

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2019

DELIVERED ON : 06.03.2019

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WP.NO.4580 OF 2019 &
WMP NO.5170 OF 2018

Kovai Mavatta Pricol Thozhilalar Otrumai Sangam,
rep. by its General Secretary,
126 C, Eswaran Kovil Veedhi,
Periyanaickenpalayam,
Coimbatore-641 020.

... Petitioner

Versus

1. The Government of Tamil Nadu,
rep. by its Secretary,
Labour and Employment Department,
Fort St.George, Chennai-600 009.
2. The Commissioner of Labour,
Labour Welfare Building,
D.M.S.Compound, Chennai-600 006.
3. The Deputy Commissioner of Labour,
Conciliation-III, Dr.Balasundaram Road,
Coimbatore-641 018.
4. The Management,
Pricol Limited,
Periyanaickenpalayam,
Coimbatore-641 020.

.. Respondents

PRAYER:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the 1st and 2nd respondents to issue Government Orders under Section 10 (1) and 10(B) of the Industrial Disputes Act, 1947 on the petitioner's letters dated 31.12.2018 and 14.1.2019 to them and on the Industrial dispute raised by the petitioner before the 3rd respondent on 24.1.2019 within a time frame.

For Petitioner : Mr.S.Kumaraswami for
M/s.K.M.Ramesh

For Respondents : Mr.J.Ramesh, AGP for R1 to R3
Mr.Sanjay Mohan, SC for
M/s.Ramasubramanian & Associates
for R4

ORDER

The petitioner is a Labour Union, having members who are the employees of 4th respondent Management.

2. In order to understand the scope of the litigation and the issue that arise on behalf of the Union and resisted on behalf of the Management, the following brief facts that are necessary, are stated hereunder:

3. According to the petitioner Union, there was a spate of Industrial Disputes, Writ Petitions, Special Leave Petitions as between the Union and the Management from the year 2007 to 2011. At one point of time, it was decided to resolve all the pending issues amicably and the petitioner Union was formed on amalgamation of two other erstwhile Unions. The petitioner Union is affiliated to All India Central Council of Trade Unions (AICCTU)) which is a Central Government recognized National Trade Union.

4. On 08.06.2012 and 02.08.2014, 12(3) settlement was entered into between the Labour Union and the Management with regard to various service conditions including the wages applicable to the workers. The earlier settlement entered into under Section 12(3) of the Industrial Disputes Act had come to end on 30.06.2018 and as per the earlier agreement, negotiations for the new settlement were to commence six months prior to the expiry of the earlier settlement. In the said circumstances, a charter of demands were placed on 29.01.2018 proposing new settlement. While so, for some reason, the relationship between the workers and the management became strained and there were allegations and counter allegations being the cause for such strained relationship. The dispute between the Labour Union and the Management became so acute and bitter, the Management appeared to have declared partial lockout for 144 workers on 16.08.2018. According to the petitioner Union, choosing 144 workers for partial lockout by the Management is an act of hostile discrimination and as the relationship became more wild and strained, there was a call for indefinite strike from

21.8.2018 on behalf of the workers. Several officials of the Government were also approached for acceptable solution to the raging dispute between the petitioner Union and the Management.

5. A conciliation talk was also initiated which was held on 29.11.2018 before the Special Joint Commissioner of Labour, Chennai and according to the petitioner Union, the Special Joint Commissioner of Labour has advised as under on the basis of settlement reached by the parties.

1. The Management and the Union agreed that uniform allowance was given on 13.11.2018
2. It is advised to pay bonus and profit share amounts if any difference are due.
3. It is advised to pay educational allowance and leave encashment dues if they are pending.
4. The Management stated that it would sign an agreement only with Kovai Mavatta Pricol Tholizhazhargal Ottrumai Sangam (AICCTU)
5. The Management accepted that it will allow all workers to resume work when they return from the strike and that no worker will be victimized for this strike."

6. Thereafter, the workers started returning to work from 3.12.2018. On resumption of work, the workers were in shock that the Management has transferred 302 workers to Sricity-Andhra Pradesh, Maharashtra and Uttarkand. The workers were informed that in view of the Management suffering losses due to strike, it was constrained to transfer the workers for better man power utilization. According to the Management, instead of retrenching the workers, they had provided alternative work to them to safeguard their interest by merely transferring to their other plants in the above mentioned three places.

