

RESERVED ON: 10.02.2015

DELIVERED ON: 19.02.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-02-2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.27043 of 2014

and M.P.Nos.2 and 3 of 2014

and 1 and 2 of 2015

Thiruvallur Unviersity Employees Union
rep by its General Secretary,
No.17, Vivekanandan Street,
Thirunagar,
Vellore-632 006

... 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

Writ Petition 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 petitioner : Mr.Ajay Khose

For 1st respondent : Mr.Aravind Pandian,
Addl.Advocate General
for Mr.S. Yaswanth

ORDER

The writ petition has been filed by the Thiruvallur University Employees Union 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.

2. The brief case of the petitioner is as follows:

(a) According to the petitioner, there were 91 employees, who were working on consolidated/daily rated wages. And all the 90 Non Teaching/Administrative Staff employed on consolidated/daily rates wages were enrolled as members of the Employees Provident Fund. Though all the 91 employees had been working continuously without any break on all working days and holidays of the respondent University, ranging from 2 to 10 years, they were not made permanent and also they were not extended with the benefits as available to the permanent staff.

(b) According to the petitioner, after the formation of the petitioner Union, the Members of the Union placed a Charter of Demands, demanding permanency and to extend various other benefits. However, the management of the first respondent University did not call them for talks and they did not take any steps to resolve the issues amicably.

(c) The petitioner Union raised an Industrial Dispute before the Labour Officer-I, Vellore on 26.8.2013, on the charter of demands. The petitioner Union demanded to make all the 91 consolidated pay/daily rated employees, permanent and to extend all the benefits as available to permanent employees.

(d) The first respondent University filed their reply on 30.9.2013 before the Labour Officer-I and came up with a plea that the University was not an Industry within the meaning of Section 2(j) of Industrial Disputes Act and contended that the dispute raised by the Union was not maintainable.

(e) The petitioner Union filed Rejoinder to the said reply on 18.10.2013 and refuted all the averments made by the first respondent University.

(f) On 5.11.2013, the first respondent University terminated the services of the members of the Union and thereafter, the Union made a complaint under Sec.33(A) of the Industrial Disputes Act before the Labour Officer-I, Vellore on 7.11.2013, against the illegal termination of the Services of the 66 workers. On 6.11.2013, the Labour Officer-I, Vellore issued a Failure Report.

(g) The first respondent University was bound to take and get prior permission from the Conciliation Officer and in the absence of such permission, the termination of services of 66 workers is not valid in law.

(h) The workers filed a computation Petition under Sec.33(C)(2) read with section 33(c)(5) of the Industrial Disputes Act, claiming wages from the date of their termination. The said petition is pending before the Labour Court, Vellore in C.P.No.11 of 2014.

(i) On 25.6.2014, the first respondent University, in its Syndicate Meeting, decided to fill up 54 Non-Teaching Ministerial and Technical Posts by Direct Recruitment. On 17.7.2014, the first respondent issued an advertisement in "Daily Thanthi" calling for applications from the eligible candidates to fill up 54 permanent posts of non-teaching staff (Ministerial and Technical) by Direct Recruitment.

(j). The Government of Tamil Nadu by G.O.(D) No.379, Labour and Employment Department dated 21.8.2014 has referred the Issue with regard to the Demand of the Petitioner Union for permanency to all the 91 consolidated/daily rated employees and the said reference has been taken as I.D.No.161/2014 by the Principal Labour Court, Vellore.

(k) In these circumstances, the petitioner has filed the above writ petition, seeking for the above relief.

3. The brief case of the first respondent is as follows:

(a) According to the first respondent, none of the petitioners was appointed through open advertisement and selection committee nor sponsored by the employment exchange. 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. The 66 non-teaching staff were terminated after following due process of law.

(b) To give an opportunity to the temporary employees working in this University, who have crossed the age limit, an agenda was placed to consider the relaxation of age limit to the temporary non-teaching staff to apply for the permanent post for various categories in this University in the meeting of the Establishment Committee of the Syndicate held on 3.7.2014. The Computation Petition filed by the Petitioner Union in C.P.No.11 of 2014 was dismissed by the Labour Court on 8.10.2014. The appointment of the petitioners are not merely irregular but illegal inasmuch as no procedure for appointments particularly in public employment were followed.

(c) In these circumstances, the first respondent prayed for dismissal of the writ petition.

4. Heard Mr.V. Ajay Khose, learned counsel for the petitioner and Mr.Aravind Pandian, learned Additional Advocate General for the first respondent.

5. Mr.V. Ajay Khose, learned counsel for the petitioner submitted that when the dispute raised by the petitioner Union is pending in I.D.No.161/2014 on the file of Principal Labour Court, Vellore, the first respondent should not have called for applications for appointment, which would affect the rights of the Members of the petitioner Union.

