

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE: 13-10-2015

PRONOUNCED DATE: 27-10-2015

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P. No.14792 of 2012

and

M.P.No.1 of 2012

Arasu Pokkuvarathu Madurai
Thozhilalar Sangam,
Rep. by its General Secretary,
V.O.C. 2nd Street, Arul Nagar,
Bypass Road,
Madurai-16.

....Petitioner

Versus

1. The Government of Tamilnadu
Rep. by its Secretary,
Labour and Employment Department,
Fort St. George, Chennai-9.
2. The Secretary to Government,
(Chairman of Transport Corporations)
Transport Department,
Government of Tamilnadu,
Fort St. George, Chennai-9.
3. The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Compound, Chennai-6.
4. Tamilnadu State Transport
Corporation (Madurai) Ltd.
Rep. by its Managing Director,
Bypass Road, Madurai-16.

5. The General Manager,
Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bypass Road,
Madurai-16.

...Respondents

Prayer: Writ Petition is filed to issue a Writ of Mandamus, directing the first respondent to initiate criminal action against the respondents 4 and 5 for non implementing and for violation of and breach of the 12(3) settlement regarding determination and payment of daily rate of wages to the drivers and conductors and the respondents 4 and 5 to pay daily rated wages to the daily rated drivers and conductors and reserved drivers and conductors with effect from 1.9.2010 as per the terms of settlement and also to pay daily rated wages to the drivers and conductors in future in terms of the settlement, award costs.

For petitioner : Mr.R.Krishnasamy &
Mr.V.Ajoy Khose

For respondents : Mr.P.Chinnadurai
Government Advocate (R1 to R3)

Mr.P.Paramasivadosh (R4 & R5)

ORDER

Heard the learned counsel appearing for the petitioner, as well as the learned counsels appearing on behalf of the respondents.

2. This Writ Petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus, directing the first respondent to initiate criminal action against respondents 4 and 5, for their failure to implement the settlement, dated 30.9.1992, entered into under Section 12(3) of the Industrial Disputes Act, 1947, relating to the daily rate of wages payable to the Drivers and the Conductors, who are members of the petitioner Sangam.

3. The main contention of the learned counsel appearing on behalf of the petitioner Sangam is that there are nearly 700 daily rated Drivers and Conductors, who are members of the

petitioner Sangam. The conditions of service of the workmen, including the wages, and other monetary benefits, are determined by the settlement concluded under Section 12(3) of the Industrial Disputes Act, 1947. In spite of the fact that a settlement had been arrived at, on 30.9.1992, under Section 12 (3) of the Industrial Disputes Act, 1947, the respondent Transport Corporation is paying wages to the members of the petitioner Union, who are covered under the said settlement, which are below the minimum wages prescribed in the Minimum Wages Act, 1948.

4. It has also been stated that another 12(3) settlement, dated 22.1.2011, had been concluded, with regard to the service conditions of the members of the petitioner Sangam. However, in spite of the several representations, the respondent Corporation had failed to comply with the terms and conditions of the concluded settlement. Therefore, the petitioner Sangam has preferred the present Writ Petition, before this Court, under Article 226 of the Constitution of India, to initiate criminal action against the respondents 4 and 5, for non implementation of the settlement, concluded under Section 12(3) of the Industrial Disputes Act, 1947, and to pay the Drivers and Conductors, who are the members of the petitioner Sangam, the daily rate wages, as per the said settlements.

5. The learned counsel appearing for the petitioner had relied on the following decisions in support of his contentions.

- i) Madras State V. C.P.Sarathy, A.I.R 1953 SUP.Court 53 (Vol.40. C.N.15).
- ii) Nani Gopal Sarkar Vs. Heavy Engineering Corpn.Ltd., (1990) 3 SCC 173.
- iii) Mgmt. of KSRTC Vs. KSRTC Staff and Workers' Fed and another, 1999 (1) LLJ 849.
- iv) K.C.C. & Gen. Emp. Union Vs. State of Karnataka, 2002 (IV) LLJ (Supp) 171.
- v) T.P.P.K. Oozhiyar Sangam Vs. Mgmt. of T.N.S.T. Corporation, 2005 (III) LLJ 338
- vi) Arasu Viraivu Pokkuvarathu Oozhiyar Sangam Vs. Government of Tamilnadu, rep. by its Secretary and another, (W.P.No.11302 of 2009, dated 22.2.2013)
- vii) C.Rajakumar Vs. Tamilnadu State Transport, (W.P.No.19445 of 2015, dated 2.7.2015).

6. The learned counsel appearing on behalf of the respondents had submitted that it is not for this court to

implement the terms and conditions of the settlement, concluded under the relevant provisions of the Industrial Disputes Act, 1947. The matter has to be referred to the Labour Court concerned to see if there is any breach of the terms and conditions of the settlement committed by the respondents, or if any offence is committed. The claim of the petitioner Sangam that the respondents had committed unfair labour practice, by their non implementation of the terms and conditions of the settlement entered into under Section 12(3) of the Industrial Disputes Act, 1947, cannot be accepted. The respondents are implementing the settlement, without any default. Therefore, the Writ Petition is liable to be dismissed.

7. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the relief, as prayed for by the petitioner, in the present Writ Petition. Nothing has been shown on behalf of the petitioner that the Drivers and Conductors, who are the members of the petitioner Sangam, have been paid less than the minimum wages, contrary to the terms and conditions of the settlement concluded under Section 12(3) of the Industrial Disputes Act, 1947. There are no reasons shown for punishing the respondents 4 and 5 for committing unfair labour practice, under Section 29 read with Sections 25(T) and 25(U) of the Industrial Disputes Act, 1947. Further, the petitioner cannot approach this court for implementing the settlement entered into under the relevant provisions of the Industrial Disputes Act, 1947. The petitioner ought to approach the Labour Court for the implementation of the settlement, if they are found to be valid in the eye of law. In such circumstances, the relief prayed for by the petitioner in the present Writ Petition cannot be granted. Hence, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

csh

To

The Secretary,
Labour and Employment Department,
Fort St. George, Chennai-9.

2. The Secretary to Government,
(Chairman of Transport Corporations)
Transport Department,
Government of Tamilnadu,
Fort St. George, Chennai-9.

3. The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
DMS Compound, Chennai-6.

4. Tamilnadu State Transport
Corporation (Madurai) Ltd.
Rep. by its Managing Director,
Bypass Road, Madurai-16.

5. The General Manager,
Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region, Bypass Road, Madurai-16.

1 CC to Mr.V.Ajoy Khose, Advocate SR.No. 58680

W.P. No.14792 of 2012

KK (CO)
PSI (27.11.2015)

सत्यमेव जयते

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