7. The en masse transfer of workers was a last straw on the workers' back and the action of the Management perceived to be punitive and mala fide, the workers refused to obey the transfer order. According to the petitioner Union, the members of their Union alone have been singled out for transfer which action on the part of the Management was nothing but unfair labour practice attracting penal provisions of the Industrial Disputes Act. Several demonstrations and protests have been held against the orders of transfer dated 1.12.2018. It appears that the workers and the Union have also approached the District Collector in order to find a solution to the ongoing tussle between the petitioner Union and the Management. Simultaneously, the petitioner Union also approached respondents 1 and 2 for referring the industrial disputes for adjudication under Section 10(1) and also intervention of the Government

under Section 10(B) of the Industrial Disputes Act. According to the petitioner Union, an Industrial Dispute was raised on 24.1.2019 against the transfer of 302 workers before the 3rd respondent and in response to the dispute, the Management has filed its objections on 08.02.2019 and the petitioner Union in turn, has also filed its reply on 11.02.2019. When the dispute regarding en masse transfer was pending conciliation before the respondents 1 and 2, the Management has passed orders on 11.02.2019, dismissing 294 workmen. According to the petitioner Union, such dismissal of workmen is in violation of 33(1)(B) of I.D.Act. Since the action initiated by the Management was directly in issue with the dispute raised by the Union before the respondents 1 and 2, it is imperative and mandatory that the Management has to take prior permission from the Authority concerned before giving effect to the orders under challenge. However, apprehending that the Management would go ahead with the punitive action against 294 workers without following the procedure contemplated under I.D.Act and in which event, large number of workmen would suffer non-employment illegally and unjustly and such extraordinary situation can be remedied effectively only before this Court under Article 226 of the Constitution of India, the present Writ Petition has been filed by the petitioner Union.

8. Shri S.Kumara Swami, learned counsel appearing for the petitioner Union moved this Writ Petition for admission on 15.02.2019 and prayed for grant of interim stay of dismissal order issued by the 4th respondent Management to 294 workers belonging to the petitioner Union whose names were given in the Annexure. The learned counsel would submit that the workers concerned apprehended that their employment was at stake in view of the drastic and extreme action initiated by the Management in dismissing them without following due process of law. Unless this Court comes to the rescue, any reference of the dispute for adjudication by the Government would not alleviate the problems of the workmen. If the workers are denied employment during the adjudicatory process either under Section 33 or under any other provisions of the I.D.Act, the ultimate sufferer of such situation are the workers and not the Management. According to the learned counsel, a monstrous situation has arisen for this Court to intervene since as many as 294 workers are sought to be dismissed by the impugned action of the 4th respondent Management. He would submit that such extraordinary action by the management in dismissing 294 workers at one go as a punitive measure to victimize the workers for their legitimate protest against the mass transfer orders, requires extraordinary remedy and that remedy is available only under Article 226 of the Constitution of India. Therefore, he would implore this Court to grant interim order of stay.

9. On consideration of submissions made on behalf of the workmen by Shri S.Kumara Swami, learned counsel and also on perusal of pleadings and materials placed on record and also on being satisfied with the balance of convenience, pending disposal of the Writ Petition, this Court has granted interim order of stay of dismissal order passed against 294 workmen.

10. After the said order was passed, on behalf of 4th respondent Management, Shri Sanjay Mohan, learned Senior Counsel mentioned the matter and submitted that the Management was inclined and willing to treat the workers under order of dismissal as the employees of their Unit at Coimbatore for all purposes and they would also be paid salary for the relevant period and the workers need not report for duty. The learned Senior Counsel also submitted that this arrangement can be put in place till the matter is taken up finally on the next adjourned date.

11. On the basis of submissions made by the learned Senior Counsel on behalf of 4th respondent Management, eventually the order was modified/clarified as under:

"4. In view of the submissions made by the learned counsel for 4th respondent/Management, it is clarified that the protection given by this Court by the above interim order of stay, shall be limited to the extent of maintaining the status quo, which means that they would remain on the rolls of 4th respondent/Management for all purposes but for reporting for duty, till the next date of hearing."