6. According to the learned counsel, calling for applications for appointment by the first respondent, is against the provisions of Industrial Disputes Act. In support of his contention, the learned counsel relied on the following judgments:

(i) 2002(4) LLN 530 (Anaimalai National Estate Workers Union vs Planters' Association of Tamil Nadu, Coimbatore and Others), wherein, this Court held that Sec.33A of the Act is not at all an effective or an alternate remedy. It is in fact more complicated and long winded than the main dispute itself which is awaiting adjudication. The Management which intentionally and with impunity violates Sec.33(1) of the Act cannot be heard to plead that Sec.33A of the Act is an effective alternative remedy.

(ii) (2002) 2 SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd vs Ram Gopal Sharma and Others), which reads as follows:

"14. Where an application is made under Section 33 (2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide

whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc., If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of

discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

(iii) (2006) (3) LLN 916 (Arasu Viraivu Pokkuvarathu Oozhiyar Sangam vs State Express Transport Corporation Ltd and others), wherein, the Division Bench of this Court held that the conciliation proceedings deemed to continue until the failure report reached the appropriate State Government. If the respondents committed breach of Sec.33(1)(a) for having passed the order implementing the charge without obtaining express written permission from the Conciliation Officer, the Order passed in violation of the mandatory provisions of Sec.33 of the Act was void and inoperative.

(iv) (1977) (2) SCC 350 (The Bhavnagar Municipality vs Alibhai Karimbhai and Others), wherein the Apex Court has held as follows:
"In order to attract Section 33(1)(a), the following features must be present:

(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.

(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen.

(v) An unreported judgment of the Division Bench of this Court dated 18.4.2009 made in W.A Nos.2560 to 2579 of 2002, wherein the Division Bench of this Court held as follows:

"6. In the present case, it will be evident that the learned single Judge, by the impugned common

order dated 21.3.202 in W.P. Nos.4884 to 4887 and 5651 of 2002, has not decided the case on merits, but merely gave liberty to the Management of the Estates, to move before the Conciliatioin Officer for permission under Section 33(1) of the Industrial Disputes Act, before altering the conditions of service and till then, the Managements were directed to comply with the existing terms of service conditions.

7. In view of such liberty given and merely an interim order was passed to comply with the existing terms and conditioins of service and in view of the subsequent development that has taken place, which was brought to the notice of this Court by the learned counsel for the Workers' Union, we find no ground made out to interfere with the impugned common order passed by the learned Single Judge."

7. Countering the submissions made by the learned counsel for the petitioner, Mr.Aravind Pandian, learned Additional Advocate General, appearing for the first respondent, submitted that the publication, calling for applications for appointment, was made on 17.7.2014 and that on the date of the publication, the conciliation proceeding was not pending before the Labour Officer and that the Labour Officer had filed his Conciliation Failure Report dated 6.11.2013 before the Government and the same was received by the Government on 6.3.2014 and that the Government had referred the dispute for adjudication on 21.8.2014. Therefore, according to the learned Additional Advocate General, there was no conciliation proceeding pending on the date of publication i.e., on 17.7.2014. Further, the learned Additional Advocate General submitted that since the selection process had already commenced on 17.7.2014 and the applications were submitted on 8.8.2014 by the applicants, the first respondent has not violated any provisions of the Industrial Disputes Act. Further the learned Additional Advocate General submitted that if the vacancies are not filled up immediately, the functioning of the University would be affected to a great extent.

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that though the petitioner Union contended that the members of the Union had worked continuously without any break and that too, on all the days in a month including National Holidays, the first respondent University contends that all these

appointments were only on ad-hoc basis on daily wages, payable only for the number of days they worked.

9. In the counter filed by the first respondent, it is stated that the University have taken steps to regularise all the consolidated/daily wage workers of the University. According to the first respondent, the strike Notice dated 3.10.2013 is in clear violation of Sec.22 of the Industrial Disputes Act 1947 and consequently the strike is termed to be illegal in terms of Sec.24 of the Industrial Disputes Act, 1947.

10. The first respondent appealed to non-teaching staff to call off the strike and to come for talks, however, the non-teaching staff did not come for talks and continued their strike. In view of the illegal strike the day-to-day work of the University was affected. Thereafter, on 30.10.2013, the first respondent issued a Public Notice requesting the temporary workers to join the work immediately and it was also made clear that if they failed to report to the work, they will be terminated without any further notice.

11. Pursuant to the notice, 17 non-teaching staff joined duty on 30.10.2013 and on 31.10.2013 and 4.11.2013, 6 more non-teaching staff joined duty. In these circumstances, the first respondent issued termination order to the individuals on 5.11.2013 to 65 non-teaching staff, who have not returned for duty despite repeated request.

