

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.776/2015 and C.R.P.(PD) Nos.4038 and 4333 of 2015

Tr.C.M.P.No.776 of 2015 & C.R.P.(PD) No.4038 of 2015

1) P.Kamaraj
S/o M.Pattabiraman
Postal Assistant
Vepery Post Office
Chennai - 600 007

2) M.Inbavanan
S/o.A.C.Munuswamy
Postal Assistant
R.A.Puram Post Office
Chennai - 600 028

... Petitioners

vs.

1) All India P&T SC/ST Employees Welfare Association
(Regd. No.S13358 of 3/83)
Rep. by its President A.Sundararaman
4th Floor, SRT Nagar (P.O)
New Delhi - 110 055

2) M.K.Ahirwar
Secretary General
All India P&T SC/ST Employees Welfare
Association (Regd. No.S13358 of 3/83)
4th Floor, SRT Nagar (P.O.)
New Delhi - 110 055

3) A.Palani Rajan
Postal Assistant
General Post Office
Chennai - 600 001

4) M.Rajendran
Sorting Assistant
Chennai Sorting Division
Egmore PSO, Chennai - 600 008

5)A.Senthil Kumar
Postal Assistant
Greams Road Post Office
Chennai - 600 006

6)S.Sundara Moorthy
Sorting Postman
Raja Annamalai Puram Post Office
Chennai - 600 028

7)M.Mahalingam
Postal Assistant
Head Post Office
Virudhu Nagar - 626 001

8)T.Pitchai Muthu
Sorting Assistant
Trichy RMS
Trichy - 620 001

C.R.P. (PD) No.4333 of 2015

1)A.Palani Rajan
Postal Assistant
General Post Office
Chennai - 600 001

2)M.Rajendran
Sorting Assistant
Chennai Sorting Division
Egmore PSO
Chennai - 600 008

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Trichy - 620 001

...Petitioners

-Vs-

1) P. Kamaraj
S/o M. Pattabiraman
Postal Assistant
Vepery Post Office
Chennai - 600 007

2) M. Inbavanan
S/o A. C. Munuswamy
Postal Assistant
R. A. Puram Post Office
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3) All India P&T SC/ST Employees Welfare Association
(Regd. No. S13358 of 3/83)
Rep. by its President A. Sundararaman
4th Floor, SRT Nagar (P.O.)
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4) M. K. Ahirwar
Secretary General
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Association (Regd. No. S13358 of 3/83)
4th Floor, SRT Nagar (P.O.)
New Delhi - 110 055

... Respondents

Prayer in Tr.C.M.P.No.776 of 2015

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the appeal in C.M.A.No.104 of 2015 from the file of the XVII Additional Judge, City Civil Court, Chennai and transfer the same to the file of this Hon'ble Court to be heard along with C.R.P.(PD) No.4038 of 2015.

Prayer in C.R.P.(PD) Nos.4038/2015 & 4333/2015:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 31.08.2015 made in I.A.No.11177 of 2015 in O.S.No.4384 of 2015 passed by the Learned XVI Assistant Judge, City Civil Court, Chennai.

For Petitioners in : Mr.N.Rajan

Tr.C.M.P.No.776/2015 and for Mr.P.S.Amalraj
C.R.P.(PD) No.4038/2015

For Petitioner in
C.R.P.(PD) No.4333/2015 : Mr.R.Malaichamy

For Respondents in : Mr.K.P.Dinesh for R1
Tr.C.M.P.No.776/2015 and Mr.R.Malaichamy for R3
to R8
C.R.P.(PD) No.4038/2015 No Appearance for R2

For Respondents in : Mr.P.S.Amalraj for R1 &
R2
C.R.P.(PD) No.4333/2015 K.P.Dinesh for R3
No Appearance for R4

COMMON ORDER

The learned counsel appearing for C.R.P. (PD) No.4333/2015 submits that the petitioners therein have been advised to withdraw the civil revision petition and hence he would pray for the dismissal of the said civil revision petition as withdrawn. The learned counsel has also made an endorsement in C.R.P.(PD) No.4333/2015 to the above said effect. The endorsement is recorded and C.R.P.(PD) No.4333/2015 is dismissed as withdrawn.