12. When the matter is taken up for hearing on 27.02.2019, Shri Sanjay Mohan, learned Senior Counsel appearing for the 4th respondent Management would stoutly object to continuance of the above interim arrangement any further. He would submit that the order of dismissal was passed against the workmen on 11.02.2019 itself and as such, the Union cannot ask for any interim stay of dismissal order. He would further submit that the question of obtaining prior permission would not arise since as per Section 20 of I.D.Act, the conciliation has not commenced at all. In any case, the learned Senior Counsel would submit that the Writ against private Management would not lie. He would also submit that as regards the main prayer is concerned, the Management cannot have any quarrel since it is entirely within the domain and power of the Government to refer any dispute for adjudication. However, under the guise of seeking innocuous prayer of reference of dispute for adjudication, it is not open to the petitioner Union to pray for stay of dismissal order since that would involve the exercise of jurisdiction of Writ

Court against a private Management. In support of his contentions, the learned Counsel would rely on the following two decisions, viz.,

i) "(2010) 8 SCC 329 (Shalini Shyam Shetty and another versus Rajendra Shankar Patil)" and

ii) "2015 (3) CTC 554 (K.K.Saksena versus International Commission on Irrigation and Drainage)".

13. The learned Counsel would submit that the Writ Petition cannot lie against a private party and interference of Writ jurisdiction in private dispute was found to be not maintainable. Therefore, he would submit that when the Writ itself is not maintainable in law, the question of grant of stay of dismissal order need not be considered by this Court as it is always open to the Union and the workers to approach the mechanism as provided under the provisions of the I.D.Act.

14. Per contra, the learned counsel appearing for the workmen would submit that this Court prima facie was satisfied about the injustice meted out to large number of workmen at the hands of the Management and therefore, this Court had granted interim stay of dismissal order. This Court was also satisfied about the maintainability of the Writ Petition since at the time when the Writ Petition was moved for admission, the issue of jurisdiction was also addressed by the petitioner Union and upon being satisfied of the same, this Court has intervened and extended interim protection to the workers. In any event, the learned counsel would reiterate the decisions relied upon from the list of citations submitted by him, as stated below:

i) "2002 (4) LLN (Annamalai National Estate Workers Union versus Planter's Association of T.N. and others)".

In the above decision, the learned Judge of this Court has in extenso dealt with the various decisions rendered on the subject matter by the Hon'ble Supreme Court of India and finally held that the Writ jurisdiction can be invoked and writ can be issued even against a private individual when main issue relates to public duty and for public interest. Paragraphs 16 to 23 and 30 to 37 are relevant and they are extracted hereunder:

"16.MAINTAINABILITY:

The contention that a writ of mandamus cannot be issued as against a Private Company especially where no public duty is involved in the discharge of duties, is mainly based on the judgment of the Supreme Court in V.S.T.INDUSTRIES LTD. v. V.S.T. INDUSTRIES WORKERS' UNION (2001 (1) S.C.C., 298). Much reliance is placed on the observations contained in paragraph No.8 of the judgment which is as follows:

"The High Court has relied very strongly on the decision of a learned single Judge in T.GATTIAH CASE where in it was stated that a writ may lie under Article 226 of the Constitution against a company incorporated under the Companies Act, 1956 as it is permissible to issue a writ against any person. Prima facie, therefore, a private person or an incorporated company cannot be taken out of the sweep and contemplation of Article 226 of the Constitution. That decision does not take note of the fact as to the nature of the functions that a person or an incorporated company should be performing to attract judicial review under Article 26 of the Constitution. In ANANDI MUKTA CASE this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve any public function. Incidental to that activity there is an obligation under Section 46 of the Act to set up a canteen when the establishment has more than 250 workmen. That means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare device for the benefit of its workforce unlike a provision where the Pollution Control Act makes it obligatory even on a private company not to discharge certain effluents. In such cases public duty is owed to the public in general and not specifically to any person or group of persons. Further the damage that would be caused in not observing them is immense. If merely, what can be considered a part of the conditions of service of a workman is violated then we do not think there is any justification to hold that such activity will

amount to public duty. Thus, we are of the view that the High Court fell into error that the appellant is amenable to writ jurisdiction."

17.Mr. A.L. Somayaji, also relies on few other judgments in support of the same contentions.

18.The statement of law thus expressed by the Supreme Court in V.S.T.INDUSTRIES case, supra, had already been pronounced by the Supreme Court in PRAGA TOOLS CORPORATION v. I (1969 (2) L.L.J., 749).

