



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2018

CORAM:

THE HONOURABLE **MR. JUSTICE G.R. SWAMINATHAN**

W.P. (MD) No. 3943 of 2018

and

W.M.P (MD) No. 4094 of 2018

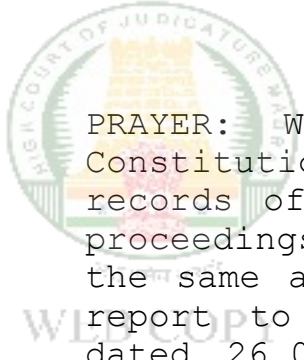
R. Rajendran
State General Secretary,
108 Ambulance Workers Union Tamil Nadu
Regn. No. 1508/MDU,
Office Plot No. 1, Meenakshi Nagar Bus Stop,
Near Abinavi Physiotherapy Clinic,
P & T Nagar Main Road,
Madurai - 625 017.

... Petitioner

Vs.

1. The Principal Secretary,
Department of Labour and Employment,
Government of Tamil Nadu,
St. George Fort,
Chennai - 600 005.
2. The Commissioner of Labour,
Government of Tamil Nadu,
DMS Campus,
Tenampet,
Chennai - 600 006.
3. The Assistant Commissioner of Labour
(Conciliation)
(Head Quarters)
Office of the Commissioner of Labour,
V Floor, DMS Campus,
Tenampet,
Chennai - 600 006.
4. The Management,
GVK Emergency Management and
Research Institute,
DMS Campus,
Tenampet, Chennai - 600 006.
5. Mr. Seenivasan
HR/Associate Partner,
GVK Emergency Management and
Research Institute,
DMS Campus, Tenampet,
Chennai - 600 006.

... Respondents



PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to call for the records of impugned order passed by the third respondent in his proceedings vide Letter No.Pa4/10169/15 dated 25.01.2018 and quash the same and consequently direct the second respondent to file a report to the first respondent on petitioner union's petition dated 26.02.2015 for making complaint under Section 34 of the Industrial Disputes Act, 1947 within such time as this Court may be fixed.

For Petitioner : Mr.T.Sivakumar
 For Respondents : Mr.J.Gunaseelan Muthiah
 Addl. Govt. Pleader
 for R1 to R3

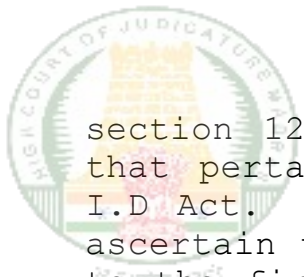
O R D E R

Heard Mr.T.Sivakumar, learned counsel appearing for the petitioner and Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents 1 to 3. By consent of both parties, this writ petition is taken up for final disposal.

2.The petitioner is an office-bearer of registered Trade Union. The members of the petitioner Union are working in the ambulance services run by the fourth respondent in partnership with the Government of Tamil Nadu. It is the specific complaint of the petitioner that unfair labour practices are being committed by the 4th and 5th respondents and that therefore, they must be prosecuted in terms of Section 34 of Industrial Disputes Act, 1947. Section 34 of the I.D. Act, 1947 reads as under:-

"34.Cognizance of offences.-(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government."

3.In the present case, the petitioner submitted a complaint to the 3rd respondent. The 3rd respondent must ascertain the facts of the complaint and thereafter, send the report to the Government for taking further action in terms of the statutory provision. In the present case, instead of adopting such approach, the 3rd respondent has chosen to handle the matter as if it is an industrial dispute and that conciliation process in terms of Section 12 of the I.D Act must be adopted. He has therefore, given a letter dated 25.01.2018 in this regard. The 3rd respondent has informed the petitioner that if the petitioner is not present during the conciliation talks, failure report will be sent under Section 12(4) of the I.D Act. The approach of the third respondent is entirely misconceived. It is not an industrial dispute, in respect of which conciliation process in terms of



section 12 of the I.D Act should be adopted. This is a matter that pertains to a criminal prosecution under Section 34 of the I.D Act. The third respondent is to go through the complaint, ascertain the facts set out therein and thereafter submit a report to the first respondent/Government. It is for the Government to adopt the course of action as it deems fit.

4. Therefore, the impugned communication is liable to be quashed and it is accordingly, quashed. The third respondent is directed to ascertain the facts set out in the petitioner's complaint and thereafter submit a report to the Government in this regard. It is made clear that this Court has not expressed any opinion on the merits of the matter. The third respondent shall send such report within a period of eight weeks from the date of receipt of a copy of this order.

5. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
Department of Labour and Employment,
Government of Tamil Nadu,
St. George Fort,
Chennai - 600 005.
2. The Commissioner of Labour,
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Tenampet, Chennai - 600 006.
3. The Assistant Commissioner of Labour
(Conciliation)
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SKN

VB/PN/SAR4/02.07.2018/3P/4C

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