2. The petitioners in C.R.P.(PD) No.4038/2015 are also the petitioners in Tr.C.M.P.No.776/2015. For the purpose of election to the office bearers of the Tamil Nadu Circle of the first respondent Association, namely All India P&T SC/ST Employees Welfare Association, Annual General Body meeting of the Tamil Nadu Circle was convened on 19.07.2015. According to the petitioners, the election was conducted in which, the petitioners were elected as President and Secretary respectively. It is the further contention of the petitioners that the second respondent, who is the Secretary General of the All India P&T SC/ST Employees Welfare Association, supported the defeated candidates and walked out of the meeting after the petitioners were declared elected; that with a view to prevent the petitioners in C.R.P.(PD) No.4038/2015 from acting as President and Secretary of the Executive Body of the Tamil Nadu circle of the first respondent Association, the second respondent, highhandedly appointed an Ad hoc Committee consisting of the defeated candidates superseding the election and that therefore, they had to approach the trial court (XVI Assistant Judge, City Civil Court, Chennai) with the suit for a

declaration that they were duly elected as President and Secretary respectively, of the Executive Body of the Tamil Nadu circle of the first defendant Association and consequential reliefs.

3. Pending disposal of the suit filed by them, namely O.S.No.4384/2015 on the file of XVI Assistant Judge, City Civil Court, Chennai sought an order of interim injunction against respondents 2 to 8 not to interfere with their functioning as President and Secretary of the Executive Body of the Tamil Nadu Circle of the first respondent Association. The said application was numbered as I.A.No.11176/2015. Along with the said application, the petitioners filed another interlocutory application in I.A.No.11177/2015 with a prayer for interim stay of operation of the order of the second respondent appointing Ad hoc Committee.

4. The learned trial judge, after hearing both sides, by a common order dated 31.08.2015 dismissed both the interlocutory applications. As against the dismissal of I.A.No.11176/2015, the petitioners have filed a Civil Miscellaneous Appeal in C.M.A.No.104/2015 on the file of the XVII Additional Judge, City Civil Court, Chennai. As against the dismissal of I.A.No.11177/2015, the petitioners have approached this court with C.R.P.(PD) No.4038/2015 under Article 227 of the Constitution of India.

5. Since the order challenged in C.M.A.No.104/2015 on the file of the XVII Additional Judge, City Civil Court, Chennai and the order challenged in C.R.P.(PD) No.4038/2015 have been incorporated in the common order of the trial court dated 31.08.2015, the petitioners have come forward with Transfer Civil Miscellaneous Petition No.776/2015. Upon hearing the submissions made on both sides, this court is able to find that the order of the second respondent, which was sought to be impugned in the suit and regarding which I.A.No.11177/2015 came to be filed, was not an order either of a Court or a Quasi Judicial Authority or an Administrative Authority whose order shall have a statutory force. The proper course to have been adopted by the petitioners was to seek an order of injunction not to implement the order of the second respondent appointing Ad hoc Committee and an injunction against the members of the Ad hoc Committee not to function as members of the Ad hoc Committee so as to prevent the exercise of their right as President and Secretary of the Executive Body of the Tamil Nadu circle of the first respondent Association.

6. By a wrong advice, the petitioners seem to have sought an order of stay instead of an order of interim injunction pending disposal of the suit. The mere fact that such a wrong prayer has been made will not deter the court from moulding the relief treating prayer as one for injunction rather than stay. Hence, this court comes to the conclusion that the petition filed in I.A.No.11177/2015 shall be taken as one for injunction against the members of the Ad hoc Committee appointed by the second respondent from acting as such, instead of a prayer for stay. The order of dismissal of the said petition is also to be construed as an order rejecting the prayer for interim injunction whose scope is as indicated supra. In view of the same, this court is of the view that the petitioners should be directed to go to the lower appellate court to file a civil miscellaneous appeal against the order passed in I.A.No.11177/2015 treating the order to be an order refusing the grant of injunction against the respondents 3 to 8 from functioning as members of the Ad hoc Committee appointed by the second respondent. In view of the above said finding, the Transfer Civil Miscellaneous Petition has become unnecessary and the same deserves to be dismissed as unnecessary.

