

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.2471 & 2474 of 2018
and CMP.Nos.19943 & 19950 of 2018

WA No.2471 of 2018

Sri.U.Ramaraj,
Asst. Commissioner of Labour (Enforcement),
Karur

... Appellant/5th Respondent

vs.

1. S.P.Shanthi
Asst. Commissioner of Labour,
Battlagundu,
Dindigul District.

2. State of Tamil Nadu,
Rep. by its Principal Secretary to Govt.,
Labour & Employment Department,
Fort St. George,
Chennai

3. The Commissioner of Labour,
DMS Compound,
Chennai - 600 006.

4. The Principal Secretary,
Personnel & Administrative Reforms Dept.,
Secretariat, Fort St. George,
Chennai - 600 009.

5. Sri Abdul Azeez,
Assistant Commissioner of Labour,
Erode.

6. Tmt.S.Vetriselvi,
Asst. Commissioner of Labour-I,
Chennai.

... Respondents/writ Petitioner & Respondent

WA No.2471 of 2018
Sri.U.Ramaraj,
Asst. Commissioner of Labour (Enforcement),
Karur

...

Appellant/5th Respondent

Vs.

1. K.Balamurugan,
Asst. Commissioner of Labour,
Battlagundu,
Dindigul District.

2.State of Tamil Nadu,
Rep. by its Principal Secretary to Govt.,
Labour & Employment Department,
Fort St. George,
Chennai.

3. The Commissioner of Labour,
DMS Compound,
Chennai - 600 006.

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Personnel & Administrative Reforms Dept.,
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5. Sri Abdul Azeez,
Assistant Commissioner of Labour,
Erode.

6. Tmt.S.Vetriselvi,
Asst. Commissioner of Labour-I,
Chennai.

...

Respondents/Writ Petitioner & Respondents

Writ Appeals filed under Clause 15 of the Letters Patent against the common Order dated 04.10.2018 made in WMP Nos.30570 & 30579 of 2018 in W.P.Nos.26309 and 26316 of 2018.

W.P.Nos.26309 and 26316 of 2018

This Petition under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a writ, order of Direction more so in the nature of a writ of certiorarified Mandamus Calling for the records of the 2nd respondent herein in the proceedings No. E3/43422/ 2016 dated 17.09.2018 so far as inclusion of the names of

the private respondents quash the same with a consequential direction directing the respondents to draw the panel for promotion to the post of Deputy Commissioner of Labour for the year 2016 by including the name of the petitioner without insisting upon the service qualification as per Rule 2 of the special Rules for Tamil Nadu Labour Services and consequentially promote the petitioner to the post of Deputy Commissioner of Labour with all attendant benefits (in WP.No.26309 of 2018)

Calling for the records of the 2nd respondent herein in the proceedings No. E3/ 43422/ 2016 dated 17.09.2018 so far as inclusion of the names of the private respondents quash the same with a consequential direction directing the respondents to draw the panel for promotion to the post of Deputy Commissioner of Labour for the year 2016 by including the name of the petitioner without insisting upon the service qualification as per Rule 2 of the special Rules for Tamil Nadu Labour Services and consequentially promote the petitioner to the post of Deputy Commissioner of Labour (in WP.No.26316 of 2018)

To direct the respondents 1 and 2 to include the name of the petitioner in the panel for promotion to the post of Deputy Commissioner of Labour for the year 2016 without insisting as per Rule 2 of the Special Rules or Tamil Nadu Labour Service in WMP.No.30570 of 2018) pending disposal of the above writ petition 26309/18 and;

To direct the respondents 1 and 2 to include the name of the petitioner in the panel for promotion to the post of Deputy Commissioner of Labour for the year 2016 without insisting as per Rule 2 of the Special Rules or Tamil Nadu Labour Service in WMP.No.30579 of 2018) pending disposal of the above writ petition 26316/18 respectively.

For Appellant : Mr.Syed Mustafa
in both WAs.

For Respondents : Ms.S.Sunitha (for R1)
in both WAs. for Ms.Dakshyani Reddy

COMMON JUDGMENT
(Judgment of the Court was made by S.MANIKUMAR, J)

Writ appeals are filed against the common interim order passed on 04.10.2018 in WMP Nos.30570 & 30579 of 2018 in W.P.Nos.26309 and 26316 of 2018.

