

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13-09-2017

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

W.P.No.13281 of 2017

and

W.M.P.Nos.14278 & 19303 of 2017

Puthiya Jananayaga Thozhilalar Munnani,  
TI Metal Forming Employees Branch,  
Rep. by its Secretary,  
Regn. No.43/TVR,  
No.110/63, N.S.K.Salai,  
Kodambakkam,  
Chennai – 600 024.

... Petitioner

Versus

1. The Government of Tamil Nadu,  
Represented by its Secretary,  
Labour and Employment Department,  
Fort St. George, Chennai – 600 009.
2. The Assistant Commissioner of Labour  
(Conciliation II),  
Kuralagam,  
Chennai – 600 108.

3. The Management,  
TI Metal Forming,  
Chennai – Thiruvallur High Road,  
Thiruninravur,  
Thiruvallur District – 602 024.

... Respondents

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to forbear the 3<sup>rd</sup>

respondent from altering the service conditions of the members of the petitioner union as stated in the accompanying members list including discontinuance of their services or any act which will result in non-employment of them, without getting prior permission from 2<sup>nd</sup> respondent in terms of section 33 of the Industrial Disputes Act, 1947 in the industrial dispute raised by the petitioner union viz. Na.Ka.No.Aa/133/2017 pending on the file of the 2<sup>nd</sup> respondent and further direct the 2<sup>nd</sup> respondent to conciliate and effect settlement under section 12(3) and if no settlement is forthcoming to submit failure report under Section 12(4) of the Industrial Disputes Act, 1947 to the 1<sup>st</sup> respondent and in turn the 1<sup>st</sup> respondent to refer the dispute for adjudication before the competent industrial adjudicator and orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondents : Mr.M.Perumal,  
Government Advocate for R1 & R2.

Mr.Anand Gopalan  
for M/s.T.S.Gopalan & Co. for R3.

ORDER

The relief sought for in this writ petition is to forbear the 3<sup>rd</sup> respondent from altering the service conditions of the members of the petitioner-union as stated in the accompanying members list including discontinuance of their services or any act which will result in non-employment of them, without getting prior permission from

the 2<sup>nd</sup> respondent in terms of section 33 of the Industrial Disputes Act, 1947, in the industrial dispute raised by the petitioner union before the 2<sup>nd</sup> respondent and further direct the 2<sup>nd</sup> respondent to conciliate and effect settlement under section 12(3) and if no settlement is forthcoming, to submit failure report under Section 12(4) of the Industrial Disputes Act, 1947 to the 1<sup>st</sup> respondent and in turn, the 1<sup>st</sup> respondent to refer the dispute for adjudication before the competent industrial adjudicator.

2. No doubt in the case on hand, a Writ of Mandamus is sought for in order to forbear the third respondent from altering the service conditions of the members of the petitioner-Association. The third respondent is TI Metal Forming, which is a Private Company and, is not a State, within the meaning of Article 12 of the Constitution of India. Thus, in normal circumstances, no writ can be entertained against Private Sector Companies. However, the learned counsel appearing for the writ petitioner relied on the judgment rendered by the Hon'ble Supreme Court of India in the case of **Janet Jeyapaul vs. SRM University and Others**, reported in **(2015) 16 SCC 530**, the relevant paragraph 26 sub-clause (15), is extracted below:

*“26. This Court examined the legal issue in detail. K. Jagannatha Shetty, J. speaking*

for the Bench agreed with the view taken by the High Court and held as under: (Andi Mukta case [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , SCC pp. 696-98 & 700, paras 11-12, 15 & 20)

“11. ... ..

12. .... ..

15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty, mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely

*supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [ See M.P. Jain, The Evolving Indian Administrative Law (1983) 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."*

3. In the case of **Binny Limited and Another vs. V.Sadasivan and Others**, reported in **(2005) 6 SCC 657**, it is relevant to cite paragraph 11, which is extracted hereunder:

*"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be*

*discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (5th Edn.) by*

*de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus:*

*“A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides ‘public goods’ or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.*

*Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally*

*private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is Government."*

4. The **SRM University** case is the latest one, holding the field in respect of entertaining a writ petition against a Private Sector, which is not a State. The Hon'ble Supreme Court, mainly on the premise that if the rights are purely of a private character, no Mandamus can be issued. However, if the Management is purely a Private Body with no public duty, then also the Mandamus will not lie. These are two exceptions to Mandamus.

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5. Thus, this Court has to examine whether the rights are purely of a private character and the Private Body is performing any public duty. The nomenclature of the third respondent-Company, no

doubt, is purely a private. This apart, the Mandamus, as such, sought for in this writ petition by the petitioner-Association, is relates to the service conditions of the members of the petitioner-Association. Further, the Labour Welfare Legislations, including the Industrial Disputes Act, 1947 and other Statutes, are very much available for the purpose of redressing the grievances of the petitioner-Association. The petitioner-Association, without exhausting the remedies available under the Labour Welfare Legislations, has chosen to file this writ petition, directly with a prayer to forbear the third respondent-Company from altering the service conditions of the members of the petitioner-Association.

6. Thus, this Court is of the opinion that the Management of the third respondent-Company is purely a private one and secondly, there is no performance of public duty is involved in this case. The petitioner-Association, being a service Association, is functioning and in order to protect the interest of the employees working in the third respondent-Company and they are not of any public character nor the third respondent-Company is of any public character.