19.In that case also, the Supreme Court observed that mandamus would lie to secure the performance of a statutory duty and as such the condition precedent for the issue of a mandamus is that there should be legal right in the petitioner and also could be issued to a person or to a Corporation to do a particular thing which is in the nature of public duty. Therefore, we have to see whether the principles stated in PRAGA TOOLS case, and VST INDUSTRIES case, supra, would non-suit the petitioners in seeking for direction to the respondents to comply with their statutory duties and obligations.

20.The power of the writ Court to issue the prerogative writs is well known. There is no controversy over the position that it is an extraordinary and plenary power to be exercised by the Supreme Court and the High Courts and could be issued to any person inclusive of a private individual. Whatever restrictions or embargo which are placed against the exercise of such power are only a series of self imposed restrictions which the Courts have imposed upon themselves considering that it is a discretionary remedy. Normally writs will not be issued in situations such as availability of alternative remedy, parties approaching the Court very belatedly, notices which are in the nature of show-cause notices, Executive functions which are administrative and discretionary in nature and based on the subjective satisfaction of the authorities etc. Likewise, for issuing writs positively, notwithstanding any of the above mentioned self imposed restrictions, writs can be issued for securing ends of justice, the Executive Authority acting without application of mind or without jurisdiction and deliberately violating statutory obligations and last but not

the least when the action of respondents may be described as "monstrous". What is to be characterised as monstrous is no doubt to be left to the judicial conscience in the exercise of its discretion in the facts and circumstances of each case.

21. The question whether a writ can be issued to a private person and a Private Company is positively answered in the above two judgments themselves relied on by the employers namely, in PRAGA TOOLS's case and VST.INDUSTRIES case, supra. It is made clear that writ can be issued to a private individual or a Corporate body or Company and such category of persons need not be discharging any public or statutory duty. Distinction is made only on the basis as to whether the impugned action of the respondents is in relation to any public duty or statutory duty. In VST.INDUSTRIES case, supra, in spite of the Supreme Court having found that the Company was not involved in any public duty, at the same time made it clear that if the same Company was violating the provisions of the Pollution control Act, a writ can be issued. Therefore, there is no question of any blind or universal embargo against issuing a writ against a private individual or a Company. If they violate statutory or public duties or indulge in monstrous activities, writ can be issued.

22. While attempting to interpret the judgments of the Supreme Court in PRAGA TOOLS case, supra, and VST.INDUSTRIES case, supra, it is needless to emphasise that the first principle of rule of precedents is that a decision is an authority for only what it decides and what it specifically deals with. The ratio of a decision cannot be operative to all situations by ignoring the background in which the judgment had been rendered. It is also settled proposition of law that a judgment cannot be interpreted as an Act of Legislature, but would govern only the specific, legal and factual issues dealt with by the judgments.

23. In PRAGA TOOLS case, supra, two rival Trade Unions had executed two different agreements with the management under Section 18 of the Act. One group of workmen approached the High Court under Article 226 of the Constitution of India questioning the agreement executed by the rival group. A mandamus was sought for to restrain the Company from implementing the agreement. Needless

to say that the issue was purely contractual and there was no statutory violation much less transgression of any public duty. Likewise in VST.INDUSTRIES case, supra, the issue was as regards the provisions of the Factories Act and not about the obligations arising under the Industrial Disputes Act. The prayer was for a mandamus to treat the employees of the canteen of one of the factories belonging to the Company, as employees of the Company itself. This plea was rejected by the Supreme Court in the context of Section 46 of the Factories Act, 1948 and it was rightly held that no public duty was involved in the running of the canteen. This judgment is only a restatement of the law on the subject.

"24 to 29.

"30.The public interest involved in the issues covered under the Industrial Disputes Act has been very effectively stated by the Constitution Bench of the Supreme Court 50 years ago in D.N.BANERJI v. P.R.MUKHERJEE as follows:

"It is therefore incumbent on us to ascertain what the statute means by "industry" and "industrial dispute", leaving aside the original meaning attributed to the words in a simpler state of society, when we had only one employer perhaps, doing a particular trade or carrying on a particular business with the help of his own tools material and skill and employing a few workmen in the process of production or manufacture, and when such disputes that occurred did not go behind individual levels into acute fights between rival organisations of workmen and employers, and when large scale strikes and lock-outs throwing society into chaos and confusion were practically unknown Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost."

