

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2825 of 2016 and

WMP.No.2368 of 2016

L & T. Ship Building Limited,
Rep. by its Head-HR K.Manohar,
Kattupalli Village, Ponneri Taluk,
Tiruvallur - 600 120. ... Petitioner

V.

- 1.The Assistant Commissioner of Labour,
(Conciliation - II),
Chennai - 600 108.
- 2.Minjur Area General Workers Union (153/TVR)
BTR Memorial,
Athipattu Outskirts, Chennai - 600 120.
- 3.M/s.Auromaa Facility Services,
Old No.20 New No.14, 3rd Cross Street,
West CIT Nagar, Chennai - 600 035.
- 4.M/s.Sai Saravana Traders,
No.32, Vaigunda Perumal Koil Street,
Athipattu, Chennai - 600 120.
- 5.M/s.Sai Saravana Enterprises,
No.387, Dr.Ambedkar Street,
Athipattu, NCTP Post,
Chennai - 600 120.
- 6.M/s.M.D.G. Builders
No.36, Gandhi Street,
Athipattu, NCTP Post,
Chennai - 600 120.
- 7.M/s.K.B.Jaishankar Labour Contract
No.1715, Ellaiamman Koil Street,
Kattupalli Village, NCTPS Post,
Chennai - 600 120.

8.M/s.S.Azhagunithy Labour Contract,
No.91, Perumal Koil Street,
Kattupalli Village,
NCTPS Post, Chennai - 600 120.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the 1st respondent to implead the respondents 3 to 8 in Proceedings No.526/2015 pending before 1st respondent.

For Petitioner ... Mr.S.Ravindran

For 1st Respondent .. Mr.R.Vijayakumar

Additional Government Pleader

ORDER

Heard Mr.S.Ravindran, learned counsel for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader accepting notice on behalf of the 1st respondent and with their consent, the writ petition is taken up for final disposal at the admissions stage.

2.In the light of the order proposed to be passed in this writ petition, notice to the respondents 2 to 8 is dispensed with.

3.The petitioner seeks for a direction upon the 1st respondent to implead the respondents 3 to 8 in the Conciliation Proceedings which is pending before the 1st respondent. In this regard, the petitioner Management had submitted a letter to the 1st respondent on 04.11.2015 on receipt of the notice dated 18.08.2015 from the 1st respondent, based on the dispute raised by the 2nd respondent Union. To the said letter dated 04.11.2015 submitted by the petitioner, the 2nd respondent Union has submitted a rejoinder. The grievance of the petitioner is that till date, the 1st respondent is yet to decide as to whether notices have to be sent to the respondents 3 to 8 based on the request made by the petitioner and it is stated that the conciliation proceedings are adjourned from time to time.

4.The learned counsel for the petitioner, after referring to the factual position, placed reliance on the order passed by this Court in W.P.No.23680 of 2014 in the case of SAP BPO Services Private Limited V. The Assistant Provident Fund Commissioner, Chennai and submitted that though the said decision arose under the provisions of the Employees Provident Fund Act, yet the legal principle which has been laid down by

the Hon'ble Supreme Court had been set out in the said order. In paragraph 5 of the said order, this Court had referred to the decision of the Hon'ble Supreme Court in the case of Food Corporation of India V. Provident Fund Commissioner and others reported in 1990 (1) SCC 68 and pointed out that the power conferred on the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in the payment of contribution and other dues by identifying the workman. Further, it was held that the Commissioner under the Employees Provident Fund Act should exercise all his powers to collect all evidence and collate all material before coming to a proper conclusion and it would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person. Thus, following the said decision, the Writ Petition was disposed of, by order dated 05.01.2015, directing to issue summons to the persons mentioned by the petitioner therein and to decide the matter on merits and in accordance with law.