12. The Government of Tamil Nadu, by G.O.Ms.No.201 dated 25.6.2007, has sanctioned 22 non-teaching posts, out of which, 17 are ministerial cadre and 5 non-teaching cadre. An additional 42 non-teaching (ministerial) and 13 non-teaching (technical) posts shall be created and the 54 non teaching (ministerial) and 14 non-teaching (technical) posts should be filled up following 200 point roster system.

13. As per the Resolution passed in the 58th Syndicate meeting held on 25.6.2014, the advertisement for 54 number of various non-teaching posts was advertised on 17.7.2014 in "Daily Thanthi" with a Note that "for in-service candidates (Consolidated/Daily wages) of this University are concerned the date on which they joined the University service as consolidated/Daily wages shall be the date for the purpose of reckoning the upper age limit. The last date was fixed as 8.8.2014 for submission of the application. A Scrutiny Committee was constituted to scrutinize the applications received, whereas, all the eligible candidates recommended by the Scrutinize Committee will have to appear for a written examination.

14. The petitioner Union had also filed a Claim Petition in C.P.No.11 of 2014 before the Principal Labour Court, Vellore on 4.2.2014, directing the first respondent to pay the pending wages with an interest of 12% from the date of termination i.e., from 5.11.2013 to 31.1.2014. The Principal Labour Court dismissed the Computation Petition in CP No.11 of 2014 on 8.10.2014.

15. Against the dismissal of the Computation Petition, the petitioner Union has filed a Writ Petition in WP No.33942/2014, which, according to the petitioner, is pending before this Court. The first respondent also contended that the petitioners' appointment are not merely irregular but also illegal inasmuch as no procedure for appointments particularly in public employment were followed.

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 6.11.2013. 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 petitionier 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.

20. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the petitioner, since the facts and circumstances of the present case differs, the said judgments are not applicable to the present case.

21. In these circumstances, the writ petition is liable to be dismissed.

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.

No costs.

Sd/-
Assistant Registrar
Dated:25.2.15

True Copy

Sub Assistant Registrar

To

1. Registrar,
The Thiruvalluvar University,
Serkadu,
Vellore-632 115

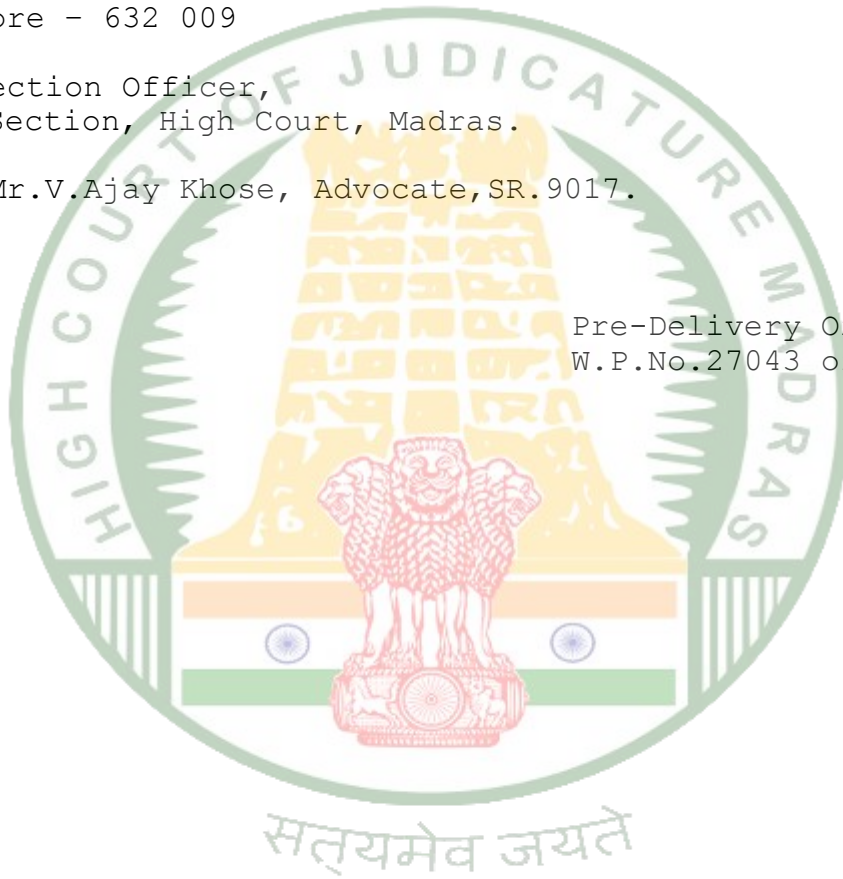
2. The Presiding Officer,
The Principal Labour Court,
Sathuvachari,
Vellore - 632 009

3. The Section Officer,
E.R.Section, High Court, Madras.

+1 cc to Mr.V.Ajay Khose, Advocate, SR.9017.

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krd 5/3

Pre-Delivery Order in
W.P.No.27043 of 2014



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