

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.21895 of 2003 and
W.P.M.P.No.27121 of 2003

Tamil Nadu Arasu Pokkuvarathu
Kazhaga Uzhiar Sangam (Salem Division I)
(Regd.No. 224/SLM) (CITU) rep. by its
General Secretary
15, Vidhyalaya Road,
Salem - 636 007, Salem District. ..Petitioner

/vs/

1.The Management of Tamil Nadu State
Transport Corporation (Salem Division I)
rep. by its General Manager,
12, Ramakrishna Road,
Salem - 636 007, Salem District.

2.The Secretary,
The State of Tamil Nadu,
Labour and Employment Department,
Chennai.

(R2- Suo Moto impleaded as per order
dt:30.08.2018) ..Respondents

Prayer : Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the Respondent not to effect any changes in the working schedule of the workers concerned in the operation of the buses resulting in changes in their working hours without following the due process of law, more particularly the provisions of Section 9-A of the Industrial Disputes Act 1947.

For Petitioner : Mr.S.Ayyathurai

For Respondents : Ms.S.Rajeni Ramadoss for R1

Mr.G.B.Rajesh,
Government Advocate for R2

O R D E R

The prayer sought for herein is for a writ of Mandamus directing the Respondent not to effect any changes in the working schedule of the workers concerned in the operation of the buses resulting in changes in their working hours without following the due process of law, more particularly the provisions of Section 9-A of the Industrial Disputes Act 1947.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

(i) The petitioner, Tamil Nadu Arasu Pokkuvarathu Kazhaga Uzhiar Sangam is a registered Trade union representing and espousing the cause of the member employees, has filed this writ petition with the afore said prayer.

(ii) The main grievance appears to be for the petitioner is that, even though there had been a settlement under Section 12 (3) of the Industrial Disputes Act between the respondent management and the petitioner employees union, there had been considerable violation of the said settlement. Therefore, it seems that, the petitioner union pointing out those violations, had given a detailed request on 25.06.2003 to the Deputy Commissioner of Labour, Salem for appropriate action by way of conciliation. The same had been received by the office of the Deputy Commissioner of Labour, Salem on 25.06.2003.

(iii) It is the claim of the petitioner union that, though the petitioner association had been co-operating with the Labour Commissioner for completing the conciliation proceedings, the labour officer has not shown any interest and thereby the issue had been kept pending without showing any progress. Only in that circumstance, the petitioner union had approached this Court, seeking for a writ of Mandamus

(iv) Since the Conciliation Officer has not shown any progress nor he has not given any failure report to the Government for referring the issue for adjudication to the Labour Court / Industrial Tribunal, the petitioner union having no other option approached this Court seeking for a writ of mandamus.

3. Mr.S.Ayyathurai, the learned counsel appearing for the petitioner union submitted that, in spite of the best efforts having been taken by the petitioner's union by approaching the Conciliation Officer to take forward the conciliation proceedings, no interest had been shown. In spite of the pointed violations as has been mentioned in the request made by the petitioner Union dated 25.06.2003, no action had been taken. All

these years, even though the writ petition is pending, till today no progress has been shown for the said violations of 12 (3) settlement, thereby the employees of the petitioner union have been suffered a lot.

4. In this regard, the learned counsel appearing for the petitioner would further submit that, recently on 01.03.2017 also several such violations had been pointed out by the petitioner union and the same had been given to the respondent management. It is however, the respondent management also has not come forward to settle the grievances of the employees and nothing was worth coming from them.

5. The learned counsel appearing for the petitioner has further submitted that, yet another request also has been made on 01.03.2017 to the Managing Director of the respondent management about the violations nothing was considered so far. The learned counsel would also submit that, the Deputy Commissioner of Labour, Thiruchengode, in his proceedings dated 16.06.2017 had in fact issued a notice stating that, there had been some violations when the premises of the respondent corporation had been inspected and in this regard the management had been directed to pay the compounding fees for the violations, which was accepted by the management through the letter dated 23.06.2017.

6. By relying upon all these communications, the learned counsel for the petitioner would submit that, in spite of these violations, no progress had been shown by the conciliation officer for all these years. Therefore, appropriate Government need not wait for the failure report from the Conciliation Officer and under Section 10 of the Industrial Disputes Act, even on apprehension, labour dispute can be referred to for adjudication before the Labour Court.

