



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

CORAM :

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

Writ Appeal (MD) No.1459 of 2015

and

M.P(MD)No.1 of 2015

in

WP(MD)No.18550 of 2014

National Horticultural Research &
Development Foundation (NHRDF)
54, Pandiyan Nagar,
Dindigul 624 001,
5/5 B-1B, Sakthi Vinayagar Nagar,
Vellalore, Coimbatore 641 111

... Appellant/Petitioner

Vs.

1.The Presiding Officer,
Labour Court, District Court Building,
Trichirappalli.

2.P.Murugesan

... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 28.10.2015 made in W.P.(MD).No.18550 of 2014 on the file of this Court.

Prayer in WP(MD)No.18550/2014 :

Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order passed by the Labour Court, Tiruchirappalli, in I.A.No.134/2014, C.P.No.7/2014 dated 09.10.2014 and quash the same.

For Appellant : Mr.V.O.S.Kalaiselvam

For 2nd Respondent : Mr.P.Murugesan
Party in Person

For Respondent No.1 : Labour Court

JUDGMENT

(Judgment of the Court was delivered by **The Hon'ble The Chief Justice**)

The dispute between the workman the second respondent and the management being the appellant is pending consideration before the Labour Court under the Industrial Disputes Act, 1947.

2. In those proceedings, the appellant desired to seek assistance of a Counsel which was not agreed to by the workman appearing in person. This has given rise to a spate of litigations by the



appellant management one after the other seeking to raise the same issue.

3.The request of the appellant management having been declined by the Labour Court, the same was assailed by filing writ petition in W.P(MD)No.5239 of 2010 raising the issue whether the management is entitled to engage an Advocate without consent of the workman as per Section 36(4) of the Industrial Disputes Act, 1947. That writ petition was dismissed on 12.07.2010. The appellant aggrieved by that order preferred W.A.(MD)No.631 of 2011. The appeal was dismissed on 10.08.2011.

4.A perusal of the order shows that the principal contention raised by the appellant was the effect of the notification dated 09.06.2011 issued bringing Section 30 of the Advocates Act, 1961 into force from 15.06.2011.

5.This plea was dealt with and rejected while simultaneously noticing that the management had really not even raised this plea in the grounds of appeal. This ought to have put the matter to rest, but that did not happen.

6.The appellant thereafter filed W.P(MD)No.11249 of 2012, seeking to raise a constitutional challenge to the validity of Section 36(4) of the Industrial Disputes Act, 1947. That writ petition was dismissed by the learned single Judge vide order dated 02.11.2012. The learned single Judge referred to the judgment of the Hon'ble Supreme Court in **Paradip Port Trust, Paradip Vs.Their Workmen** reported in **AIR 1977 SC 36** in paragraph 6 stating that those observations were made while noticing that though Section 30 of the Advocates Act, 1961 had not come into force at that stage even otherwise, the rights conferred under the Industrial Disputes Act, 1947 in this behalf could not be trammelled upon.

7.Thereafter, once again, this plea was sought to be raised before the Labour Court based on Section 30 of the Advocates Act, 1967 and on the same being rejected, W.P(MD)No.18550 of 2014 was filed which has been dismissed by the impugned order. Now, the present appeal has been preferred.

8.We have heard the learned counsel for the appellant and the second respondent in person at great length.

9.A perusal of the impugned order shows that the learned single Judge has taken into consideration the aforesaid facts to come to the conclusion that the appellant keeps on dragging the same issue again and again *inter se* the same parties. To say the least, the principles of constructive *res judicata* certainly would apply keeping in mind the provision of Section 11 of the Civil Procedure Code,1908.

10.We are in complete agreement with the view taken by the learned single Judge and find that the present proceedings is gross abuse of process of Court.



11.The second respondent is right in his contention that labour disputes do not see the end of the day and this case also has been going on for the last six years. The patience of the workman has been tested by repeatedly raising the same issue. The only thing on the positive side which we may notice is that this has facilitated the second respondent workman to improve his skills to canvass his case articulately before us!

12.We also otherwise believe that the provisions of this Section 36(4) of the Industrial Disputes Act, 1947 given that this beneficial piece of legislation for the workman cannot be diluted even if Section 30 of the Advocates Act, 1967 has come into force as relied on in the proceedings which we have discussed above.

13.Learned counsel for the appellant has however insisted that there are observations in certain judgments which have a direct impact on the matter in issue in his favour. In this behalf, he referred to the judgment of the Supreme Court in **Aeltemesh Rein Vs.Union of India** reported in **AIR 1988 SC 1768** to submit that in paragraph 4 there is a reference to Section 36(4) of the Industrial Disputes Act, 1947. We fail to appreciate the relevance of the same since the issue in question was whether a direction can be issued to bring into force Section 30 of the Advocates Act, 1967 and the Hon'ble Supreme Court declined to issue such a mandamus. The principles set out in the Constitution Bench judgment of the Supreme Court in **A.K.Roy Vs.Union of India** reported in **1982 2 SCR 272** have been reiterated that no writ petition will lie to bring a statute or a provision in a statute into force in exercise of powers conferred by Parliament in that statute.

14.A reference was also made to a judgment of the learned single Judge of this Court in **N.Ramkumar Vs.P.Narayanan and another** reported in **CDJ 2011 MHC 6094** and of the Kerala High Court in **C.P.Saji Vs.Union of India** reported in **AIR 2012 Kerala 23** which also have no application since the discussion is to the effect of not to bring into force Section 30 of the Advocates Act, 1967 and the desirability to do so.

15.The abuse of process of Court proceedings has in fact persuaded the learned single Judge to impose costs of Rs.10,000/- (Rupees ten thousand only) payable to the second respondent workman. Now this is being a complete wastage of time of two Judges of this Court, the costs need to be at least doubled. We thus impose a cost of Rs.10,000/- payable to the second respondent workman and Rs.10,000/- payable to the Mediation and Conciliation Centre attached to this Bench within fifteen days from today. We dismiss the writ appeal in the aforesaid terms. No costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/



To

The Presiding Officer,
Labour Court, District Court Building,
Trichirappalli.

Copy To:

The Co-Ordinator,
Mediation and Conciliation Centre,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.V.O.S.Kalaiselvam, Advocate in SR.No.29499

+1cc to M/S.P.Murugesan, Party in Person in SR.No.29102

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sms/ssm

PA/AAL-MPA/SAR II/21.06.2016/4P/5C