

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2017

CORAM :

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.28790 of 2017
and
W.M.P.No.30968 of 2017

GKN Driveline Workers Union (Regn.No.428/KPM),
rep. by its General Secretary Mr.R.Suresh,
No.77A, A.J.C. Complex, Bangalore Highway,
Sriperumputhur Tk, Kancheepuram-602 105. ... Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by the Secretary,
Labour and Employment Department,
Secretariat, Chennai-600 009.
- 2.The Assistant Commissioner of Labour,
(Conciliation-I), Sriperumputhur.
- 3.The Management of GKN Driveline (India) Limited.,
Plot No.B-13, Sipcot Industrial Park,
Vaipur A & B, Oragadam, Sriperumputhur Tk,
Kancheepuram District-602 105. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ in the nature of declaration declaring that the transfer orders issued by the 3rd respondent dated 03.11.2017 to the members of the petitioner Union namely Kesavan, Prabhu and Dilliraj is illegal as it is issued in violation of Section 33(1) of the Industrial Disputes Act being obtaining prior permission from the 2nd respondent Assistant Commissioner of Labour, with whom the Industrial Dispute is pending for conciliation.

For Petitioner : Mr.K.C.Karl Mark

For Respondents : Mr.C.Manohar Gupta

for M/s.Gupta & Ravi (For R3)
Mr.R.A.S.Snthilvel, AGP (For R1 & R2)

ORDER

This writ petition has been by GKN Driveline Workers Union (Regn.No.428/KPM), represented by its Secretary Mr.R.Suresh, seeking for a writ in the nature of declaration, declaring that the impugned transfer orders issued by the 3rd respondent dated 03.11.2017 to the members of the petitioner Union namely Kesavan, Prabhu and Dilliraj, are illegal, since they were issued in violation to Section 33(1) of the Industrial Disputes Act, which provides a prior permission to be obtained from the 2nd respondent Assistant Commissioner of Labour, with whom the Industrial Dispute is pending for conciliation.

2.The learned counsel appearing for the petitioner Union submitted that the petitioner Union, having been registered under The Trade Union Act, 1926 with Registration No.428/KPM, is also affiliated to C.I.T.U. The 3rd respondent, being a Multinational Company, engaged in the manufacturing of Automotive Driveline Components set up in Orgadam in the year 2007, has been supplying drive shaft to various leading car companies. The petitioner Union, being a recognized one by the 3rd respondent, sought for wage increase for the year 2017 among other demands, by presenting a charter of demands dated 05.10.2016 to the 3rd respondent. But, the said demands were not considered by the 3rd respondent, as a result, the petitioner Union raised an Industrial Dispute under Section 2(K) of the Industrial Disputes Act before the 2nd respondent viz., Assistant Commissioner of Labour (Conciliation-I), Sriperumputhur, on 27.03.2017. The 2nd respondent initiated conciliation proceedings and the same is still pending, as the 3rd respondent Management is not cooperating for the conciliation. In the meanwhile, the 3rd respondent adopted unfair labour practice and victimised the workers, who are members of the petitioner Union, and reprimanded them for no fault of them. Again the petitioner Union raised another Industrial Dispute before the 2nd respondent to take action against the unfair labour practice of the 3rd respondent. Considering the claim of the petitioner Union, the 2nd respondent also initiated conciliation by sending notice dated 16.10.2017 to the 3rd respondent to take part in the conciliation proceedings on 26.10.2017. On the said date, after taking part in the conciliation proceedings, the 3rd respondent Management has accepted to maintain status quo. But, on 03.11.2017, the 3rd respondent Management transferred some of the workers, who are members of the petitioner Union, to Pune. It is submitted by the learned counsel for the petitioner that as the conciliation proceedings are pending on the file of the 2nd respondent, the legal embargo stipulated by Section 33(1) of the ID Act, would come into operation, which says that during the pendency of any conciliation proceedings before a

conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall alter the conditions of service to the prejudice of the workmen concerned in such dispute. Therefore, according to the learned counsel for the petitioner, the impugned orders of transfer dated 03.11.2017 are liable to be set aside, till the Conciliation Proceedings come to an end.

3. Opposing the maintainability of the writ petition, the learned counsel appearing for the 3rd respondent urged this Court to dismiss this writ petition, stating that the present writ petition has been filed against the 3rd respondent, who is a private party and no writ petition shall be maintainable against a private party. Taking reliance from the Judgement of the Division Bench of this Court in the case of P. Ptitchumani and others Vs. Management of Sri Chakra Tyres Ltd., reported in 2004 (2) L.L.N. 1086, the learned counsel for the 3rd respondent submitted that in a similar occasion, this Court has held that only such violations under Industrial Disputes Act, 1947, which involve public duties are amenable to writ jurisdiction under Article 226 of the Constitution of India, whereas dismissals, transfers and matters concerning service conditions of employees governed by Industrial Disputes Act have to be adjudicated by forum created under the said statute and not otherwise. In this regard, it would be appropriate to extract the relevant portion in the said judgment, which reads as follows

"14. In view of what is stated supra, we hold that:

(i) only such violations under I.D. Act, which involve public duties, are amenable to writ jurisdiction under Art. 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act; "

4. Yet another reliance placed before this Court by the learned counsel for the 3rd respondent is in the decision reported in 2005 (4) L.L.N. 10 (Management of G.E. Power Controls

India and others Vs. S.Lakshmipathy and others) which shows that when the Court has no jurisdiction, it should not grant any relief whatsoever.

5.In the present case also, the petitioner has approached this Court when the conciliation proceedings are pending before the 2nd respondent with regard to the dispute raised by them under Section 2(k) of the ID Act. Further, in the conciliation proceedings, notice has also been issued to the 3rd respondent and on receipt of the notice, the 3rd respondent also appeared before the conciliation officer (2nd respondent) and he would maintain statu quo, it is stated.

6.It is at this juncture, the learned counsel for the 3rd respondent submitted that the transfer of the employees is nothing to do with the rights sought to be relied upon by the petitioners under Section 33(1) of ID Act, as there has been settlement/agreement between the petitioner Union and the 3rd respondent and transfer has taken place only pursuant to the settlement, to which both the parties are bound.

7.In view of the disputed question of facts, the petitioner has to approach the competent forum as per the Industrial Disputes Act. Hence, this Court, holding the writ petition is not maintainable, is not inclined to grant the relief sought for by the petitioner.

8.Accordingly, the writ petition is dismissed. It is open to the petitioner Union to workout their remedy in the manner known to law. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ssv

To

1.The Secretary,
State of Tamil Nadu,
Labour and Employment Department,
Secretariat, Chennai-600 009.

WEB COPY

2.The Assistant Commissioner of Labour,
(Conciliation-I), Sriperumputhur.

+1cc to Mr.K.C.Karl Marn, Advocate SR.No.79764
+1cc to M/s.Gupta & Ravi, Advocate SR.no.79831
+1cc to Government Pleader SR.No.80555

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SM:30.11.2017



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