7. In that circumstances, in fact it was requested by the learned counsel appearing for the petitioner as well as the respondent that, since the prayer sought is for the referral of the ID to the Labour Court, that prayer could be decided only after hearing the appropriate Government. Since the State Government is not a party originally in the writ petition, therefore, it became a necessity to implead the State Government represented by the Secretary to Government, Labour and Employment Department as one of the party respondents. Accordingly, the said respondent had been impleaded and after impleading the State Government, the views of the State Government also had been sought for.

8. Pursuant to the same, Mr.G.B.Rajesh, learned Government Advocate appearing for the State Government has produced the written instructions given by the Secretary to Government, Labour and Employment Department, dated 28.09.2018 which reads thus:

'I am directed to invite your attention to the letter 1st cited and to state that the Hon'ble High Court has impleaded the Secretary, State of Tamil Nadu, Labour and Employment Department, Chennai Suo-moto as one of the respondent in W.P.No.21895/2003 and directed to seek instruction whether the above W.P. Can be sent for industrial Tribunal.

2. In this regard, i am directed to inform that the above Writ Petition filed by the petitioner is a subject matter of Section 9A of the Industrial Disputes Act, 1947 (Act. No.14 of 1947). If the management does not follow the provisions of Section 9A of the Industrial Disputes Act, 1947 the aggrieved party/trade union can raise an Industrial Dispute under Section 2k of the Industrial Dispute Act, 1947 before the concerned Conciliation Officer. After the Conciliation Proceedings, if the dispute is not settled through Conciliation Authority the matter can be referred for adjudication to the Industrial Tribunal by the appropriate Government under Section 10 of the Industrial Disputes Act, 1947.

3. I am therefore, directed to inform that, it is not appropriate to refer the Industrial Dispute in this case directly to the Industrial Tribunal, without following the provisions of Section 2k and Section 10 of the Industrial Disputes Act, 1947.'

9. Based on these instructions, the learned Government Advocate would submit that, since there was no failure report from the conciliation officer, the State Government cannot straight away refer the matter for adjudication to the Labour Court. Therefore, it is the stand of the State Government that, once the parties approached the Labour Commissioner for conciliation and after conciliation, if the failure report is received from the Labour Commissioner, certainly the State Government would refer the matter for adjudication to the Labour Court without any further delay.

10. Ms.Rajini Ramadoss, learned counsel appearing for the respondent Transport Corporation also had submitted that, though the issue had been brought to the notice of the Labour Officer for conciliation, so far no progress since had been shown, a direction can be given to the Labour Commissioner to complete the conciliation process, for which both the parties can co-operate and once it is decided by the Conciliation Officer and any failure report is given by him, based on which the State Government can act upon towards referring the matter to the Labour Court for adjudication.

11. I have considered the said submissions made by the learned counsel appearing for the parties. As has been rightly pointed out by the learned counsel for the petitioner, the issue raised by the petitioner employees Union has been cropping up for the past more than 15 years and the issue has been pending before this Court for these period. Even though the petitioner union approached the Labour Commissioner in the year 2003 itself pointing out various violations on the part of the respondent management, because of the specific violations of 12(3) settlement, subsequent progress had not been shown in conciliation proceedings.

12. Even though it is maintained by the learned standing counsel appearing for the respondent corporation that, there had been no violation on their part, the same can be decided after having mutually negotiated the issue by way of conciliation by the Deputy Labour Commissioner, before whom the matter has already been pending for conciliation.

13. Because of the delay caused by the Labour Commissioner in completing the conciliation proceedings, the further action on the part of the petitioner side could not at all taken up and therefore, there is every justification on the part of the petitioner to approach this Court seeking for a writ of Mandamus as has been prayed for.

14. Now the stand of the State Government also has been made explicitly stating that once the parties approach the conciliation officer, before whom the conciliation proceedings is taken place and ultimately the Labour Commissioner filed any failure report for conciliation before the Government, thereafter the Government will have no hesitation in referring the matter to the Labour Court for appropriate adjudication.

