respondent is an Industry under the Act, he may proceed with the conciliation proceedings.

With these observations, the writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

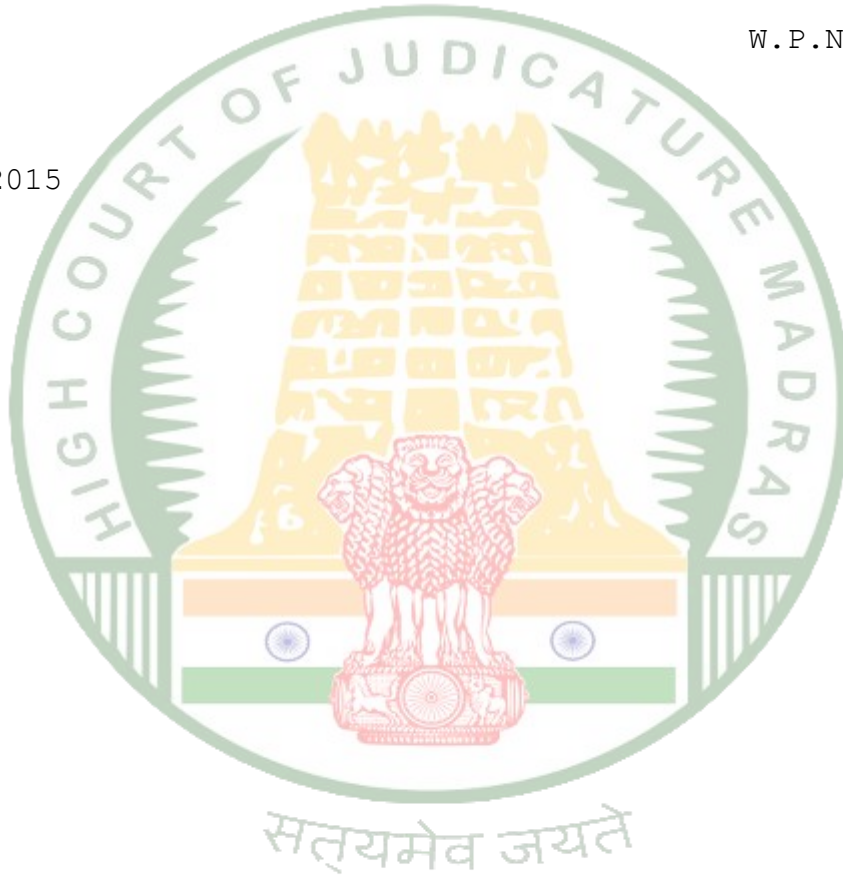
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To
The Labour Officer - III
(Conciliation Officer)
Kuralagam, Chennai.

1 cc to Mr.Vinod Kumar ,Advocate, SR.No.3179
1 cc to Government Pleader,Sr.No3179
1 cc to Mr.Ms.Ramapriya ,Advocate, SR.No.3252

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