

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8764 of 2015

and

M.P.No.1 of 2015

Sungwoo Stamping Private Limited
(Formerly Gestamp Sungwoo Hi Tech
(Chennai) Pvt. Ltd.

Rep.by its Assistant General Manager
No.488/2, Mannur Village
Valarpuram Post
Sriperumbudur Taluk
Kanchipuram-602 105

.... Petitioner

vs.

1.State of Tamil Nadu
rep.by the Joint Director
Industrial Safety and Health
Kancheepuram @ Chennai
TANSI Building
T.V.K.Industrial Estate
Guindy, Chennai-600 032

2.Ragu.K

3.Govindaraj.M

4.Suresh Babu.S

5.Gopi.S

6.Sekar.L

7.Gunasekaran.C

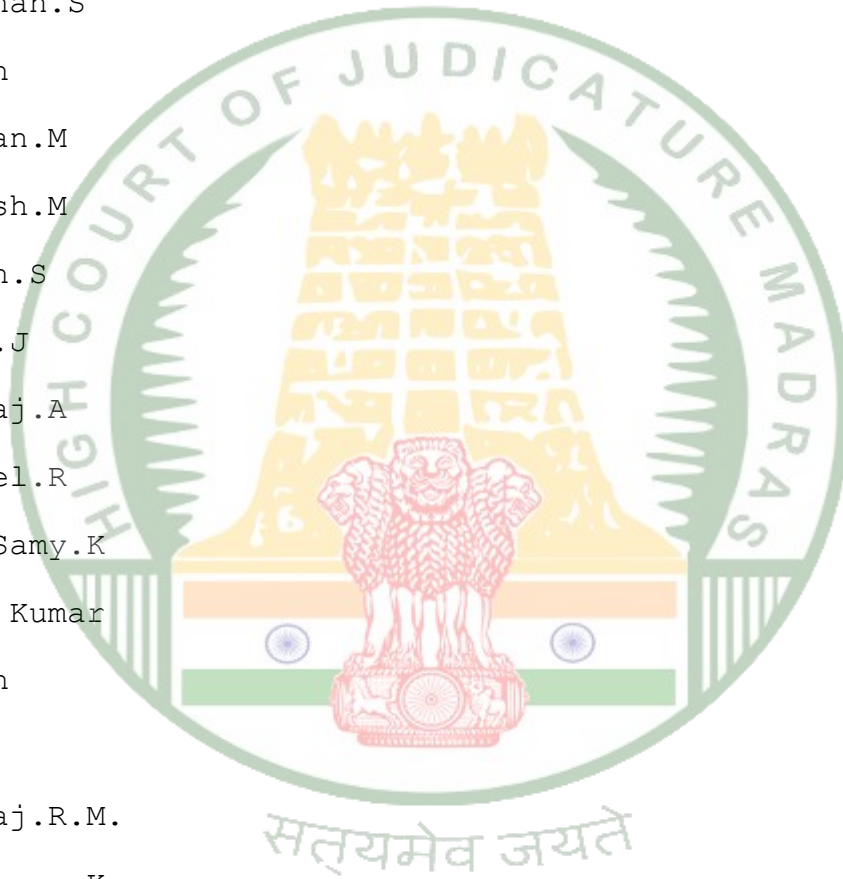
8.Sasi Kumar.M

9.Velram.B

10.Ramachandran.S

WEB COPY

- 11.Manikandan.S
- 12.Ramalingam.P
- 13.Siva.R
- 14.Karthikeyan.J
- 15.Dasarathan.S
- 16.Gopinath
- 17.Manoharan.M
- 18.Rajganesh.M
- 19.Satheesh.S
- 20.Sathish.J
- 21.Sugan Raj.A
- 22.Vedha Vel.R
- 23.Alagar Samy.K
- 24.P.Ashok Kumar
- 25.P.Rajesh
- 26.V.Raja
- 27.Mohan Raj.R.M.
- 28.Ashok Kumar.K
- 29.Jaya Kumar.A
- 30.Ramu.K
- 31.Tamishselvan.S
- 32.Gopi.B
- 33.Saravanan
- 34.Prabhu.S



WEB COPY

35.Govinda Raj.R

36.Dhinakaran.V

37.Pandia Raj.S

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus forbearing the first respondent from adjudicating the permanency claim bearing Ref.No.Na.Ka.(U)4341/2013-2, dated 21.11.2013, raised by the respondents 2 to 37, before the first respondent against the petitioner on merits, without first deciding the preliminary objection as to maintainability raised by the petitioner in accordance with law.

