

HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 10254 of 2005

ORDER:-

This writ petition is filed seeking to issue a writ of *Mandamus* declaring action of the 1st respondent in issuing the Proceedings dated 16.12.2002, as arbitrary and illegal and against the principles of natural justice and direct the respondents to dispose of the representations dated 11.03.2002 and 22.04.2002. Subsequently, the petitioners filed W.P.M.P.No. 7944 of 2006 seeking to amend the writ prayer by declaring action of respondent No.1 in issuing the impugned proceedings dated 16.12.2002 and consequential orders passed by the 2nd respondent dated 08.02.2006 vide Reference No.A2/ 1599/ 2005, as arbitrary and illegal and without jurisdiction and violates the concept of collective bargaining and the provisions of the Industrial Disputes Act, and consequently direct the respondents to initiate Conciliation proceedings on the disputes raised by the petitioners in their representation dated 25.05.2005, and the W.P.M.P. was ordered on 23.07.2018.

Heard Sri S. Ashok Anand Kumar, learned counsel for the petitioners and learned Government Pleader for Labour appearing on behalf of the respondents and perused the material placed on record.

The petitioners have raised an industrial dispute before the 2nd respondent - Conciliation Officer, but instead of making efforts to resolve the dispute, the 2nd respondent issued proceedings dated 08.02.2006 closing the dispute to the effect that the duty of the conciliation officer is whenever there is failure report he will forward it to the appropriate Government which refers the dispute to the Labour Court. The Conciliation Officer cannot simply close the dispute raised by the petitioners.

It is brought to the notice of this Court that the 6th petitioner has expired and it is always open for the 6th petitioner's legal representatives to pursue their remedies in accordance with law.

The learned Government Pleader has submitted that conciliation officer has rightly closed the dispute raised by the petitioners as the employees of the management have specifically pleaded that they are engaged by the contractor.

Having regard to the submission made by the learned Government Pleader, this Court is of the considered view that the conciliation officer cannot decide whether the petitioners are employees of the management or not and it is for the Labour Court to adjudicate the dispute that too after leading evidence whether the petitioners are workmen within the meaning of Section 2-S of the Industrial Disputes Act or there

is any relationship existing between the petitioners and the management.

In view of the above discussion, this writ petition is disposed of directing the 2nd respondent to forward the failure report to the appropriate Government. If the talks between the petitioners and the management failed, it is for the appropriate Government to refer the dispute to the Labour Court for its adjudication under Section 10(1) of the Industrial Disputes Act, 1947.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous. No order as to costs.

31.08.2018

bcj

ABHINAND KUMAR SHAVILI, J

