

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.43575 of 2016
and W.M.P.Nos.37404 of 2016 and 2003 of 2017

Nilgiri Industrial & General Workers Union,
Rep. by its Present T.Balakrishnan,
No.85, Jawahar Pet, Coonoor,
Nilgiris District. ...Petitioner

Vs.

- 1.The Labour Officer,
Office of the Deputy Commissioner of Labour,
Coonoor-1, Nilgiris District.
- 2.M/s.The Management of Nestle India Limited,
Choladi, Cheranpadi, Nilgiris - 643205
- 3.M/s.The Management Tejus Intervinni Enterprises,
Nestle India Limited,
Choladi, Cheranpadi, Nilgiris - 643205
- 4.M/s.The Management Power Pereira,
Nestle India Limited,
Choladi, Cheranpadi, Nilgiris - 643205
...Respondents

Prayer: This writ petition filed under Article 226 of the Constitution of India, to issue a writ particularly in the nature of a writ of Mandamus, to direct the first respondent to forbear the respondents 2 to 4 from changing the service conditions of the Contract Labours/members of the petition union as mentioned in the list annexed pending final disposal of the conciliation proceedings in Na.Ka.No.E/5583/2016 dated 08.12.2016 before him.

For Petitioner : Mr.K.Lavan

For Respondents : Mr.S.Diwakar
Special Government Pleader (For R1)
Mr.S.Ravindran
Senior Counsel
for Mr.S.Basheer Ahamed (For R2)
Mr.T.S.Sundaram (For R3)
No appearance (For R4)

ORDER

This writ petition has been filed for issuance of Writ of Mandamus, to direct the first respondent to forbear the respondents 2 to 4 from changing the service conditions of the Contract Labours/members of the petition union as mentioned in the list annexed pending final disposal of the conciliation proceedings in Na.Ka.No.E/5583/2016 dated 08.12.2016 before him.

2.In pursuant to the charter demand raised by the petitioner, conciliation proceedings are initiated by the first respondent which is pending in Na.Ka.No.E/5583/2016. Alleging that the service conditions are sought to be changed contrary to Section 33(1)(a) of the Industrial Disputes Act (hereinafter referred to as "the Act"), the present writ petition has been filed.

3.The learned counsel appearing for the respondents 2 and 3 would submit that while the mandate of Section 33(1)(a) of the Act would be followed, a mere regional transfer over which an employer has got power cannot be included in that. Relevance has been made on the judgment of the Hon'ble Supreme Court in Transport and Dock Workers' Union vs. Mumbai Port Trust reported in 2011 (2) SCC 575. It is also submitted that in such case the very maintainability of the writ petition itself would be in question as held by the Hon'ble Division Bench of this Court in Larsen & Toubro Employees' Union rep. by its Secretary R.Ramu vs. The Labour Officer (Conciliation), Office of the Labour Officer (Conciliation), Government of Puducherry, Puducherry and another reported in 2017 (1) LLN 763.

4.The mandate of Section 33(1)(a) and Section 33(2) of the Act, as held by the Hon'ble Supreme Court, has to be seen from the context of any proposed change in service condition pending conciliation, but that would not include a transfer over which a Management has got power. Such an activity cannot be termed as alteration of condition of service.

5. Accordingly, it is hereby ordered that pending conciliation proceedings, there shall not be an alteration of service condition barring a transfer, over which the respondent concerned has got ample power, of course stands, malafide exercise. Further, taking note of the long pendency of the conciliation proceedings, a direction is issued to the first respondent to conclude it within a period of three months from the date of receipt of a copy of this order and send a report to the Government thereafter.

6. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

cse

To

1. The Labour Officer,
Office of the Deputy Commissioner of Labour,
Coonoor-1, Nilgiris District.
2. M/s. The Management of Nestle India Limited,
Choladi, Cheranpadi, Nilgiris - 643205
3. M/s. The Management Tejus Intervinni Enterprises,
Nestle India Limited,
Choladi, Cheranpadi, Nilgiris - 643205
4. M/s. The Management Power Pereira,
Nestle India Limited,
Choladi, Cheranpadi, Nilgiris - 643205

- +1 cc to Mr. S. Bazeer Ahamed Advocate sr 21480
+2 ccs to M/s. T. R. Sundaram Advocate sr 21407
+2 ccs to M/s. A. Kumar Advocate sr 21409
+1 cc to Mr. K. Lavan Advocate sr 21442

W.P.No.43575 of 2016
and W.M.P.Nos.37404 of 2016
and 2003 of 2017

sal(co)
aa20/04/2017