For Petitioner : Mr.C.K.Chandrasekar

For Respondents : Mr.P.Sanjay Gandhi, A.G.P.
For Mr.M.S.Ramesh, A.G.P., for R1
Mr.Parthasarathy for R2 to R37

* * * * *

O R D E R

Reserved on : 20.07.2015

Pronounced on : 18.12.2015

The prayer in the writ petition is for issuance of a writ of mandamus to forbear the first respondent from adjudicating the permanency claim bearing Ref.No.Na.Ka.(U)4341/2013-2, dated 21.11.2013, raised by the respondents 2 to 37, against the petitioner, on merits, without deciding the preliminary objection as to the maintainability raised by the petitioner in accordance with law.

2. The short facts of the case are as follows:

According to the petitioner, their Company is incorporated under the provisions of Companies Act, 1956 and engaged in manufacturing of Car body parts for the companies like Hyundai Motors, Nissan etc. They have certified standing orders for establishment. As per the standing orders, the Management is entitled to engage persons as trainees / probationers for a fixed period of time and to determine their contract or to make them permanent depending upon their performance.

3. They have submitted that since the work requires specialized skills to suit the needs of the buyers, training has to be given to the employees before inducting them into the regular work as

sophisticated and costly machines are involved in the production work. In such circumstances, the categories of employees, who are working under them, will be taken as Graduate Engineer Trainee, Assistant Supervisor Trainee and Assistant Engineer and based on their eligibility, they will be subsequently appointed and promoted as engineers. The engineers will be promoted further as senior engineers and thereafter they will become Deputy Managers and later Managers. The nature of work is supervising the quality, communication with the customers; workers and to supervise the products. The persons in these posts will be subsequently promoted to Managing and Administration level. The workman category includes Technicians and operators. In terms of the Standing orders, the Management is entitled to engage various categories of employees for the purpose of smooth running of the unit. Among others, they have also engaged persons as trainees and probationers for a specified period of time and depending upon the performance of the trainees and probationers, they will be either confirmed in service or directed to leave the company.

4. Further, they have submitted that there is a workers committee to represent the grievances of the employees and their service conditions. Based on the charter of demands, a settlement was arrived at between the workers and management and the said settlement was in force for a period from 01.04.2012 to 31.03.2013. Based on the settlement, wages have been increased and other facilities have been provided to the workers. The last settlement was signed on 19.03.2013, under Section 12(3) of the Industrial Disputes Act, 1947. The training is time based and it is not an assurance. The induction will be mainly based on the performance during the training and needs of the Management. Hence, after completion of the training, the trainees may be sent out as there is no employment guarantee. Some of the existing trainees, probationers and engineers, who are not permanent employees, were said to have joined the Puthiya Jananayaga Thozhilalar Munnani and placed a charter of demand on 23.05.2013. Since Section 12(3) settlement was already in force, the said demands by the Union was not considered by the Management. Therefore, they had raised an industrial dispute before the statutory authorities. The individual respondents had also raised a petition before the first respondent seeking permanency, which is not applicable to them. Accordingly, the first respondent initiated proceedings. During the pendency of the proceedings, the Management filed a detailed reply objecting to the maintainability of the same as they are working in supervisory capacity and they cannot be termed as workmen.

5. They have further submitted that according to Section 2(4) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, a "workman" is defined as any person employed in any industrial establishment to do any skilled or

unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person, who is employed mainly in managerial or administrative capacity or who being employed in a supervisory capacity draws wages exceeding three thousand and five hundred rupees per mensem or exercises, either by the nature of duties attached to the office or reason of the powers vested in him, functions mainly of a managerial nature. It may be noted that the Act does not include a "trainee" or "apprentice" within its ambit unlike the Industrial Disputes Act, 1947. Hence, the claim itself was not maintainable.

6. Further, they have stated that they filed a reply before the first respondent objecting the *locus standi* of the claimants to be espoused by the Union to raise the claim before the first respondent. They have also filed an additional reply and preliminary objection objecting the proceedings on the additional demand raised by the Union and also requested to decide whether the dispute is maintainable or not in the absence of any minutes, authorizing the Union to raise the dispute and conduct the case. But, the first respondent had not considered the preliminary issue, namely, maintainability of the claim and if it is decided, the petition itself may become otiose. Unless the claim of the Management as to the maintainability is considered and decided, the adjudication of the claim on merits will be prejudiced to the interest of the Management. Unfortunately, the first respondent had not considered the preliminary and fundamental objection raised by the Management, which goes to the root of the matter.