31.If the introduction of the Industrial Disputes Act was a product of social evolution and was meant to meet the changes in the society, throwing society into chaos and confusion, I fail to

appreciate how to term the Industrial Disputes Act as a mere legislation dealing with only personal or individual rights and to hold that no public duty was involved in the proceedings under the Act. It is true that in a case of a dispute between a single workman and the management, no public interest would be involved. But in a case of the present type, which involves the question of wages due to thousands of workers and the potential dangers to which the society would be exposed if their grievances are not sorted out, definitely the issue affects public interest and a corresponding public duty is cast upon both the management and the labour to ensure public peace. It is also a fact that on the very same issue, peace, law and order in the areas where the Tea estates are located have been greatly affected and public peace, tranquility had been very much disturbed. The public interest and public duty involved is as much as that of violation of the Pollution Control Act, which has been pointed out by the Supreme Court as an instance which would justify invocation of Article 226 of the Constitution of India, notwithstanding the fact that the respondent may be only a private individual and not being involved in the discharge of any public duty, vide VST.INDUSTRIES case.

32. In the very same judgment of the Constitution Bench cited above, the Supreme Court went further to point out that industrial disputes could affect large groups of workmen and employees arrayed on opposite sides on certain common issues such as wages, bonus etc., and observed as follows:-

"Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the Government cannot afford to ignore as a minor trouble to be settled between particular employer and workman."

33. In BALLARPUR COLLIERIES CO. v. PRESIDING OFFICER, DHANBAD, the Supreme Court dealt with the scope of the Industrial Disputes Act and held as follows:-

"In this connection it has to be borne in mind that proceedings of industrial adjudication are not considered as

proceedings purely between two private parties having no impact on the industry as such. Such proceedings involve larger public interest in which the industry as such (including the employer and the labour) is vitally interested. The scheme of the law of industrial adjudication designed to promote industrial peace and harmony so as to increase production and help the growth and progress of national economy has to be considered in the background of our constitutional set-up according to which the State has to strive to secure and effectively protect a social order in which social, economic and political justice must inform all institutions of national life and the material resources of the community are so distributed as best to sub-serve the common good."

34. This is precisely the situation now faced in the present case and therefore, I find it difficult to accept the contentions that Article 226 of the Constitution of India cannot be invoked and no mandamus can be issued.

35. For the very same reasons, as above, I am unable to accept the comparison which Mr. A.L. Somayaji was drawing as regards the Rent Control Act, namely, if every statutory violation could justify invocation of Article 226 of the Constitution of India, then a landlord or a tenant could do so complaining that the opposite party had violated the provisions of the Rent Control Act. Firstly, the wider and pervasive nature of the disputes under the Industrial Disputes Act had been very succinctly described by the Constitution Bench as above. The Rent Control Act which deals with the individual and mutual contractual obligations between one landlord and one tenant (or at the most a five or six tenants) cannot at all be compared with the range of disputes contemplated under the Industrial Disputes Act. Secondly, I had already mentioned that in a given case a dispute raised by a single worker or as against the single worker, public interest or public duty will not be involved. But in the present case, we are confronted with a dispute between thousands of workers and about 30 Tea Estates.

36. A Division Bench of this Court when confronted with similar objections in MADRAS LABOUR UNION v.

BINNY LIMITED had dealt with the issue in detail with reference to several rulings of the Supreme Court and had ultimately concluded that a mandamus can be issued as against a private body in the context of gross violation of statute or public duty and if the monstrosity of the facts would justify intervention by the Court.

37. Therefore, I am inclined to hold that the above writ petitions are maintainable and the judgment in VST.INDUSTRIES case supra, does not in any manner affect the facts of the case. On the other hand, the said judgment is positive that a writ can be issued even as against a private individual the impugned issue relates to a public duty or public interest."

ii) "(2003) 10 SCC 733 (Federal Bank Ltd., versus Sagar Thomas and others)", wherein, the learned counsel would rely on paragraph 18, in which, the Hon'ble Supreme Court has explained the position whether a Writ could be held maintainable under Article 226 of the Constitution of India and it was observed as follows:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."

iii) Order passed by this Court in W.P.Nos.19138 & 26553 of 2014, dated 12.01.2016, wherein, a learned Judge of this Court has framed the following issues for consideration, which are extracted as under:

"9. The following issues arise for consideration:

- (A) Whether the writ petitions are maintainable?
- (B) Whether the writ petitioner has to invoke Section 33A(ii) of the I.D. Act?
- (C) Whether the writ petitioner has deliberately suppressed any material fact ?
- (D) Whether the impugned order in G.O.(D).No.370 of the first respondent dated 20.08.2014 declining to

make reference in respect of some of the demands is unsustainable?

