

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
25.02.2016	26.02.2016

CORAM

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

W.P.No.4676 of 2016

Workmen of Deepak Cables India Ltd.,
United through Labour Federation,
Rep., by its Joint Secretary,
B.Manickavasaham,
No.149, Thambuchetty Street,
Chennai - 600 001. Petitioner

Vs

1. The Labour Officer (Conciliation),
O/o.The Labour Officer (Conciliation),
15, first floor, Nehru Nagar,
Puducherry - 605 011.
2. The Management of Deepak Cables (India) Ltd.,
No.7, Whirlpool Road,
Rep., by its Managing Director,
Thiruvandarkoil, Puducherry - 605 102. ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus to direct the first respondent to commence the conciliation proceedings forthwith with regard to the industrial dispute raised by the petitioner Union on 01.02.2016, relating to the legality of the retrenchment notice of 12.01.2016, issued by the second respondent-Management and issue such further or other directions.

For petitioner : Mr.V.Prakash Sr. Counsel for
Mr.K.Sudalaikannu

For Respondents : Mr.M.Govindaraj G.P.,
Assisted by
Mr.A.Tamilvannan G.A., for R1
Mr.P.V.S.Giridhar for R2

O R D E R

The petitioner is a Trade Union consisting of employees of the second respondent Management, and they have filed this Writ Petition praying for a direction to the first respondent, the Conciliation Officer to commence the conciliation proceedings forthwith, with regard to the industrial dispute raised by the petitioner Union on 01.02.2016 relating to the legality of the retrenchment notice, dated 12.01.2016, issued by the second respondent Management.

2. Mr.V.Prakash learned Senior counsel for the petitioner Union submitted that there is a wage dispute relating to the non-payment of wages, which is pending conciliation and in the mean time, the Management stopped paying the wages to the workers and the petitioner Union filed Writ Petition in W.P.No.3444 of 2016 and a direction was issued to the Inspector of Factories to enquire into the matter and pass appropriate orders and while so, notice of retrenchment was issued on 12.01.2016. Therefore, the petitioner Union raised an industrial dispute on 01.02.2016 and the Conciliation Officer has not commenced conciliation proceedings and therefore, it is submitted the Conciliation Officer has to be directed to proceed with the matter. In this regard, the learned counsel also referred to the documents annexed in the typed set of papers to substantiate the factual averments.

3. Mr.P.V.S.Giridhar, learned Government Advocate appearing for the second respondent Union submitted that under normal circumstances, there cannot be any objection for issuing a direction to direct the Conciliation Officer to do it statutory duty, but in the instant case, the dispute was raised before the Conciliation Officer on 01.02.2016 and the Writ Petition has been filed on the very next day and there is no violation of any statutory duty committed by the Conciliation Officer warranting direction to be issued by this Court exercising jurisdiction under Article 226 of the Constitution of India. Therefore, it is submitted that the Writ Petition is liable to be dismissed as not maintainable. Further, it is submitted that it is always open to the Workmen to raise a dispute under Section 2A of the I.D.Act and as on date, there is no wage dispute pending as already the Conciliation Officer has submitted his report. With regard to the factual averments, the learned counsel has drawn the attention of this Court to the averments made in paragraphs 5 to 7 of the counter and submitted that the financial condition of the Management is precarious and attributable to the attitude of the employees resulting in deterioration of quality of the products produced and ultimately

resulting in the cancellation of the contract by the Power Grid Corporation, blacklisting the Management from the list of contractors, attachment of Bank accounts by the Income Tax Authorities etc. In support of his contentions, learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in the case of Uttaranchal Forest Development Corpn., & Anr., vs. Jabar Singh & Ors., reported in (2007) 2 SCC 112 and in the case of U.P. State Spinning Co., Ltd., vs. R.S. Pandey & Anr., reported in (2005) 8 SCC 264 and the decision of this Court in the case of R. Ramachandran and Ors., vs. Management of the Kinnakorai, Industrial Co-operative Tea Factory Ltd., reported in Manu/TN/1384/2002.

4. The learned Government Pleader appearing for the first respondent submitted that the Writ Petition has been filed immediately after filing the petition before the Conciliation Officer and the same is not maintainable.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. The petitioner Union has approached this Court stating that they have raised a dispute before the first respondent on 01.02.2016 and the Conciliation Officer has not commenced the conciliation proceedings till the date of filing the Writ Petition and by commencement of the conciliation proceedings, it would freeze the situation and protect the employment of the workers, while it is pending in conciliation and the first respondent has the duty to apply his mind to the urgency of the situation and commence the conciliation proceedings and that the first respondent has failed to perform his public and statutory duty.

7. As noticed above, the dispute was raised on 01.02.2016 and the petitioner Union had sworn to the affidavit filed in support of the Writ Petition on 02.02.2016 and the Writ Petition was presented before this Court on 03.02.2016 and taken on file on 05.02.2016. Thus, on the date when the affidavit was filed by the Joint Secretary of the Petitioner Union, it was hardly one day after the dispute was raised. Therefore, it is highly unreasonable on the part of the petitioner Union to state that the Conciliation Officer has failed to perform his statutory duty. Thus, the very premise based on which the Writ Petition has been filed stating that the Conciliation Officer has not applied his mind and failed to perform his public and statutory duty is completely erroneous and therefore, on that ground itself, the Writ Petition is liable to be dismissed.

8. The petitioner Union ought to have waited for a reasonable time to enable the Conciliation Officer to act on the dispute raised by the petitioner and ought not to have rushed to this Court on the very next day. Thus, this Court having been satisfied that there was no failure on the part of the first respondent to exercise its statutory duty, there cannot be any ground to issue a Writ of Mandamus based on the facts placed by the petitioner before this Court, when the Writ Petition was filed.

9. The other financial difficulties faced by the respondent Management are to be placed before the Conciliation Officer during the course of conciliation proceedings and it is also open to the Management to place the subsequent developments, which have taken place in the wage dispute. It appears that the petitioner themselves have created a stalemate in the matter by approaching this Court and filing this Writ Petition and this has in fact created a roadblock and has prevented the first respondent to perform his statutory duty.

10. Hence, for all the above reason, no Writ of Mandamus as sought for by the petitioner can be granted on the facts pleaded in the affidavit filed in support of the Writ Petition. Consequently the interim order granted on 08.02.2016, cannot be extended any further and stands vacated.

11. Since, the dispute is now pending before the first respondent, the first respondent taking into consideration the entire facts, is directed to expeditiously commence the conciliation proceedings after notice to the petitioner and the second respondent and endeavour to bring about a workable solution or upon failure in conciliation submit appropriate report to the Government. The above direction shall be complied with, within a period of three weeks from the date of receipt of a copy of this order. सत्यमेव जयते

In the result, the Writ Petition is dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pbn

To

The Labour Officer (Conciliation),
O/o.The Labour Officer (Conciliation),
15, first floor, Nehru Nagar,
Puducherry - 605 011.

+1cc to Mr.K.Sudalaikannu, Advocate, S.R.No.12882
+1cc to Mr.P.V.S.Giridhar, Advocate, S.R.No.12625

W.P.No.4676 of 2016

RSY(CO)
CA(10/03/2016)



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