

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.6906 of 2015 &
M.P.No. 1 of 2015

The Madras Harbour Workers
Union Rep. by its General Secretary

[PETITIONER]

Vs

- 1 Union of India
Rep. by its Secretary
Labour and Employment Department
Sharam Shakti Bhawan, Rafi Marg
New Delhi-110001.
- 2 The Assistant Labour Commissioner (Central)
Office of the Deputy Chief Labour Commissioner (Central)
No.4, Haddows Road, Shastri Bhavan
Chennai-600 006.
- 3 The Management
Steel Authority of India
ISPAT Bhavan No.2 Kodambakkam High Road
Chennai-600 034.
- 4 The Management
Sri Krishna Engineering and Construction Co.
CMDA Complex, Sathangadu,
Manali Chennai-600 068.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus, to forbear the 3rd respondent and 4th respondent or any one claiming through them from altering the service conditions of the members of the petitioner union whose names are given in the Annexure to the affidavit filed in support of the writ petition in any manner including discontinuance of service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act 1947 in the Industrial Disputes raised by the petitioner which is pending conciliation before the 2nd respondent as Dispute No. M.8(04)/2015-B4 regarding the regularization of the services of the employees who are concerned in this writ petition whose names are given in the annexure of the affidavit, raised through Petition dated 27.12.2014 and further direct the second

respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under section 12(4) of the Industrial Disputes Act and in turn direct the 1st respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.J.Madangopal Rao, -R1
Sr.Central Govt Standing Counsel

No appearance - R2

Mr.S.Siva Shankar - R3
for M/s Sarvabhauman Associates

Mr.Pradeep - R4
for M/s T.S.Gopalan & Co

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.Balan Haridas, learned Counsel appearing for the petitioner, Mr.J.Madangopal Rao, learned Senior Central Government Standing Counsel for the first respondent, Mr.S.Siva Shankar, learned counsel for the third respondent and Mr.Pradeep, learned counsel appearing for the fourth respondent.

3.The petitioner Workers' Union has filed the Writ Petition for issuance of a writ of mandamus to forbear the third respondent and fourth respondent or any one claiming through them from altering the service conditions of the members of the petitioner union whose names are given in the Annexure to the affidavit filed in support of the writ petition in any manner including discontinuance of service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act 1947 in the Industrial Disputes raised by the petitioner which is pending conciliation before the 2nd respondent as Dispute No. M.8(04)/2015-B4 regarding the regularization of the services of the employees who are concerned in this writ petition whose names are given in the annexure of the affidavit, raised through Petition dated 27.12.2014 and further direct the second respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under section 12(4) of the Industrial Disputes Act and in turn direct the 1st respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

4.The relief sought for in the Writ Petition cannot be considered and granted by this Court while exercising the powers conferred under Article 226 of the Constitution of India. This legal position is not seriously disputed by the learned counsel for the petitioner Union. However, the learned counsel appearing for the petitioner raised a plea that the 59 workmen who have been employed for handling of steel dealt with by the third respondent is being done through the fourth respondent by virtue of the Labour Contract and the said contract is sham and nominal arrangement and those 59 workmen are to be declared as permanent workmen, as the third respondent being their principal employer.

5.In my view, this issue cannot be adjudicated in a writ petition and necessarily the petitioner Union has to approach the forum under the Industrial Disputes Act. In fact, this has been done by the petitioner Union and they have raised a dispute on 27.12.2014 and now the same is pending before the second respondent for conciliation and the Conciliation Notice was issued on 4.2.2015 and conciliation has commenced with the first hearing on 11.3.2015. It is submitted by the learned counsel for the petitioner as well as the third respondent that conciliation proceedings is a preliminary stage and it may take some more time for the second respondent to conclude the proceedings. The apprehension of the petitioner Union is that those 59 workmen may be terminated at any point of time. This plea was canvassed at the time when the writ petition was entertained and an order of status quo was granted on 12.3.2015 which has been extended from time to time and is force as on date.

6.In the light of the settled legal position that the plea of regularisation has to be necessarily canvassed before the appropriate forum under the I.D.Act, the relief sought for by the petitioner Union to that extent in a writ petition cannot be acceded to. However, this Court does not propose to render any finding on this aspect and it is for the petitioner as well as the respondents 3 & 4 to agitate the issue before the competent authority. It is stated that the conciliation proceedings are pending before the second respondent and it is in the early stage of conciliation and the petitioner Union agrees to extend their full co-operation to the second respondent in the conciliation proceedings and the management are also willing to co-operate in the proceedings before the second respondent.

7.The learned Standing counsel appearing for the second respondent would submit that the second respondent may be given a reasonable time to conclude the conciliation proceedings and submit appropriate report.

8. In the light of the above, there will be a direction to the second respondent to conclude the conciliation proceedings at the earliest preferably within a period of three months from the date of receipt of a copy of this order, subject to the condition that the petitioner Union as well as the Management, respondents 3 & 4 extend full co-operation. Till such report is submitted by the Conciliation Officer to the first respondent, for appropriate action, the status quo with regard to 59 employees said to have been engaged by the third respondent for the fourth respondent shall continue to be granted.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

rpa
To

- 1 Union of India
Rep. by its Secretary
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Sri Krishna Engineering and Construction Co.
CMDA Complex, Sathangadu,
Manali Chennai-600 068.
- +1 cc to Mr.J.Madanagopal Rao, Advocate, sr.62414
+1 cc to Mr.T.S.Gopalan & Co., Advocates, sr.62557
+1 cc to MR.Balan Haridass, Advocate, sr.62741

W.P. No.6906 of 2015

ad co, kra 27.11.2015