(E) To what reliefs, the petitioner is entitled?"

The learned Judge ultimately has answered the Issues A and B which are relevant for the present case in paragraphs 14 to 16 as under:

"14. The learned counsel appearing for the third respondent made a submission that the judgment rendered by this Court in Annamalai National Estate Workers Union v. Planters' Association of Tamil Nadu, Coimbatore and Others [2002 (4) L.L.N. 530], can be distinguished for the reason that the matter in issue affects permanent workmen numbering 24,000 and temporary workmen 26,000 and taking into consideration the provisions of the statute, it was held that the writ petition is maintainable. But in the case on hand, the issue pertains to termination of very few workmen who are all members of the petitioner Union and since the third respondent is not performing any public duty, it is not amenable to writ jurisdiction. However, this Court is of the view that W.P.No.19138 of 103 is maintainable for the reason that the Hon'ble Supreme Court of India in the judgment in Federal Bank Ltd. v. Sagar Thomas and Others [(2003) 10 SCC 733] at para 27 observed that writ may be issued to private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies and quoted certain legislations like I.D. Act, Minimum Wages Act, Factories Act, Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974 etc. In Akalakunnam Village Service Cooperative Bank Limited and Another v. Binu N. and Others [(2014) 9 SCC 294], the Hon'ble Supreme Court of India held that in the event of statutory violation, writ petition is maintainable.

15. It is the specific stand of the writ petitioner that pending conciliation proceedings, services of its members, numbering 46 have been terminated without obtaining leave under Section 33(1)(b) and though it is open to the concerned aggrieved persons to invoke Section 33A, it is not an effective alternative remedy in the light of the facts and circumstances of the case. Though it is contended by the learned counsel appearing for

the third respondent that termination of trainees is not retrenchment as per Section 2(oo)(bb) of the I.D. Act and as a consequence, Section 33 of the I.D. Act would not be attracted, this Court is of the prima facie view that in the facts and circumstances of the case, the petitioner need not invoke alternative remedy and also in the light of subsequent development namely passing of G.O.(D). No.370 dated 20.08.2014 passed by the Government.

"16. Therefore, Issue Nos.A and B are answered in affirmative in favour of the writ petitioner."

iv) "(2002) 2 SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. versus Shri Ram Gopal Sharma and others)", wherein, the Hon'ble Supreme Court has held that requirement of Section 33 of I.D.Act was mandatory and non-compliance of the same would render the order of discharge or dismissal void and inoperative. Therefore, the learned counsel for the petitioner Union would submit that the order passed by the 4th respondent/Management dated 11.02.2019 dismissing 294 workers without following the mandatory procedure as contemplated in the provisions of the I.D.Act, is per se, void, inoperative and cannot be enforced. The writ jurisdiction can be invoked in a situation like this where as many as 294 workmen are sought to be dismissed by the 4th respondent/Management as a punitive measure and such mala fide action on the part of the 4th respondent required to be interfered with by this Court exercising its extraordinary constitutional jurisdiction.

15. Heard the learned Counsel appearing for the petitioner Union and the learned Counsel appearing for the 4th respondent/Management and the learned Addl.Government Pleader appearing for respondents 1 to 3 and perused the entire materials available on record.

16. As regards the main prayer in the Writ Petition is concerned, it is the contention of the learned counsel for the 4th respondent/Management that the grant of such prayer ought not to be seriously objected, as it is always open to the workers to approach the Government, seeking adjudication of their dispute and it is always within the right of the Government to refer such of those disputes which deem fit for adjudication. Therefore, grant of the main prayer in the Writ Petition has practically no resistance from the Management and therefore, this Court has no hesitation in allowing the Writ Petition as prayed for.

17. While allowing the Writ Petition, the point of dispute between the petitioner/Union and the 4th respondent/Management

is, 'whether this Court in exercise of writ jurisdiction, can issue a writ by staying the order of dismissal from service, as a measure of interim protection?'. The citations relied upon by the learned Counsel appearing for the 4th respondent/Management in this regard have no application since both the citations relied upon dealt with completely a different situation about the private rights being enforced and a private dispute being sought to be resolved in writ jurisdiction. But in the case on hand, the nature of the dispute is not between the tenant and landlord, but it is between the Labour and the Management governed by the scheme of Industrial Disputes Act, 1947, while regulating the relationship between the Labour and the Management, I.D.Act has provided several safeguards to the workmen from being exploited or from being victimized at the hands of the Management. Therefore, the Management has public duty under the provisions of the I.D.Act.

