

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No.44203 of 2016

United Labour Federation

Regn.No.2657/CNI

Represented by its Vice President

No.149, IV Floor,

C.J. Complex, Thambuchetty Street,

Chennai - 600 001. ...Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep.by its Principal Secretary in charge,
Department of Labour and Employment,
Chennai - 600 009.

2.The Assistant Commissioner of Labour-I,
Sriperumbudur, Kancheepuram.

3.The Sharda motor Industries Limited,
Sipcot Industrial Park, Irungattukottai,
Sriperumbudur Taluk, Kancheepuram. ...Respondents

Prayer: This writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of first respondent in connection with G.O.(D) No.399, Labour and Employment (A2) Department dated 03.09.2014 and quash the same and further direct the first respondent State of Tamil Nadu to refer the Industrial Dispute raised by the petitioner Union dated 01.01.2014 for adjudication and issue such further or other appropriate orders or directions.

For Petitioner : M/s.K.Sudalaikannu

For Respondent : Mr.M.E.Raniselvam

Additional Government Pleader(For R1&R2)

M/s.Gupta & Ravi (For R3)

ORDER

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records of first respondent in connection with G.O.(D) No.399, Labour and Employment (A2) Department dated 03.09.2014 and quash the same and further direct the first respondent State of Tamil Nadu to refer the Industrial Dispute raised by the petitioner Union dated 01.01.2014 for adjudication

2.The petitioner raised a dispute against the third respondent before the second respondent. There are three more disputes that are sought to be raised by the petitioner. One is with respect to the sudden termination of the employment of 60 workmen belonging to the petitioner's Union. In this issue, the petitioner has contended that there is no contract involved and thus the employees are directly engaged and working under the third respondent. The second issued is with respect to the moulds and other parts removed from the premises of the factory by the second respondent. The third one pertains to consequential employment of labour unauthorizedly from outside. Incidentally, the petitioner has also sought for payment of wages.

3.By the impugned order, the reference was rejected by considering the three main issues raised by the petitioner. On the first issue it has been stated that the petitioner being contract employees, they have to workout the right under the Contract Labour (Regulation and Abolition) Act, 1970. On the second issue, it has been held that the same is very vague and incapable of an adjudication. The third issue was also not referred as being unnecessary as no employee from outside can be prevented from being employed.

4.The learned Counsel for the petitioner would submit that it is a clear case where the first respondent has exceeded jurisdiction by indulging in the process of adjudication instead of making a reference on the issues raised.

5.The learned Counsel appearing the third respondent placing reliance on the following judgments would contend that the impugned order is perfectly valid in law being dealt with on a prima facie consideration.

- (i) (2014) 1 SCC 536 (Tata Iron and Steel Company Limited vs. State of Jharkhand and others)
- (ii) 2005 (2) LLN 278 (O.N.G.C. Madras Port Contract Employees' Union (rep. by its Secretary), Chennai vs. Management of Oil and Natural Gas Corporation Limited (Rep. by its

Regional Director, Southern Regional Business Centre), Chennai and others.
(iii)2016 (2) LLN 22 (SC) (Rahman Industries Pvt. Ltd. vs. State of UP and others)

6. On perusal of the orders impugned would show that it has gone into the merits of the issues raised. On the first issue, it is a specific case of the petitioner that there are direct employees under the third respondent. Merely because, the third respondent has denied the said statement, a reference cannot be refused on that scope being one of adjudication before the jurisdictional Labour Court. In other words, the question as to whether the employees are in direct employment of the third respondent or there exist a contract labour agreement being a disputed question of fact ought not to have been adjudicated by the first respondent. An incidental remedy, if any, under the Contract Labour (Regulation and Abolition) Act, 1970 would not prevent the union to expose the case of the employees by raising a dispute. The reason assigned in the impugned order that the demand is vague, also cannot be sustained since the same by itself cannot be a ground to decline reference.