7. They have further submitted that taking advantage of the pendency of the conciliation proceedings in another matter, the Union filed a writ petition before this Court in W.P.No.19138 of 2013 alleging that the Management tried to alter the service conditions of the workers by way of transfer during the pendency of the dispute and obtained interim injunction against the Management restraining them from discontinuing the service of the members of the respondent Union without getting prior permission from the conciliation office under Section 33 of I.D.Act. The conciliation proceedings were over and the failure report was recorded, but, however citing the pendency of the case, the claimants in the permanent status case continued beyond their period of training under threat of contempt. However, they have made it clear that the continuance is contingent upon the case and no rights based on litigious employment can be fastened on them. In spite of vacate stay petition being filed, the case is yet to be heard and decided. The respondents / claimants raised a dispute before the Assistant Labour Commissioner also and certain trainees, probationers and engineers filed petitions against unfair labour practice, protected workmen status and for bonus. The intention of the claimants was to create an uncertainty in industrial peace by

raising numerous disputes before various authorities. They also want permanent employment forgetting the fact that they are trainees, who could be given employment only based on the requirement of the company and workforce cannot be forced on a private employer.

8. Further, they have submitted that the Hon'ble Supreme Court in *Sindhu Resettlement Corporation vs. Industrial Tribunal*, reported in 1968 LLJ 834, held that unless there is a demand, the dispute is not maintainable. In *W.S. Insulators of India vs. Industrial Tribunal*, reported in 1977 (II) LLJ 225, this Court has held that unless there is a demand and the demand is not complied with, there cannot be any industrial dispute with the meaning of Section 2(k) of the I.D. Act.

9. They have further submitted that the first respondent has not taken up the preliminary objection raised by them in their reply. The first respondent did not ask the claimants to individually prove that they are "workmen" eligible to invoke the provisions of the Act. The first respondent, having failed to see whether the claimants are coming under the definition of "workman" as defined in Section 2(4) of the Permanent Status Act, 1981, is proceeding with the merits of the case without any justification. Such an action is illegal and arbitrary. The first respondent is insisting in attending the hearings, without going into the legal submissions made by them. The claimants are insisting on them to appear in the proceedings and respond to the case on merits. Left with no other alternative remedy, they are constrained to approach this Court. Further, the first respondent failed to see that a Division Bench of this Court, in *Metal Powder Company Limited, Tirumangalam and another vs. The State of Tamil Nadu and another*, reported in 1985 (II) LLN 376, has held that an apprentice or a badli worker could not be included in the word "workman" referred to in Sections 3(1) and 3(2) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workman) Act, 1981. Furthermore, in *Manali Petro Chemicals'* case, a Division Bench of this Court has held that apprentice cannot be treated as workman, by quoting the following portion reported in (2005) 7 SCC 524:

"7. It is now a well-settled principle of law that the appointment made on probation / adhoc for a specific period of time and such appointment comes to an end by efflux of time and the person holding such post can have no right to continue in the post. In the case of *Director, Institute of Management Development v. Pushpa Srivatsava* ((1992) 4 SCC 33), a three-Judge Bench of this Court considered the identical question and held in para 20 of the judgment as under : (SCC p.37)20. Because of six months' period was coming to an end on 28.02.1991, she preferred the writ

petition a few days before and prayed for mandamus, which was granted by the learned Judge under the impugned Judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment come to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularization? The answer should be in the negative.

10. They have further submitted that the aforesaid observations of the Apex Court and this Court apply to the instant case. Hence, the balance of convenience is in their favour. The next hearing has been posted to 26.03.2015 for cross-examination of witness of the claimants. The first respondent is not considering the objections raised by the Management. The failure on the part of the first respondent is incorrect, illegal and contrary to the decisions of the Court and permanent status Act itself. Hence, the same needs to be restrained to avoid miscarriage of justice. No prejudice will be caused to the party respondents as the first respondent before whom the claim is raised cannot decide the issues alleged by them, if the maintainability of the claim is decided. Therefore, they have filed this writ petition seeking the relief as stated above.

11. The learned counsel appearing for the petitioner has submitted that the petitioner Company has been registered under the provisions of Companies Act, 1956 and engaged in manufacturing of Car parts for the companies like Hyundai Motors, Nissan etc. As per the standing orders for establishment, the Management is entitled to engage persons as trainees / probationers for fixed period of time and to determine their contract or to make them permanent depending upon their performance.

12. The learned counsel has further submitted that there is a committee for workers to represent their grievances and their service conditions. Based on the charter of demands, a settlement was arrived at between the workers and management. As per the settlement arrived at, the wages had been increased and other facilities had been provided to the workers. The last settlement was signed on 19.03.2013 under Section 12(3) of the Industrial Disputes Act, 1947. After completion of the training, the trainees may be sent out as there is no employment guarantee. Some of the existing trainees, probationers and engineers, who are not permanent employees, joined the Puthiya Jananayaga Thozhilalar Munnani and they raised an industrial dispute before the statutory authorities. The individual respondents had also raised a petition before the first respondent

seeking permanency, which is not applicable to them. The first respondent initiated proceedings and in that proceeding, the Management filed a detailed reply objecting to the maintainability of the same as the employees are working in supervisory capacity and they cannot be termed as workmen.