18. In order to maintain industrial peace, the decision to dismiss as many as 294 workmen, cannot by any stretch of legal standards be held as a private dispute concerning only Management and the Union. Such monstrous dispute transcends beyond a private relationship between the Labour and Management and assumes public interest and as a consequence of which, invites discharge of public duty cast on the Management. Therefore, the arguments that the Writ will not lie against such dispute appear to be too emaciated proposition for its acceptance by this Court. The reference as sought for by the Union for adjudication is under Sections 10(1) and 10(B) of the Industrial Disputes Act. Section 10(1) reads as under:

10. Reference of disputes to Boards, courts or Tribunals.

(1) Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labor Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute , whether it relates to any matter specified in the

Second Schedule or the Third Schedule, to a Tribunal for adjudication:

19. As regards the reference under Section 10(B) is concerned, the power of the Government is provided for laying down certain conditions for maintenance of public order etc., impose certain conditions pending adjudication of dispute. Section 10(B) is extracted under:

"10B. Power to issue orders regarding terms and conditions of service pending settlement of disputes.--(1) Where an industrial dispute has been referred by the State Government to a Labour Court or Tribunal under sub-section (1) of section 10 and if, in the opinion of that Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, it may, by general or special order, make provision--

(a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman;

(b) for requiring any public utility service not to close or remain closed and to work for continue to work on such terms and conditions as may be specified in the order; and

(c) for any incidental or supplementary matter which appears to them to be necessary or expedient for the purpose of the order:

Provided that no order made under this sub-section shall require any employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months immediately preceding the date of the order."

20. Therefore, this Court's jurisdiction is primarily and essentially invoked at the behest of the petitioner Union, to safeguard the interest of the workmen pending a decision taken by the Government under Sections 10(1) and 10(B) of the I.D.Act. What would happen if such interim protection is not provided by this Court by refusing to exercise extraordinary constitutional power vested in it under Article 226 of the Constitution?, the

inevitable answer would be- 'the workmen's livelihood would be snatched away, notwithstanding the existence of provisions in I.D.Act'. Such an alarming scenario is not in respect of one or two workmen for this Court to observe restraint while extending its judicial arms in matters of private employment, but the case on hand is about 294 workers losing their employment by one stroke. Therefore, this Court has to necessarily live up to the fundamental expectation of citizens and extend its arms to protect certain sections of citizenry from being victimized even before initiation of adjudicatory process. In any event, only in industrial adjudication, the dispute between the Union and Management could be resolved and this Court cannot come to any conclusion in regard to the same as the scope of the present litigation is narrow and transient.

21. In industrial dispute, on many a time, the bone of contention between the Labour and the Management will lead a display of obduracy by the parties, not willing to budge from their respective positions. On many a occasion, the Management with crass intent to frustrate the attempts by the body of workmen to have their grievances redressed through the judicial mechanism provided under the I.D.Act, would reap unfair advantage of long pending dispute before the Industrial adjudicator/Labour Court wherein, a solution to the dispute is far from forthcoming. Pendency of industrial dispute for many years in the legal fora in fact, helps the Management to wear the workmen down. Delay in disposal of dispute of this nature when such dispute caught in the legal web and rigmarole would certainly cause incalculable hardship and inflict considerable harm on the morale of the workmen in this fight against perceived injustice befallen them at the instance of the Management. The dispute of this nature in the protracted litigious course invariably push the weaker party i.e. the workmen to the precipice of despair and helplessness, notwithstanding safeguards provided under the industrial laws. What is conceived in a statute book by the framers, sometimes cannot be realized in its implementation through complex judicial process.

22. Therefore, it is bounden duty of the Constitutional Courts to become alive to the cries of the workmen in order to protect their interest as temporary measure atleast till the dispute is referred for adjudication under Section 10(1) first, and second in this case, a decision is taken by the competent authority under Section 10(B) of the I.D.Act. Remaining mute witness to such monstrous action initiated by the Management dismissing 294 workmen at one stroke will only lead to destitution of constitutional principles on one hand and on the other, abdication of constitutional responsibility. The role of Constitutional Courts cannot be narrowly defined or limited on

the hackneyed plea of alternative remedies when such remedies offer no timely solution.