7. The decision relied upon by the learned counsel appearing for the third respondent did not apply to the case on hand. The first respondent is duty bound to make a reference though on a prima facie consideration. In other words, it cannot pre-judge the issue and take the role of Labour Court. The Labour Court being a creature of the statute assumes and acquires adjudication on the basis of the reference made to it. Thus, it cannot travel beyond it. Therefore, for the very same reason, the appropriate Government has to make a reference by taken into consideration of the nature of dispute between the parties. The primary dispute is with respect to the non-employment/termination. It is not the case before this Court that the allegation made by the petitioner is not true. Therefore once that factual premise is satisfied, then a reference ought to have been made. Certainly there exist a dispute in the case on hand. The dispute sought to be raised by the petitioner cannot be termed as irrelevant though the first respondent is not supposed to act as a post office. It appears that the first respondent has declined the reference on considering the version of the third respondent alone over a dispute which requires adjudication.

8. In such view of the matter, the order impugned is set aside and consequently, the first respondent is directed to make a reference on the issues raised by the petitioner to the jurisdictional Labour Court within a period of eight weeks from the date of receipt of a copy of this order.

9.With the above direction, this writ petition is allowed.
No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse/abr

To

1.The Principal Secretary in charge,
Government of Tamil Nadu,
Department of Labour and Employment,
Chennai - 600 009.

2.Assistant Commissioner of Labour-I,
Sriperumbudur, Kancheepuram.

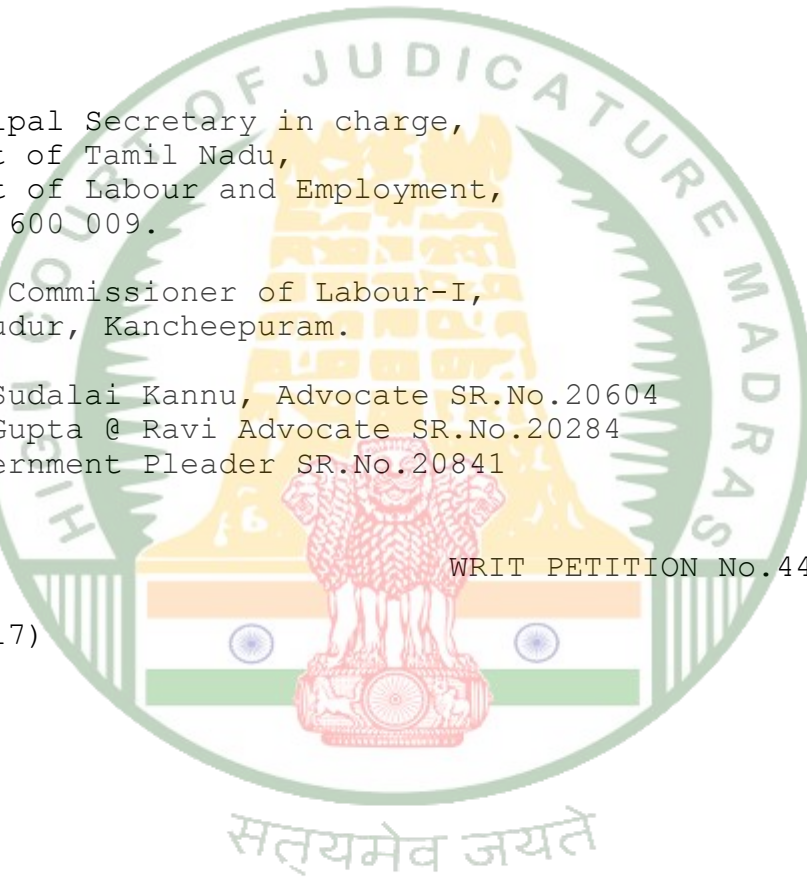
+1cc to Mr.Sudalai Kannu, Advocate SR.No.20604

+1cc to Mr.Gupta @ Ravi Advocate SR.No.20284

+1cc to Government Pleader SR.No.20841

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