In the result, the Transfer Civil Miscellaneous Petition is dismissed as unnecessary. C.R.P.No.4038/2015 is dismissed, granting leave to the petitioners therein to approach the lower appellate court with civil miscellaneous appeal against the order passed in I.A.No.11177/2015 on the premise that it is deemed to be an order declining the grant of injunction, disregarding the erroneous prayer made in the petition. The petitioners are given a week's time from today to prefer such an appeal before the lower appellate court. If such an appeal is filed within the time granted in this order, without going into the question of limitation, the lower appellate court shall take the same on file and decide the same on merits along with C.M.A.No.104/2015. Since it is brought to the notice of this court that the All India Conference of the first respondent/first defendant Association is scheduled to be held on 13th and 14th February 2016 in which delegates from Tamil Nadu Circle are to be sent, this court for rendering complete justice, deems it appropriate to grant an interim injunction against the respondents 3 to 8 not to function as members of the Ad hoc Committee to select persons to be delegates to attend the All India Conference, till 15.02.2016 of this month. The petitioners may also file a petition for interim injunction before the Lower Appellate Court. In case of filing of such petition, the lower appellate court shall hear the application

and pass orders without causing avoidable delay. C.R.P.(PD) No.4333/2015 is dismissed as withdrawn. However, there shall be no order as to cost in all the three petitions.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1) The XVII Additional Judge,
City Civil Court,
Chennai.

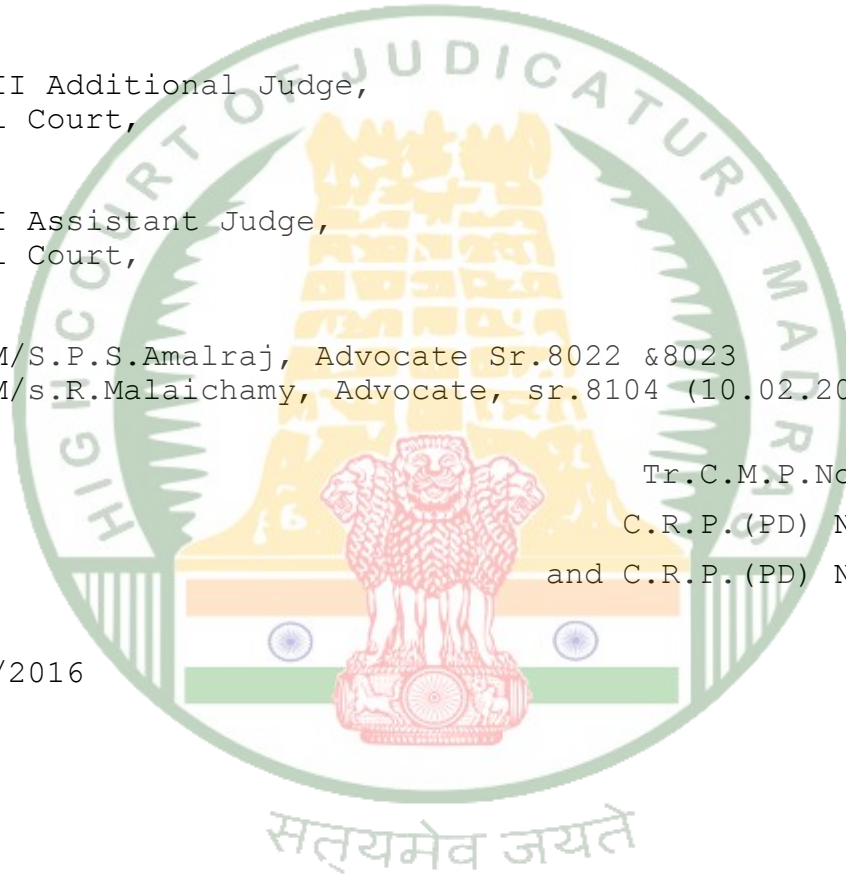
2) The XVI Assistant Judge,
City Civil Court,
Chennai.

+4 cc to M/S.P.S.Amalraj, Advocate Sr.8022 &8023

+1 cc to M/s.R.Malaichamy, Advocate, sr.8104 (10.02.2016)

Tr.C.M.P.No.776/2015,
C.R.P.(PD) No.4038/2015
and C.R.P.(PD) No.4333/2015

srg 08/02/2016



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