13. Further, the learned counsel has submitted that as per Section 2(4) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, a "workman" is defined as any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, it does not include any such person, who is employed mainly in managerial or administrative capacity or who being employed in a supervisory capacity draws wages exceeding three thousand and five hundred rupees per mensem or exercises, either by the nature of duties attached to the office or reason of the powers vested in him, functions mainly of a managerial nature. It may be noted that the Act does not include a "trainee" or "apprentice" within its ambit unlike the Industrial Disputes Act, 1947. Hence, the claim itself was not maintainable. The petitioner Company had filed a reply before the first respondent objecting the *locus standi* of the claimants to be espoused by the Union to raise the claim before the first respondent. They had also filed an additional reply and preliminary objection objecting the proceedings on the additional demand raised by the Union and also requested to decide whether the dispute is maintainable or not in the absence of any minutes, authorizing the Union to raise the dispute and conduct the case. But, the first respondent had not considered the preliminary issue, namely, maintainability of the claim and if it is decided, the petition itself may become otiose. Unless the claim of the Management as to the maintainability is considered and decided, the adjudication of the claim on merits will be prejudicial to the interest of the Management. Unfortunately, the first respondent had not considered the preliminary and fundamental objection raised by the Management, which goes to the root of the matter.

14. The learned counsel has further submitted that the respondents / claimants raised a dispute before the Assistant Labour Commissioner also and certain trainees, probationers and engineers filed petitions against unfair labour practice, protected workmen status and for bonus. The intention of the claimants was to create an uncertainty in industrial peace by raising numerous disputes before various authorities. They had submitted that the Hon'ble Supreme Court in *Sindhu Resettlement Corporation vs. Industrial Tribunal*, reported in 1968 LLJ 834, held that unless there is a demand, the dispute is not maintainable. As such, the claim made by the claimants was not maintainable. The first respondent had not taken up the preliminary objection raised by them in their reply.

The first respondent did not ask the claimants to individually prove that they are "workmen" eligible to invoke the provisions of the Act. The first respondent ought to have decided the issue whether the claimants are coming under the definition of "workman" as defined in Section 2(4) of the Permanent Status Act, 1981. If the first respondent decides the preliminary issue, the respondents / claimants will not be prejudiced. Hence, the learned counsel has prayed this Court to allow the writ petition and to direct the first respondent to decide the preliminary issue and then proceed with the main case.

15. The learned Additional Government Pleader appearing for the first respondent has submitted that the first respondent is the competent authority to conduct the proceedings based on the application filed by Gopinath and others, who are workmen of the petitioner Company. Further, the first respondent issued a notice to the petitioner Company and directed the Assistant General Manager of the petitioner Company to appear before him on 16.12.2013, at about 11.30 a.m., along with relevant documents and also along with statements, if any, for enquiry. The said notice is not a final order. The duty of the Assistant General Manager is to appear before the first respondent since the petitioner Company has been registered under the Companies Act and the first respondent is the competent authority to monitor the petitioner Company. Hence, the learned Additional Government Pleader has prayed this Court to dismiss the writ petition.

16. The learned counsel appearing for the respondents 2 to 37 has submitted that the claimants had levelled a petition before the first respondent under Section 2(4) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 and sought for permanent status. Now, the said case has been posted for cross-examination of witness on the claimants' side. If the first respondent has conducted any comprehensive enquiry in the presence of both parties, no one will be prejudiced. Hence, the learned counsel has prayed this Court to permit the first respondent to proceed with the said case.

17. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, it is seen that the case filed by the claimants, before the first respondent, under Section 2(4) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, has been posted for cross-examination of witnesses on the claimants' side. In such circumstances, the preliminary issue can be decided after conducting a comprehensive enquiry. Further, the first respondent has directed the Assistant General Manager of the petitioner Company to appear for enquiry and it is his duty to appear for enquiry and to extend his co-operation for speedy trial. As such, the writ petition does not generate

sufficient force to allow it and it is liable to be dismissed.

18. In the result, the writ petition fails and it is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

-sd/-
ASSISTANT REGISTRAR

/ TRUE COPY /

Sub-Assistant Registrar

krk

To:

The Joint Director,
State of Tamil Nadu,
Industrial Safety and Health,
Kancheepuram @ Chennai,
TANSI Building,
T.V.K.Industrial Estate,
Guindy, Chennai-600 032.

+1cc to MR.C.K.CHANDRASEKAR,ADVOCATE SR.NO. 68594/15

+1 CC TO MR.S.PARTHASARATHY ADVOCATE SR.NO. 68655/15

+1 CC TO GOVERNMENT PLEARDER SR.NO. 69164/2015.

SV[CO]

RD 27/01/2016

W.P.No.8764 of 2015
and
M.P.No.1 of 2015

WEB COPY