

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.01.2017

Pronounced on: 25.04.2017

Coram:

The Hon'ble Dr. Justice ANITA SUMANTH

W.P.No.10728 of 2002

Tamilnadu State Transport Workers Union,
CITU, 111/1, V.P. Chinthan Road,
Karaikudi 631 001;
represented by its General Secretary ... Petitioner

Versus

Tamilnadu State Transport Corporation
Ltd., Kumbakonam Division - III,
Marudhupathy,
Karaikudi,
Sivaganga District,
represented by its Managing Director ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus directing the respondent not to give ON DUTY facility to any workman and not pay salary and other benefits to any workman and not to pay salary and other benefits to any workman without allocating and extracting work for the category to which they belong to .

For Appellant .. Mr. G. Asokapathy
for Mr.D. Saravanan
For Respondent .. Mr.V.R.Kamalanathan

ORDER

This Writ Petition has been filed by the Tamilnadu State Transport Workers Union praying for the Writ of Mandamus directing the Tamilnadu State Transport Corporation not to

disburse ON DUTY facility, salary and benefits to any workmen without allocating and extracting work for the respective category to which they belong.

2. At the threshold, Mr. Kamalanathan learned counsel appearing for the respondent would oppose the very maintainability of the petition on the ground that the affidavit is bereft of particulars such as names and details of workmen and for the reason that the prayer cannot be considered in a vacuum, in the absence of material facts.

3. Mr. Ashokpathy, learned counsel appearing for the Petitioner would state that about 5000 workmen were being employed by the respondent in various categories and constitute members of the petitioner union. Duties and responsibilities have been identified and allocated to the workmen, category-wise. The scale of pay and other conditions of service are regulated by settlements entered into periodically. The affidavit would aver that workmen belonging to the Union of the ruling party i.e., Anna Thozhirsanga Peravai were being extended ON DUTY facility, whereunder they received salaries and benefits without assignment or extraction of corresponding duty. Four such workmen have been identified and named in the affidavit. This, according to the petitioner, seriously prejudices the other workmen and is liable to be interfered with by this court.

4. No counter has been filed though Mr. Kamalanathan would orally deny all averments in the writ petition. He would also rely upon the decisions of the Division Bench of this Court in Nellai Chidambaranar Kumari Mavatta Arasu Pokkuvarathu Employees Union Vs. Tamilnadu State Transport Corporation Limited in W.P.No.8435 of 1998 and on the decision in a batch of Writ petitions dated 23.10.2007 in the case of Arasu Pokkuvarathu Thozhilalar Sangam (Madurai Division-I) in W.P.Nos.2142, 5734 and 33562 of 2002, wherein, it has been held that the proper forum to agitate the very same issue as in this petition, would be the Labour Court and not this Court in terms of Article 226 of the Constitution of India.

5. Learned counsel for the petitioner, on his part, relied on the decision of this Court in Secretary, Tamilnadu Electricity Board, Accounts Subordinate union vs. Tamilnadu Electricity Board (CDJ 1989 MHC 054) and Tamilnadu Civil Supplies Corporation Anna Staff Union vs. Tamilnadu Civil Supplies Corporation Limited represented by its Chairman cum Managing Director (1998(I) CTC 564). Both decisions considered the provisions of section 9(A) of the Industrial Disputes Act

(in short 'Act') which deals with the issuance of notice in the case of change in conditions of service. Though we are not, in the present case, concerned with the application of section 9A of the Act, the decisions also refer to and uphold the basic premise that no workman, be it an office bearer or otherwise, can be absolved from the obligation to render service in the course of his employment. There can be no quarrel whatsoever with this proposition and neither has Mr.Kamalanathan, to be fair to him, advanced such an argument.

6. The allegations made in the writ petition are serious and uncontroverted in writing. In the circumstances, we reiterate the principle laid down by this Court to the effect that granting of ON DUTY facility to workmen without corresponding extraction of work is not contemplated in the scheme of employment and has to be checked unconditionally. In the absence of details and factual particulars we leave it to the petitioner to seek its remedy before the appropriate forum with all relevant particulars in order to establish its allegations. Such representation, to be made within a week from the date of receipt of this order, will be considered by the court in accordance with law.

7. At this distance of time, this Court did wonder if anything survived vis-a-vis the workmen in contemplation of the writ petition filed in 2002. We are however, assured by the learned counsel for the petitioner that the practice alleged in the petition continues and the averments in the writ petition would ring true even as on date. The writ petitioner is at liberty to bring such facts before the Labour Court which will consider the matter in the light of the material produced and after hearing the parties, as expeditiously as possible and in the light of the settled principles enunciated by this court in the judgments referred to above. The writ petition is disposed in the above terms. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msr

To

The Managing Director,
Tamilnadu State Transport Corporation
Ltd., Kumbakonam Division - III,
Marudhupathy,
Karaikudi,
Sivaganga District.

+lcc to Mr.V.R.Kamalanathan, Advocate, SR.25749
+lcc to M/s. Pass Associates, Advocate, sr 25799

W.P.No.10728 of 2002

sj (co)
rmp (15/05/17)



WEB COPY