7. The entire dispute, in the case on hand, relates to the service conditions of the members of the petitioner-Association and in respect of the redressal of the grievances of the petitioner-Association with the third respondent-Company. Such being the nature of the relief sought for as well as the stature of the third respondent-Company, the principles laid down by the Hon'ble Supreme Court of India in **SRM University** case is of no avail to the petitioner, so as to maintain the writ petition under Article 226 of the Constitution of India.

8. Though the learned counsel appearing for the writ petitioner has cited some other judgments relating to the maintainability of the writ petition against a Private Sector Company. This Court is of the opinion that those cases are absolutely irrelevant in view of the fact that the very character of the third respondent-Company is private in nature and the relief sought for is also not of any public character.

9. Thus, examination of all those judgments may not have any relevance since the Hon'ble Supreme Court in the case of **SRM University** has categorically held that the two aspects have to be

satisfied for maintaining a writ petition under Article 226 of the Constitution of India and repeating the same, the writ petitioner has to establish that the Private Company is performing a public duty and having the character of a public in nature. Only in the event of these two criterias, the writ can be entertained and not otherwise.

10. Such being the factum of the case, reference made by the learned counsel for the writ petitioner in respect of all other judgments are of no avail and the **SRM University** case, holding the field and which is a recent case, is sufficient to come to a conclusion in relation to the facts of the case on hand and accordingly, this Court is of the firm opinion that the present writ petition is not maintainable and no writ can be issued under Article 226 of the Constitution of India, against the third respondent, as prayed, in this writ petition.

11. This Court is of the view that without any cause of action being arisen, the relief is sought for in respect of the future event based on presumptions and assumptions. The Court cannot issue any such direction on the presumption that the employer will alter service conditions or terminate employees or act in contravention to the provisions of Industrial Disputes Act. At the

outset, the prayer sought for in this writ petition is hypothetical in nature and further, this Court is of the opinion that such prayer is coined by incorporating provisions of the Industrial Disputes Act, so as to maintain the writ petition under Article 226 of the Constitution of India. On a plain reading of the prayer that to forbear the third respondent from altering service conditions of the members of the petitioner union and not to terminate them, the same is sought for against the third respondent and the third respondent is the management of a private company registered under the Companies Act. The third respondent being a private company is not a 'State' within the meaning of Article 12 of the Constitution of India. It is neither an instrumentality of the State nor the State/Union is having any share in the third respondent company. The third respondent company is not performing any public duties and functions and members of the petitioner union are also not relating to the public functions. It is purely an employment affair between the members of the petitioner-union and the third respondent management. It is no way connected with the public functions or relating to the public affairs.

12. Thus, this Court is of the opinion that the remedy lies to the petitioner association before the appropriate forum under the

provisions of Industrial Disputes Act and under other Labour Welfare statutes in force. The rights of the petitioner union are well protected under the statutes and by the Acts of Parliament. Thus, this Court cannot entertain the writ petition with this prayer under Article 226 of the Constitution of India and it is left open to the writ petitioner to adjudicate the matter in the manner known to law.

13. Accordingly, the writ petition stands dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are also dismissed.

13-09-2017

Index: Yes/No  
Internet: Yes/No  
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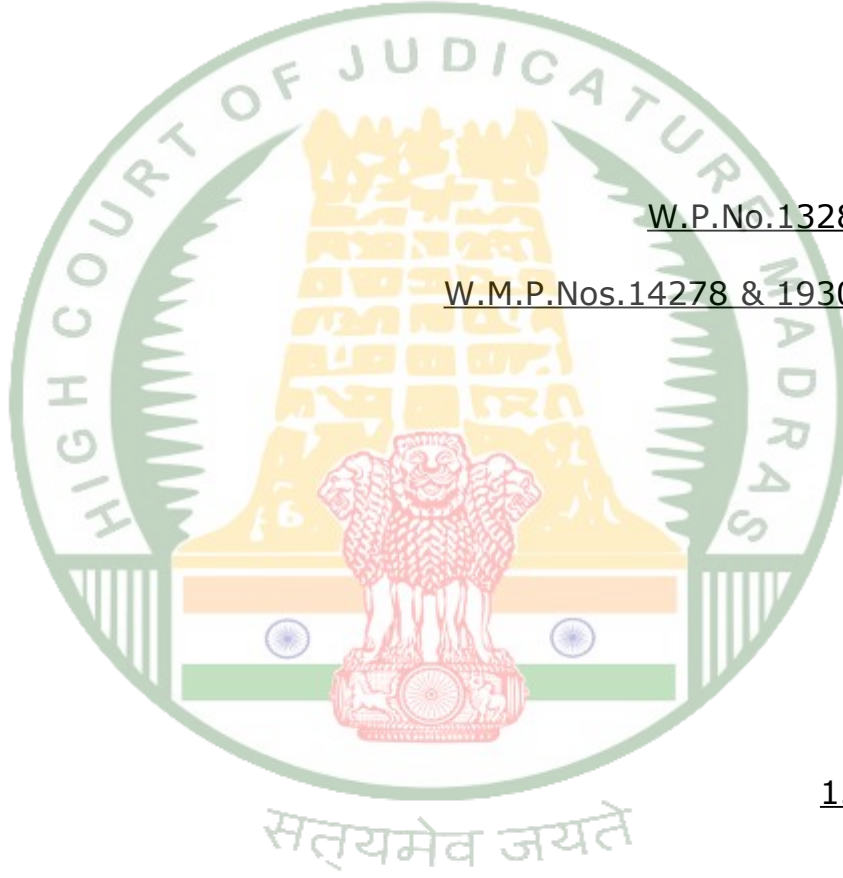
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**S.M.SUBRAMANIAM.,J**

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