2. Contention of the appellant is that the Writ Court while issuing an interim order has directed the official respondents

to include the name of the petitioners / 1st respondent, in the promotion panel list and that the promotion of the petitioners / 1st respondent would be subject to the outcome of the writ petitions, which is virtually an order granting the main relief sought for in the writ petitions. Hence, the appellant seeks for intervention.

3. True that an interim order has been passed and that the appellant has not been heard. It is well settled law that a writ appeal would not lie against an interim order. In the case on hand, interim direction has been granted, without hearing the appellant. Instead of filing a petition for vacating the interim order, writ appeal has been filed.

4. The issue as to whether a writ appeal under clause 15 of the Letters Patent is maintainable as against an interim order granted in a writ petition, is no longer res integra. The same has been dealt by a Hon'ble Division Bench of this court in, The Anna University v. Narayanaguru International Institute of Science and Technology (Regd. Trust) and others in W.A.(MD) No.466 of 2015 dated 14.05.2015. After considering the earlier decisions of this Court, the Hon'ble Bench, held that writ appeal as against interim order granted in writ petition, is not maintainable.

5. A similar question arose for consideration before a Hon'ble Division Bench of this court in R.Kannan v. Indcom Electronics Ltd., stating that the order impugned therein is not a judgment within the meaning of Clause 15 of Letters Patent of this court. A Hon'ble Division Bench, elaborately considered the matter, and held that the interim order made in the petition, which has not reached finality, determining the rights and liabilities between the parties cannot be said to have caused grave and substantial injustice to the appellant and will not fall within the meaning of the expression 'judgment' occurring in Clause 15 of the Letters Patent. Accordingly, the Hon'ble Division Bench held that writ appeal was not maintainable against an interim order.

6. In Dr.Chinnaraj Joseph Jeyakumar Joseph Jeyakumar v. The Governing Counsel of American College and Others in W.A.No.540 of 2008, dated 02.08.2008, another Hon'ble Division Bench of this court held that ex-parte interim orders are not judgments for an aggrieved person to invoke the jurisdiction of the Appellate Court, under clause 15 of the Letters Patent. Adopting the same legal principle, W.A. No.2347 of 2012, dated 05.12.2012, was disposed of by the Hon'ble First Bench giving liberty to the appellant therein to file application to vacate the interim order.

7. In Hindu Nadar Educational Trust, represented by its Managing Trustee and others vs. Hindu Nadar Uravinmurai, Nilakottai, in W.A.(MD) No.312 of 2016 dated 22.02.2016, a Hon'ble Division Bench of which one of us, is a party (Justice S.Manikumar), held as follows:

"In the abovesaid circumstances, we would only clarify that the interim order, granted in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016 dated 05.01.2016, would be an interim order, till the miscellaneous petitions are finally heard and decided, along with the vacate stay petition. It shall not be an interim order, as prayed for, in the miscellaneous petitions, till the disposal of the writ petition. It could only be an interim order, till the parties to the lis, are put on notice, in the interim applications and heard. With the above clarification, we only request the Writ Court, to take up the injunction petitions in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016, along with the vacate stay petition, and pass orders, as expeditiously as possible. Registry is directed to place the matter before the learned single Judge. Accordingly, the writ appeal is disposed of. No costs. Consequently, C.M.P(MD)No.1856 of 2016 is closed."

8. In Special Tahsildar No.III, Land Acquisition, Lignite Project, Neyveli, vs. V.Rangasamy Reddiar, reported in AIR 1988 Madras 162, this Court, has held as follows:-

'2.We are very much concerned to note a disturbing tendency that is fast developing now-a-days. In the recent past, we have come across several matters in which appeals are filed against ad interim exparte orders without resorting to the normal course of approaching the court which passed such orders and seeking appropriate further orders in spite of the law having been clearly laid down by a Division Bench of this Court in Abdul Shukoor v. Umachander AIR 1976 Mad 350. No doubt, that case arose out of an order emanating from a Subordinate Court. The ratio of the decision will apply with more force to an order passed by a learned single Judge of this Court. Moreover the ad interim orders are not judgments within the meaning of clause 15 of the Letters Patent.

