

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WP.No.11227 of 2017 & WMP.No.12166/2017
and
Cont.Pet.No.777 of 2017 in WP.28498 of 2016

WP.No.11227 of 2017

Railway Employees Co-operative Society Staff
Union (Reg No.3432/CNI),
Rep. by its General Secretary,
R.C.Cyril Thiyagaraj,
No.2/30, Lettangs Road,
Vepery, Chennai - 600 007 ...Petitioner

Vs.

- 1.The Chief Executive,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003
2. The Presiding Officer,
Tamil Nadu State Industrial Tribunal,
City Civil Court Building,
Chennai - 104 ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the First Respondent from taking any actions against the members of the Petitioner Union especially against the list of employees stated in the affidavit or altering the service conditions of the Member of the Petitioner union in violation of Sec 33(1) of the I.D.Act till the disposal of the I.S.No.27, 31, 32 of 2016 pending before the Second Respondent.

For Petitioner : M/s.D.Nagasaila

For Respondents : Mr.S.Ravindran, Senior Counsel for
Mr.S.Bazeer Ahmed for R1
R2-Tribunal

Cont.Pet.No.777 of 2017 in WP.28498 of 2016

Railway Employees Co-operative Society Staff
Union (Reg No.3432/CNI),
Rep. by its General Secretary,
R.C.Cyril Thiyagaraj,
No.2/30, Lettangs Road,
Vepery, Chennai - 600 007

...Petitioner

Vs.

1. Mr.N.Manivannan, Chief Executive,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003.
2. Mr.N.Kanniah, Chairman,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003.
3. Mr.P.Jayakumar, Director, Executive Committee,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003
4. Ms.Renukalakshmi, Director, Executive Committee,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003

..Respondents

Prayer: Contempt Petition filed under section 11 of the Contempt of Courts Act, 1971, to punish the respondents for disobeying the order dated 08.03.2017 in WP No.28498 of 2016.

wp.28498/16

petition filed under Art 226 of the constitution for the issuance of writ of mandamus directing the 2nd respondent to refer the Industrial Dispute Nos. Na.Ka. No. A/535/14, Na.Ka.No. A/778 /14, Na.Ka.No. A/99/15 dated 04/04/16 for adjudication immediately on receipt of the failure report from the 1st respondent and direct the 3rd respondent not to alter the service conditions of the workers connected with the dispute and more particularly the workers whose names are in the Annexure to the Affidavit to their prejudice in any manner including reversion or discontinuing or terminating the services in the guise of punishment etc until the adjudication of the Industrial

Dispute Nos. Na.Ka.No.A/535/14, Na.Ka.No.A/778/14,
Na.Ka.No.A/99/15 dated 04/04/2016 and passing of final award by
the Labour court or Industrial Tribunal

For Petitioner : M/s.D.Nagasaila

For Respondents : Mr.S.Ravindran, Senior Counsel for
Mr.S.Bazeer Ahmed for R1 to R4

COMMON ORDER

Considering the commonality of the issues, both the writ petition and the contempt petition are taken up and disposed of by a common order, though in the Contempt petition, the specific issue is with respect to the willful disobedience of the order passed by this Court.

2 Earlier, the petitioner filed a writ petition in WP.No.28498/2016 seeking a direction to refer the Industrial Dispute for adjudication. The writ petition was disposed of by the order dated 11.08.2016 in the following manner:-

".....

5.In view of the above said settled position of law, this Court is of the view that section 33 of the Act has to be complied with in letter and spirit by the third respondent during the currency of the proceeding before the Industrial Tribunal.

6.With the above said observation, the writ petition stands disposed. No costs. Consequently, the connected miscellaneous petition is closed."

3 Disciplinary proceedings have been initiated against the scores of the employees who are members of the petitioner. Eight of them were dismissed. As the dispute is pending adjudication in ID Nos.27, 31, 32/2016 on the file of the 2nd respondent in the present writ petition and contending that the punishment imposed is a misconduct, not connected to the dispute, Approval Petitions have been filed in AP.Nos.10 to 17/2017. Alleging that the said decision made is contrary to the order passed referred supra, Cont.P.No.777/2017 has been filed.

4 In the meanwhile, other members of the petitioner are also proceeded with. The matters stand at the stage of passing appropriate orders as the Enquiry Officer furnished his findings and the replies of the delinquent employees were also received.

5 The learned senior counsel appearing for the 1st respondent would submit that there is no connection between the dispute and the charges framed against the delinquent employees are with respect to two illegal sit-in and sit-out strikes, of which, one had taken place even before the registration of the Union. The charges would also include breakage of CCTV Camera and other misconducts. Thus, what is applicable to the case on hand is section 33[2][b] of the Industrial Disputes Act, 1947.

6 In the affidavit filed by the 1st respondent in the Cont.P.No.777/2017, in paragraph No.9, it has been stated as follows:-

".....

9.The Disciplinary Authority is yet to take a decision on the replies submitted by the employees. It is submitted that the provisional conclusion of the Disciplinary Authority, on the quantum of punishment shall be communicated to the employees. After receipt of their explanation, the Disciplinary Authority would be passing appropriate punishment order, duly seeking approval under section 33[2][b] of the I.D.Act. The first respondent herein submits that, in the event of any adverse order resulting in Removal/Dismissal/Compulsory Retirement, being passed by the Disciplinary Authority the same shall not be given effect to, till 28.07.2017."

7 In view of the above said stand taken, it is not necessary to go into the issue raised u/s.32 of the Industrial Disputes Act. This issue will have to be decided in the pending Approval Petitions. Such a decision will certainly be applicable to the other cases on the pipeline provided the charges are proved and punishment imposed. This Court does not find any willful disobedience on the part of the 1st respondent as the issue is one of law on the interpretation of section 32 by applying to the facts of the case.

8 Accordingly, it is hereby ordered that the Industrial Tribunal, Chennai, shall dispose of the Approval Petitions No.10 to 17/2017 on or before 28.07.2017. While doing so, the Industrial Tribunal, Chennai, shall answer the question as to whether the facts of the case would attract section 33[1][b] or 33[2][b] among other issues. It is well open to the Industrial Tribunal to advance the hearing as it is informed to this Court that the cases adjourned to June, by duly intimating the parties.

9 The writ petition and the contempt petition stand

ordered accordingly. No costs.

10 At this stage, the learned counsel for the petitioner would submit that the petitioner wants to file a complaint before the Industrial Tribunal before whom the Approval Petitions are pending. Therefore, the learned counsel would submit that in such eventuality, the same will have to be taken up and decided along with the pending Approval Petitions.

11 Considering the said submission, the petitioner is at liberty to file a complaint, if any, within a period of two weeks from the date of receipt of a copy of this order and as and when, the said complaint is filed within the time mentioned above, the Industrial Tribunal shall take up along with the Approval Petitions No.10 to 17/2017. Consequently, the connected miscellaneous petition is closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1. The Chief Executive,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003
2. The Presiding Officer,
Tamil Nadu State Industrial Tribunal,
City Civil Court Building,
Chennai - 104.
3. Mr.N.Kanniah, Chairman,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003.
4. Mr.P.Jayakumar, Director, Executive Committee,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003

5. Ms.Renukalakshmi, Director, Executive Committee,
Railway Employees Co-operative Credit Society Ltd.,
Ashok Vihar Complex, Old Zoo Road,
Chennai - 600 003

+ one cc to M/S.D.NAGASAILA Advocate SR.26289
+ 3 cc to M/S.A.JENASENAN Advocate SR.36650

WP.No.11227/2017 &
Cont.P.No.777/2017

RK (CO)
T.R (12/05/2017)



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