23. In view of the above narrative, this Court has no hesitation in entertaining the Writ Petition and consequence of such conclusion would be that there shall be an interim of stay of order dated 11.2.2019 dismissing 294 workmen whose names found in Annexure filed along with the Writ Petition till a final decision is taken by the first and second respondents under Sections 10(1) and 10(B) of the Industrial Disputes Act.

24. The 4th respondent/Management is directed to treat 294 workmen as employees of their Coimbatore Unit as before. The parties shall be bound by further orders to be passed by the Government in regard to the dispute raised by the petitioner/Union.

25. Accordingly, the Writ Petition is allowed and the Conciliation Officer is directed to complete the process of conciliation and on completion of such conciliation, in case of failure, first and second respondents are directed to refer the dispute for adjudication under Section 10(1) and also pass appropriate orders under Section 10(B) of the Industrial Disputes Act. The direction of this Court shall be complied with by the Conciliation Officer within a period of 8 weeks from the date of receipt of a copy of this order and in case of reference of dispute for adjudication, first and second respondents are directed to pass final orders within a period of 4 weeks from the date when the matter is placed for conciliation of reference by the authority. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Secretary,
The Government of Tamil Nadu,
Labour and Employment Department,
Fort St.George, Chennai-600 009.

WEB COPY

2. The Commissioner of Labour,
Labour Welfare Building,
D.M.S.Compound, Chennai-600 006.
3. The Deputy Commissioner of Labour,
Conciliation-III, Dr.Balasundaram Road,
Coimbatore-641 018.

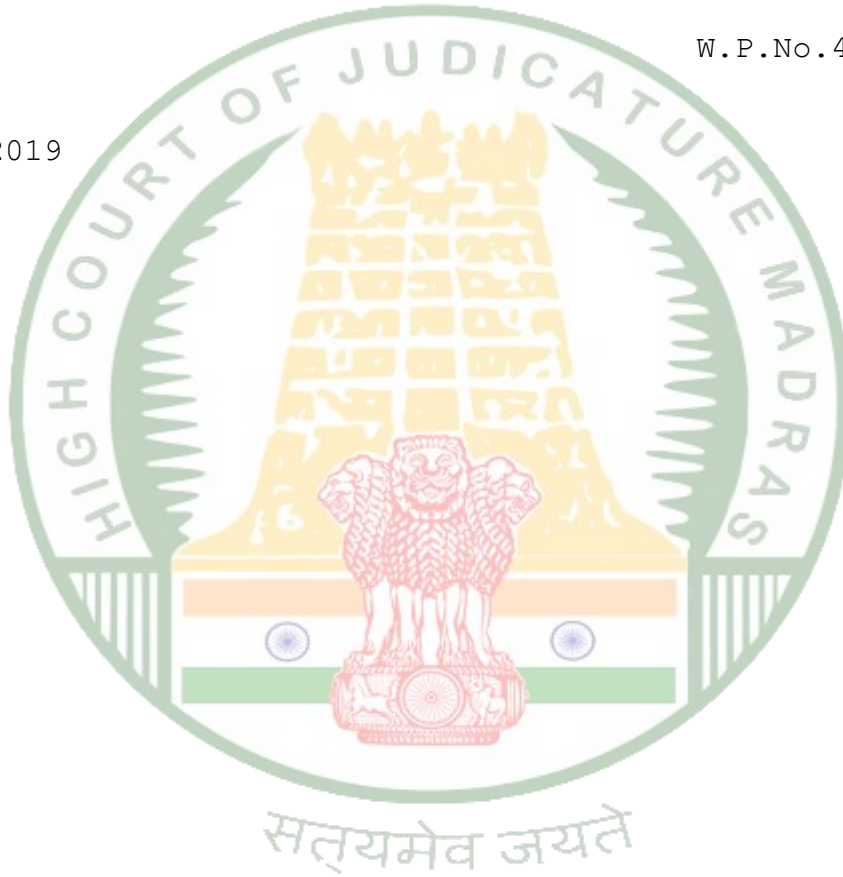
+1cc to M/s.K.M.Ramesh, Advocate, S.R.No.20627

+1cc to M/s.Ramasubramanian & Associates, Advocate, S.R.No.20900

+1cc to the Government Pleader, S.R.No.22076

W.P.No.4580 of 2019

PA (CO)
CS/14/03/2019



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