15. In that view of the matter, since the stand of both the parties have been made known explicitly before this Court as has been indicated above, this Court is inclined to pass the following order in this writ petition :

(1) The parties herein, the petitioner's employees union as well as the respondent management shall approach the Labour Commissioner / Deputy Labour Commissioner / Conciliation Officer with regard to their Industrial Dispute and once such approach is made by sending the copy of the request made by the petitioner's union as early as in the year 2003 and also the subsequent request for conciliation, the Conciliation Officer shall issue notice to both the parties and after exploring the possibility of amicable settlement by way of conciliation, the Labour Commissioner / Conciliation Officer shall come to a conclusion as to whether the issue has been settled by way of amicable settlement, if not failure report shall be prepared by the Labour Commissioner / Conciliation Officer immediately and forward the same to the State Government.

(2) The aforesaid exercise shall be undertaken by the Labour Commissioner / Conciliation Officer, within a period of two months from the date of receipt of a copy of this order.

(3) Once the failure report is received from the Labour Commissioner by the respondent State Government, it shall act upon by referring the matter under Section 10 of the Industrial Disputes Act to the Industrial Tribunal / Labour Court for adjudication, within a period of one month thereafter.

With these directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

tsg / tsvn

To

1. The General Manager
The Management of Tamil Nadu State
Transport Corporation (Salem Division I)
12, Ramakrishna Road,
Salem - 636 007
Salem District.

WEB COPY

2. The Secretary,
The State of Tamil Nadu,
Labour and Employment Department,
Chennai.

3. The Deputy Commissioner of Labour,
Salem.

copy to: The Section Officer,
VR Section,
High Court,
Madras.

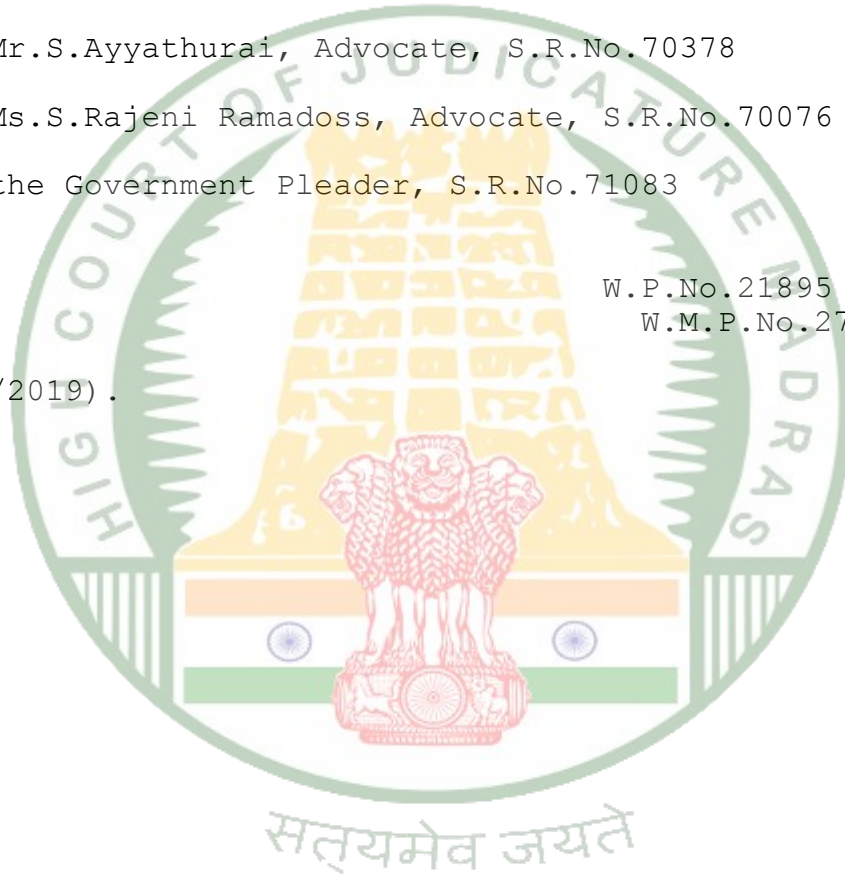
+1 cc to Mr.S.Ayyathurai, Advocate, S.R.No.70378

+1 cc to Ms.S.Rajeni Ramadoss, Advocate, S.R.No.70076

+1 cc to the Government Pleader, S.R.No.71083

GJ-II (CO)
SSM(26/03/2019) .

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