

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.04.2016

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.10724 of 2016
and
W.M.P.No.9367 of 2016

Karaikal Thuraimuga Oppanda
Thozhilalar Munnetra Sangam,
rep.by its Secretary.

...Petitioner

Vs.

1. Government of Puducherry
rep. by its Secretary to Government,
Department of Ports,
Chief Secretariat,
Puducherry - 605 001.
2. The Secretary,
Government of Puducherry
Department of Labour,
Chief Secretariat,
Puducherry - 605 001.
3. The Labour Officer (Conciliation)
Office of the Labour Officer,
Government of Puducherry
Karikal, Puducherry Union.
4. Karaikal Port (P) Ltd.,
rep. by its Managing Director,
Chettinad Chambers,
3rd Floor, No.39, R.K.Salai,
5th Street, Near AVM Rageshwari Mahal,
Chennai - 600 004.
5. Alpha Facility Service,
Nos.392 & 393, Gandhi Salai,
Kottivakam, Chennai - 600 041.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the third respondent/Labour Officer, Karikal, to direct the fourth and fifth respondents to maintain status quo during the pendency of the proceedings on the charter of demands and regularization submitted by the petitioner Union and not to terminate Labour Contract entered into between the fourth respondent and fifth respondent during the pendency of the conciliation proceedings, as the same would be contrary to the provisions of Section 33 of Industrial Disputes Act, 1947.

For Petitioner : Mr.N.G.R.Prasad, Senior Counsel
for M/s.Row and Reddy Associates

For Respondents 1to3 :Mr.A.Tamil Vanan
Government Advocate (Puducherry)

For Respondent-4 : M/s.Shivakumar and Suresh Associates

Respondent No.5 : Notice returned unserved

O R D E R

Heard Mr.N.G.R.Prasad, the learned Senior Counsel, representing M/s.Row and Reddy Associates, the learned counsel for the petitioner/Union, Mr.A.Tamil Vanan, learned Government Advocate (Puducherry), for respondents 1 to 3, and Mr.Shivakumar, the learned counsel for fourth respondent. Notice sent to the fifth respondent, having returned unserved.

2. The petitioner has filed this Writ Petition, seeking for issuance of a writ of mandamus to direct the third respondent, who in turn, should direct the fourth and fifth respondents to maintain status quo during the pendency of the proceedings on the charter of demands and regularization submitted by the petitioner/Union, and not to terminate Labour Contract entered into between the fourth respondent and fifth respondent during the pendency of the conciliation proceedings, as the same would be contrary to the provisions of Section 33 of Industrial Disputes Act, 1947.

3. The short issue that falls for consideration is as to whether the service conditions of the members of the petitioner/Union could be altered, when the matter is pending for conciliation before the third respondent.

4. It is not in dispute that the third respondent has already issued a notice to the fourth respondent/Management on the dispute raised by the petitioner/Union and the matter is in progress. This Court, at the time of entertaining the Writ

Petition, granted order of status quo, with a view to protect the service conditions of the workmen/employees of the Management.

5. The learned counsel appearing for the fourth respondent/Management raised two objections. The first objection is that, the prayer, as couched in the Writ Petition, is not maintainable, and the petitioner/Union is trying to indirectly secure an order of regularization under the guise of direction, as sought for. The second objection is that the workmen were engaged by the Contractor, and not by the fourth respondent/Management, and these issues cannot be adjudicated in a Writ Petition, and under the guise of interim orders on technical ground, the members of the petitioner/Union cannot take advantage of the same, with a view to prejudice the rights of the fourth respondent/Management.

6. In reply, the learned Senior Counsel for the petitioner/Union submitted that the Hon'ble Supreme Court, in the case of (Mathura Refinery Mazdoor Sangh Vs. Indian Oil Corp. Ltd., Mathura Refinery Project) reported in (1991) 2 S.C.C. 176, while considering the correctness of the order passed by the Central Government Industrial Tribunal, pointed out that when conciliation proceedings are pending, the workman should be continued to be employed.

7. After hearing the learned counsel appearing for the parties, and perusing the materials placed on record, since the third respondent has already entered upon the conciliation, he shall proceed with the same in accordance with law after affording an opportunity of personal hearing to the petitioner as well as the respondents 4 and 5, and endeavour to complete the same within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the order of status quo with regard to the employment, shall continue, however, this shall not confer any right on the employees of the fourth respondent/Management.

8. With the above clarification and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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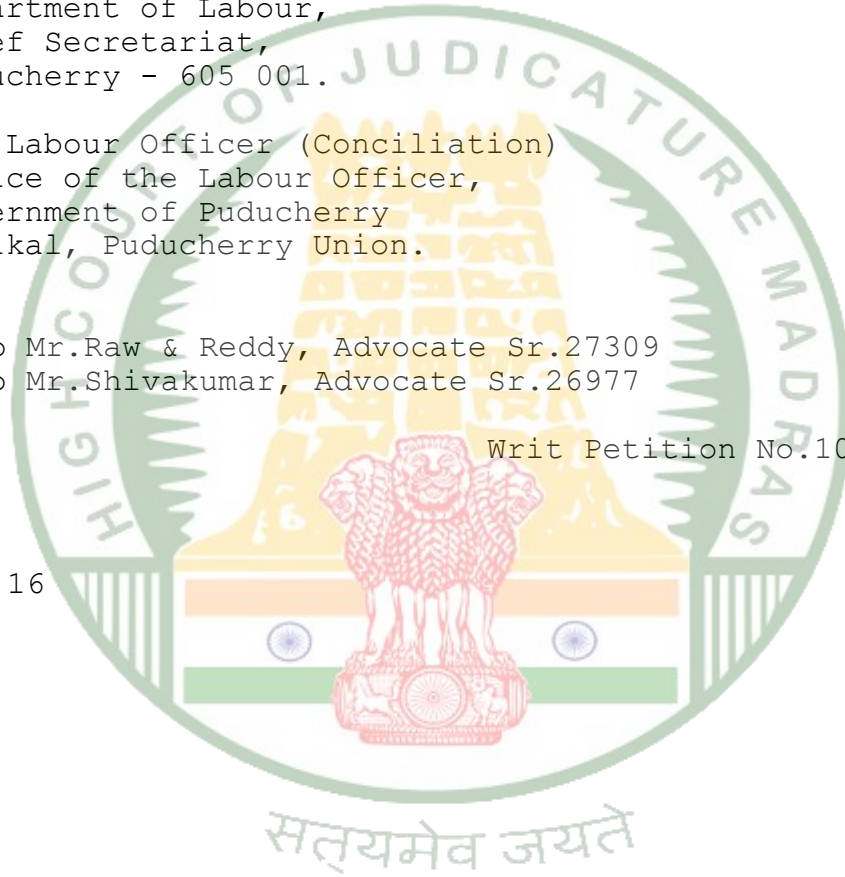
To

1. Government of Puducherry
rep. by its Secretary to Government,
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Puducherry - 605 001.
3. The Labour Officer (Conciliation)
Office of the Labour Officer,
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Karikal, Puducherry Union.

+ 1 cc to Mr.Raw & Reddy, Advocate Sr.27309
+ 1 cc to Mr.Shivakumar, Advocate Sr.26977

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LRS (CO)
Eu 12.05.16



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