

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.961 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.Larsen and Toubro Ltd.,
Rep.by its Manager (Industrial Relations)
Mr.K.Shanmugam,
ECC Construction Division,
P.B.No.979,
Mount Poonamallee Road
Manapakkam,
Chennai - 600 089. Petitioner

vs

1.Assistant Labour Commissioner,
(Conciliation-I)
SIPCOT Complex,
Irungattukottai,
Sriperumbudur - 602 117

2.A.Essoudass Calingarayar Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records relating to the proceedings bearing
No.AA/1698/2014 dated 10.12.2014 on the file of the 1st
respondent and quash the same.

For Petitioner : M/s.Rita Chandrasekaran
For M/s.Aiyar and Dolia
For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1

Mr.A.Manimaran for R2

O R D E R

The Enquiry Notice dated 10.12.2014 passed by the 1st respondent is sought to be quashed in the present writ petition.

2. The writ petitioner is M/s.Larsen and Toubro Limited. Challenging the very notice issued by the Assistant Commissioner of Labour, directing the writ petitioner to participate in the enquiry held on 05.01.2015 at 2.00 p.m.

3. The learned counsel appearing on behalf of the writ petitioner states that the 2nd respondent is not a workman within the definition of Section 2(s) of the Industrial Disputes Act. The 2nd respondent was appointed as an Assistant Executive Engineer, which is a managerial cadre and therefore, the Labour officer has no jurisdiction to conduct any Conciliation proceedings under the Industrial Disputes Act.

4. This Court is of the considered opinion that the nature of appointment and the jurisdictional Assistant Commissioner of Labour to entertain the Conciliation proceedings can be very well explained by the writ petitioner before the 1st respondent himself. Contrarily, a writ petition cannot be moved for the purpose of quashing the enquiry notice. What is of challenge in this writ petition is the Enquiry Notice issued to the writ petitioner. The writ petitioner has to participate in the enquiry proceedings along with the documents and evidences and contrarily, the writ petition cannot be entertained at this juncture, so as to interfere and provide a finding in respect of the nature of appointment issued by the writ petitioner as well as to ascertain whether the 2nd respondent is a workman within the meaning of Section 2-s of the Industrial Dispute Act or not?

5. No writ petition can be entertained against an Enquiry Notice in a routine manner. Judicial Review against such an enquiry notice is limited and the notice can be challenged under Article 226 of the Constitution of India. A Notice can be entertained, if the same has been issued by an incompetent authority having no jurisdiction or allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides, the authority against whom such an allegation is raised, to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained against such notice. The parties concerned are bound to participate in the

enquiry and established their case with reference to the documents and by adducing evidences, if required.

6. This being the legal principles to be followed, this Court is of an opinion that the writ petitioner has not established any acceptable legal ground for the purpose of interfering with the notice. Thus, the petitioner is at liberty to approach the 1st respondent for the purpose of establishing the employment status of the 2nd respondent with reference to the documents as well as the evidences, if any available.

7. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

Assistant Labour Commissioner,
(Conciliation-I)
SIPCOT Complex,
Irungattukottai,
Sriperumbudur - 602 117.

+lcc to M/s.Aiyar & Dolia, Advocate Sr.79640

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