3.What concerns us most is that the Government and statutory Corporations very often indulge in by-passing the only lawful course and adopting a course expressly disapproved by this court. We hold that the appeals ought not to have been filed in this case. The only

course open to the Government was to approach the court in charge of civil miscellaneous petitions and pray for the passing of appropriate final orders in the civil miscellaneous petition. We hope that there will be no recurrence of similar instances in future. We make it clear that if we come across any such appeals in future, we will be constrained not only to dismiss such appeals, but also penalise the parties concerned with orders of heavy costs.'" The above said decision has been followed in Syed Zehera Jabeen vs. S.Padmanabhan, reported in 1988 II MLJ 423 = 1989 (1) L.W 112, and Telecom Regulatory Authority of India vs. Bharti Airtel Ltd., reported in 2013 (5) CTC 264."

9. When attention of the learned counsel for the appellant was brought to the legal principles, Mr. Syed Mustafa, learned counsel for the appellant sought permission to file an application, before the writ Court.

10. In view of the above discussion and decisions stated supra, writ appeals are not maintainable. Liberty is given to the appellant to file appropriate petition before the writ Court. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

11.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The Principal Secretary to Govt.,
State of Tamil Nadu,
Labour & Employment Department,
Fort St. George,
Chennai.

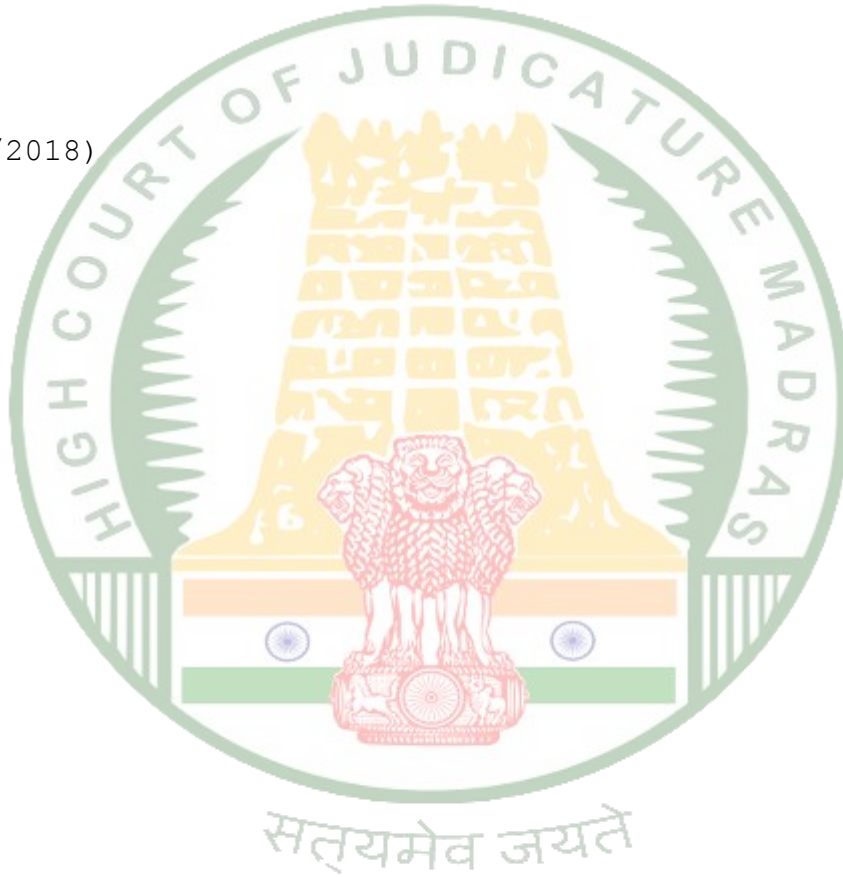
2. The Commissioner of Labour,
DMS Compound,
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3.The Principal Secretary,
Personnel & Administrative Reforms Dept.,
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+1cc to the Government Pleader, S.R.No.78015

W.A.Nos.2471 & 2474 of 2018
and CMP Nos.19943 & 19950 of 2018

SR(CO)
GSP(04/12/2018)



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