

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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WRIT APPEAL No.877 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal is preferred against the common order passed in W.P.No.646 of 2015 dated 02.04.2015. This Writ Petition, along with W.P.Nos.950 and 3300 of 2015, were filed by employees of Tata Consultancy Services Limited (the third respondent herein) seeking a direction to the Commissioner of Labour to commence conciliation proceedings forthwith in respect of the Industrial Dispute raised by the petitioner in connection with the order of termination of services dated 10.12.2014 issued by the third respondent, and to direct the third respondent to await the result, of the said Industrial Dispute, before giving effect to the order of termination.

The appellant herein submitted a representation to the Commissioner of Labour on 16.01.2015 seeking his intervention to stop forthwith the illegal termination of employees of the third respondent, including herself. They requested the third respondent not to give effect to the removal order of these employees. As no action was taken by the Commissioner of Labour, on their representation, they invoked the jurisdiction of this Court. By the order under appeal, the learned Single Judge directed the Commissioner of Labour to confine the area of scrutiny, available to him, to the four corners of law. However, in so far as the consequential relief prayed for by the petitioner is concerned, the learned Single Judge observed that it could not be granted by the Court at this stage. Aggrieved by the order of the learned Single Judge, refusing to grant her the consequential relief of keeping the order of termination in abeyance, the present appeal is filed.

Under Section 12 (1) of the Industrial Disputes Act, 1947 (for brevity, 'the Act'), where any industrial dispute exists or is apprehended, the Conciliation Officer may hold conciliation proceedings in the prescribed manner. Section 12 (2) of the

Act requires the Conciliation Officer, for the purpose of bringing about a settlement of the dispute without delay, to investigate the dispute and to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. If a settlement is arrived at between the parties, Section 12 (3) of the Act requires the Conciliation Officer to send a report to the appropriate Government. A failure report is required to be sent to the Government under Section 12 (4) of the Act, if no such settlement is arrived at. Section 12 (5) empowers the appropriate Government to make a reference to the Labour Court/Tribunal. Section 12 (6) of the Act stipulates that a report, under Section 12, should be submitted by the Conciliation Officer within fourteen days of commencement of conciliation proceedings, or within such shorter period as may be fixed by the appropriate Government. Under the proviso thereto, the time for submission of the report may be extended by such period as may be agreed upon by all parties to the dispute.

The representation submitted by the employees of the third respondent, including the appellant herein, ought to have been referred, by the Commissioner of Labour, for conciliation; and the Conciliation Officer ought to have made efforts to bring forth an amicable resolution of the dispute between the parties. While the learned Single Judge has, no doubt, directed the second respondent to confine the area of scrutiny to the four corners of law, no time frame has been stipulated for commencement and completion of conciliation proceedings. We consider it appropriate, in such circumstances, to direct the second respondent to forthwith refer the dispute, raised by the employees of the third respondent in their representation dated 16.01.2015, to the Conciliation Officer who shall commence conciliation forthwith, and shall conclude conciliation proceedings within one month from the date of receipt of a copy of this order.

In so far as the consequential relief sought for by the appellant, of keeping the order of termination in abeyance, is concerned, it must be borne in mind that the third respondent is a company incorporated under the Companies Act, 1956 and is not an instrumentality of the State within the meaning of Article 12 of the Constitution of India. The service conditions of employees, of such companies, are not governed by any statutory provisions. Consequently the jurisdiction of this Court, under Article 226 of the Constitution of India, cannot be invoked questioning the action of the third

respondent in terminating the services of their employees.

While a direction is sought in the Writ Petition to the Commissioner of Labour to commence conciliation proceedings, Section 12 of the Industrial Disputes Act enables only the Conciliation Officer to conduct conciliation proceedings, and does not empower either him or the Commissioner of Labour to keep the order of termination in abeyance. While a Writ Petition can, undoubtedly, be maintained for violation of any statutory provision, including the provisions of the Industrial Disputes Act, no statutory power is conferred on the Conciliation Officer to direct the employer (the third respondent herein) to keep the order of termination in abeyance. The learned Single Judge has rightly rejected grant of the consequential relief.

We consider it appropriate, in such circumstances, to direct the second respondent to forthwith refer the dispute, raised in the representation of the employees of the third respondent dated 16.01.2015, for conciliation to the Conciliation Officer who shall commence and conclude conciliation proceedings within one month from the date of receipt of a copy of this order. The Writ Appeal is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

12th November, 2015.

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