

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.14938 of 2015

and

M.P.No.1 of 2015 +
W.M.P.No.10260 of 2016

K.Thiruthanikumaran

...Petitioner

Vs.

1. The Assistant Labour Commissioner (c)-1,
Office of the Deputy Chief Labour Commissioner (Central)
No.26, Haddows Road,
Sashthri Bhavan,
Chennai - 600 006.
2. The General Manager Operations,
Chennai Container Terminal Pvt Ltd.,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.
3. The General Manager cum Human Capital /IR & Admin,
Chennai Container Terminal Pvt. Ltd.,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the first respondent to direct the second and third respondents to maintain status quo pursuant to the charge memo, dated 17.02.2015 issued by the second respondent pending conciliation before the first respondent in No.M.2/Misc.2015-B3, dated 12.05.2015, as the second and third respondents are in statutory violation.

For Petitioner

: Mr.K.Raja

For Respondents R2 & R3

: Mr.S.Ramasubramaniam

For Respondent-3

: Mr.C.Venkatesan
Central Government Counsel

O R D E R

Heard the learned counsel appearing for the parties.

2. The petitioner, who is the employee of the third respondent has filed this Writ Petition, seeking for issuance of a writ of mandamus to direct the first respondent to issue a direction to respondents 2 and 3, not to proceed with the domestic enquiry, since conciliation proceeding is pending.

3. After hearing the learned counsel appearing for the parties at length, and carefully perusing the materials placed on record, it is seen that there is no conciliation proceeding pending as on date before the first respondent, and all that was done by the first respondent was issuance of a notice to find out as to what was the nature of problem, which was reported by the petitioner. Perusal of the notice, dated 12.05.2015, shows that the Conciliation Officer has not entered into conciliation proceeding, nor he has issued the notice for conciliation, but, it is only a notice to hold a joint discussion. In any event, the first respondent cannot direct the respondents 2 and 3 not to conduct any disciplinary proceeding against the petitioner, moreso when respondents 2 and 3 are Private Limited Companies. That apart, the prayer sought for by the petitioner in this Writ Petition is indirectly to prevent the Management from exercising their power to have disciplinary control over its employee.

4. Considering the facts and circumstances of the case, this Court desists from expressing any opinion on the merits of the case, as it may affect the petitioner in other collateral proceedings, which are pending before the Civil Court, mentioned infra. In any event, the relief sought for herein cannot be granted. Accordingly, the Writ Petition is dismissed. The sum and substance of the allegation levelled against the petitioner is that, he has failed to do the work assigned to him. The petitioner is working as RTG crane operator, and the nature of job requires him to work in a crane, for lifting the container boxes, and for which purpose, the petitioner has to climb the Crane, which is more than 60 feet height. On account of injuries sustained by the petitioner during the year 2007, he has suffered posterior horn tear of medial and lateral meniscii left knee and partial tear of ACL- left knee. This according to the petitioner, still prevents him from operating the Crane, as he finds difficulty to climb the ladder to the Crane. If that be the case, then, the petitioner should have subjected himself to the medical assessment, and without doing so, he appears to have refused to report for work. The Management has also referred to the past conduct of the workman along with chargememo cum suspension order, dated 17.02.2015, which has been appended as annexure to the same. That apart, the petitioner has challenged the order of suspension by filing a

suit before the City Civil Court, Chennai. Therefore, if the petitioner subjects himself to the disciplinary proceedings, then, the Management shall refer the petitioner for assessment of his health condition, and based on the medical report and the charges framed against him, the case of the workman will be considered by the Management.

5. With the above observations, the Writ Petition is dismissed, as stated above, and the interim order granted in M.P.No.1 of 2015 stands vacated. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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No.26, Haddows Road,
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Chennai Container Terminal Pvt. Ltd.,
Chennai Port Trust,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.K.Raja, Advocate, S.R.No.23795
+1cc to Mr.S.Ramasubramaniam Associates, Advocate, S.R.No.23993

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ev(CO)
srg(06/05/2016)