5. In the instant case, the petitioner does not seek to summon any person for participating in the Conciliation Proceedings, but they would request the 1st respondent to hear the respondents 3 to 8, who according to the petitioner are contractors and they are independent establishments. Since a dispute has been raised by the 2nd respondent Union, it would be in the fitness of things to hear all parties concerned and if a conciliation is arrived at, that would ensure industrial peace.

6. Thus, taking note of the above facts, the 1st respondent shall decide the issue and while doing so, take note of the objections raised by the 2nd respondent Union and thereafter proceed to and decide the matter in accordance with law.

7. It is worthwhile to mention, at this juncture, that Section 11(4) of the Industrial Disputes Act, 1947, adumbrates the duties of a Conciliation Officer and states that the Conciliation Officer may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which he has ground for considering to be relevant to the Industrial Dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Industrial Disputes Act, and for such purpose, the Conciliation Officer shall have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him or of compelling the production of documents. While deciding the petitioner's representation/letter dated 04.11.2015 and the objection submitted by the 2nd respondent Union dated 20.11.2015, the 1st respondent shall bear in mind the powers conferred under the Industrial Disputes Act in terms of Section 11(4). The 1st respondent is directed to

decide the issue in accordance with law and in the light of the observations made in this order, after notice to the petitioner and the respondents 2 to 8, within a period of four weeks from the date of receipt of a copy of this order.

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

-sd-
Assistant Registrar,

//True Copy//

Sub-Assistant Registrar

Sgl

To

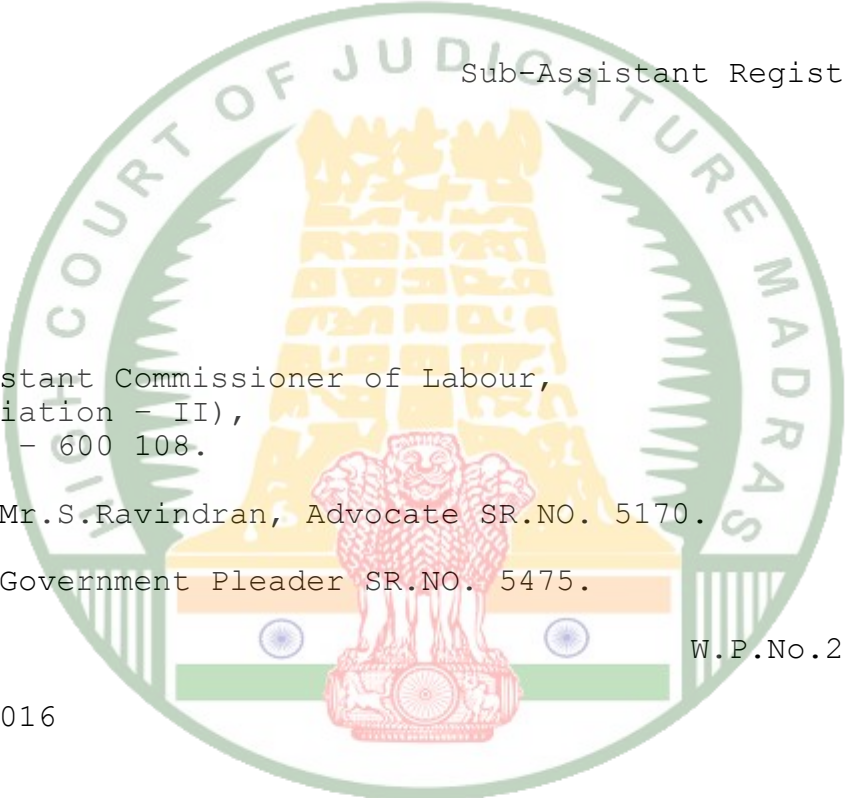
1. The Assistant Commissioner of Labour,
(Conciliation - II),
Chennai - 600 108.

+1 C.C. To Mr. S. Ravindran, Advocate SR.NO. 5170.

+1 C.C. TO Government Pleader SR.NO. 5475.

W.P.No.2825 of 2016

CTC(CO)
SL 10.02.2016



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