

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30187 of 2005

M.Ananda Kumar

...Petitioner

..Vs..

- 1.The Certifying Officer,
The Joint Commissioner of Labour,
Standing Orders Authority,
DMS Complex, Teynampet,
Chennai - 600 006.
- 2.M/s.Additions Paints and Chemicals Ltd.,
rep by its Chief Executive Officer,
Sembiam, Chennai - 600 011.

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records relating to the impugned order No.B2/24568/76; dated 31.01.1981 of the second respondent certified by the first respondent and the impugned notice dated 18.07.2005 in Ref.No.D28/05 issued by the second respondent and quash the same as null and void consequently directing the second respondent to reinstate the petitioner in service with backwages.

For Petitioner : Ms.Umashankari

For Respondents : D.Suriyanarayanan (for R.1)
Mr.Chevanan Mohan
for M/s.King & Patridge (for R.2)

ORDER

The relief sought for in the present writ petition is to call for the records relating to the impugned order No.B2/24568/76; dated 31.01.1981 of the second respondent certified by the first respondent and the impugned notice dated 18.07.2005 issued by the second respondent and quash the same.

2.The learned counsel appearing on behalf of the second respondent raised a preliminary objection regarding the maintainability of the writ petition by stating that the standing orders issued is under challenge directly without approaching the Competent Authority under the provisions of the Statute. Thus, the relief as such sought for in the present writ petition cannot be entertained by this Court under Article 226 of the Constitution of India. The impugned certified standing order was issued on 31.01.1981 and the impugned notice was issued in proceedings dated 18.07.2005. However, the fact remains that the order of dismissal was issued by the second respondent on 15.07.2005. However, all these disputed issues are to be adjudicated before the Competent Forum and this Court cannot conduct an adjudication of the issues under Article 226 of the Constitution of India.

3.This apart, the impugned letter dated 18.07.2005 was issued by the second respondent, which is a private company. The writ petitioner was an employee of the second respondent/private Company and therefore, he cannot directly file a writ petition and such a writ petition cannot be entertained.

4.The learned counsel appearing on behalf of the second respondent also cited the judgment of this Court dated 13.09.2019 in Puthiya Jananayaga Thozilalar Munnai Vs. Government of Tamil Nadu & others in W.P.No.13281 of 2017 and the relevant paragraph is extracted hereunder;

"10. This Court is of the view that without any cause of action being arisen, the relief is sought for in respect of the future event based on presumptions and assumptions. The Court cannot issue any such direction on the presumption that the employer will alter service conditions or terminate employees or act in contravention to the provisions of Industrial Disputes Act. At the outset, the prayer sought for in this writ petition is hypothetical in nature and further, this Court is of the opinion that such prayer is coined by incorporating provisions of the Industrial Disputes Act, so as to maintain the writ petition under Article 226 of the Constitution of India. On a plain reading of the prayer that to forbear the third respondent from altering service conditions of the members of the petitioner union and not to terminate them, the same is sought for against the third respondent and the third respondent is the management of a private company registered under the Companies Act. The third respondent being a private

company is not a 'State' within the meaning of Article 12 of the Constitution of India. It is neither an instrumentality of the State nor the State/Union is having any share in the third respondent company. The third respondent company is not performing any public duties and functions and members of the petitioner union are also not relating to the public functions. It is purely an employment affair between the members of the petitioner-union and the third respondent management. It is no way connected with the public functions or relating to the public affairs."

5.This Court is of the considered opinion that the writ petitioner has to approach the Competent Authority if at all he is aggrieved from and out of order of dismissal or otherwise.

6.Under these circumstances, the writ petition cannot be entertained and consequently stands dismissed as not maintainable. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Certifying Officer,
The Joint Commissioner of Labour,
Standing Orders Authority,
DMS Complex, Teynampet,
Chennai - 600 006.

2.M/s.Additions Paints and Chemicals Ltd.,
rep by its Chief Executive Officer,
Sembiam, Chennai - 600 011.

+1cc to M/s.King & Patridge, Advocate sr.84111
+1cc to Government Pleader SR.NO. 85069

W.P.No.30187 of 2005

vgi(co)
nr 12/11/2019