

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13552 to 13554 of 2016

and

W.M.P.Nos.11877 to 11879 of 2016

Brakes India Private Limited,
Foundry Division Unit-I,
Rep. by its Sr. General Manager -
P & HR - J.Sreenivasan,
Pandiyanallore Village,
Sholinghur Via,
Vellore District - 631 102.

.. Petitioner in
W.P.No.13552/2016

Brakes India Private Limited,
Foundry Division Unit-II,
Rep. by its Sr. General Manager -
P & HR - J.Sreenivasan,
Pulivalam Villlage,
Via Banavaram, Walajah Taluk,
Vellore District - 632 505.

.. Petitioner in
W.P.No.13553/2016

Brakes India Private Limited,
Brakes Division,
Rep. by its General Manager -
(Personnel) - S.Sampath Kumar,
Arakkonam Road,
Sholinghur,
Vellore District - 631 102.

.. Petitioner in
W.P.No.13554/2016

WEB COPY vs.

1.The Joint Director of Industrial Safety and Health - 1,
Tamil Nadu Housing Board Office Campus,
Sathuvacharai,
Vellore - 600 009.

.. First respondent in
all WPs'

2.M.Elangovan

3.M.Vijaya Kumar
4.N.Murugan
5.P.Ananda Raj
6.P.Tamizharasan
7.R.Pachiyappan

.. Respondents 2 to 7 in
W.P.No.13552 of 2016

- - -

2.S.Karthik
3.V.Prakash

.. Respondents 2 and 3 in
W.P.No.13553 of 2016

2.S.Arun Kumar
3.R.Vinayakam
4.G.Vinayakam
5.M.Venkatesan
6.E.Santhosh Kumar
7.E.Selvaraj
8.C.Nagarajan
9.N.Manikandan

.. Respondents 2 to 9 in
W.P.No.13554 of 2016

Writ petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to decide the preliminary issue as prayed for by the petitioners in all Writ Petitions in their preliminary objections dated 15.03.2016.

For Petitioner in
all W.Ps' : Mr.S.Ravindran

For 1st Respondent in
all W.Ps' : Mr.J.Balagopal
Additional Government Pleader [R1]

WEB COPY COMMON ORDER

Heard Mr.S.Ravindran, learned counsel appearing for the petitioner in all Writ Petitions and Mr.J.Balagopal, learned Additional Government Pleader, accepting notice on behalf of the first respondent. With the consent of the learned counsel on either side, the Writ Petitions are taken up for final disposal.

2. In the light of the order this Court proposes to pass, notice to the respondents 2 to 7 in W.P.No.13552 of 2016, notice

to the respondents 2 and 3 in W.P.No.13553 of 2016 and notice to the respondents 2 to 9 in W.P.No.13554 of 2016, is dispensed with.

3. The petitioner organization in all Writ Petitions have filed these Writ Petition praying for issuance of a Writ of Mandamus, directing the first respondent to decide the preliminary issues as prayed for by the petitioners in their preliminary objections dated 15.03.2016.

4. The respondents 2 to 7 in W.P.No.13552 of 2016, the respondents 2 and 3 in W.P.No.13553 of 2016 and the respondents 2 to 9 in W.P.No.13554 of 2016, have filed a claim statement before the first respondent under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, (hereinafter referred to as 'Act') for conferring such status on behalf of workmen of the petitioner organization. The petitioner in all Writ Petitions raised preliminary objections before the first respondent stating that (i) a common proceeding could not be entertained under the provisions of the Act (ii) The respondents 2 to 7 in W.P.No.13552 of 2016, the respondents 2 and 3 in W.P.No.13553 of 2016 and the respondents 2 to 9 in W.P.No.13554 of 2016, are not entitled to question the nature of contract whether it is sham or not, before the first respondent (iii) According to the petitioner, on whose behalf the respondents 2 to 7 in W.P.No.13552 of 2016, the respondents 2 and 3 in W.P.No.13553 of 2016 and the respondents 2 to 9 in W.P.No.13554 of 2016, have filed the claim petitions, are not in employment and (iv) in terms of Section 3 of the Act unless a person is in employment, he cannot demand status of employment and in this regard, reliance has been placed on a decision of this Court in Management of Hanil Tube India Pvt. Ltd. vs. The Competent Authority & Inspector of Factories [CDJ 2012 MHC 564]. Copy of the decision was also filed along with the preliminary objections dated 15.03.2016. It is stated that the private respondents have filed their reply statements in the respective cases before the Authority below.

5. The petitioner in all the Writ Petitions have filed these Writ Petitions presumably under the apprehension that the first respondent will not consider the preliminary issues and will proceed to decide the matter on merits. Learned counsel for the petitioner submitted that the first respondent is not inclined to consider the preliminary issue but seeks to adjudicate the matter on merits.

6. It is too early for this Court to express any opinion on the submission of the learned counsel for the petitioner since the writ petitions are taken up for hearing without notice to the respondents 2 to 7 in W.P.No.13552 of 2016, the respondents 2 and 3 in W.P.No.13553 of 2016 and the respondents 2 to 9 in

W.P.No.13554 of 2016. In any event, the petitioner having filed an application raising certain issues as preliminary objections and the second respondent having filed their counter, fairness in procedure would demand that the first respondent shall decide the issues as first among the other issues. It is made clear that the first respondent shall decide the issues raised by the petitioner as first among the other issues which the first respondent may frame. It is made clear that this Court has not gone into the merits of the petitioner's claim nor has made any remarks on the respondents 2 to 7 in W.P.No.13552 of 2016, the respondents 2 and 3 in W.P.No.13553 of 2016 and the respondents 2 to 9 in W.P.No.13554 of 2016. It is open to the parties to place all factual and legal submissions before the first respondent. The first respondent shall decide the matter independently without in any manner being influenced by this order.

This Writ Petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True copy

Sub-Assistant Registrar

To

The Joint Director of Industrial Safety and Health - 1,
Tamil Nadu Housing Board Office Campus,
Sathuvacharai,
Vellore - 600 009.

+3 ccs to Mr.S.Ravindran Advocate sr.nos.22865,
22866, 22867/16

+1 cc to Government pleader sr.23182

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W.P.Nos.13552 to 13554 of 2016
and
W.M.P.Nos.11877 to 11879 of 2016

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