

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2019

PRONOUNCED ON : 12.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 12682 OF 2018

AND

W.M.P. NO. 14815 OF 2018

Union for All Staff in Vinayaka
Medical College & Hospital
rep. By its President
No.9, M.G. J.Nagar 1st Cross
P.K.Salai, Karaikal 609 602
Union Territory of Puducherry.

... Petitioner

- Vs -

1. Government of Puducherry
rep. By its Secretary to Govt.
Dept. of Labour, Chief Secretariat
Union Territory of Puducherry.
2. The Labour Commissioner
2nd Floor, Labour Department Complex
Vazhudamur Road, Gandhi Nagar
Puducherry 605 609.
3. The Labour Officer (Conciliation)
Office of the Labour Officer
Government of Puducherry.
Karaikal, U.T. Of Puducherry.
4. Vinayaga Missions Medical
College & Hospital, rep. By its
Dean, Keezhakasakudimedu
Kottucherry (P.O.), Karaikal 609 609
U.T. of Pondicherry.
5. Vinayaka Mission's Medical
College and Hospital Non-Teaching
Staff Union, rep. By its Secretary
Keezhakasakudimedu
Kottucherry (P.O.), Karaikal 609 609.
U.T. of Pondicherry.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 2nd respondent Commissioner to conduct secret ballot in the 4th respondent Management in terms of the letter dated 20.11.2017 and to declare the petitioner Union as the bargaining agent for the employees of the 4th respondent Hospital and to forbear the respondent/Management from negotiating and signing any settlement until the finalization of the bargaining agent through secret ballot and to maintain status quo during the pendency of the proceedings before the 2nd respondent Commissioner.

For Petitioner : Mr. N.G.R.Prasad for
M/s. Row & Reddy

For Respondents: Mr. Balan Haridas for R-5
Mr. A.V.Ramalingam for RR-1 to 3
Mr. S.Raveendran, SC, for
M/s. S.Bazeer Ahmed for R-4

ORDER

The petitioner has filed the present writ petition seeking a writ of mandamus directing the 2nd respondent Commissioner to conduct secret ballot in the 4th respondent Management in terms of the letter dated 20.11.2017 and to declare the petitioner Union as the bargaining agent for the employees of the 4th respondent Hospital and to forbear the respondent/Management from negotiating and signing any settlement until the finalization of the bargaining agent through secret ballot and to maintain status quo during the pendency of the proceedings before the 2nd respondent Commissioner.

2. Earlier when the writ petition was taken up for hearing, the direction, as sought by the writ petitioner was sought to be resisted both by the 4th respondent/Management as well as the 5th respondent/Union on the ground that there was no statutory requirement or mandate to conduct secret ballot by the 2nd or 3rd respondent and, therefore, the writ petition as it is, was not maintainable. According to respondents 4 and 5, the only course open to ascertain the strength of the membership of the respective Union is to adopt check-off system, which will ultimately establish the factum of actual membership of the Union.

3. However, when the writ petition came up for hearing today, Mr.N.G.R.Prasad, learned counsel appearing for the petitioner/Union as well as Mr.Balan Haridoss, learned counsel appearing for the 5th respondent/Union as well as the learned counsel appearing for the 4th respondent/Management unanimously agreed for conduct of secret ballot under the direct supervision of the 2nd respondent on a date to be fixed by this Court.

4. In view of the submissions as made on behalf of the petitioner and the contesting respondents, the writ petition stands disposed of with the following directions :-

i) The 2nd respondent is directed to conduct secret ballot in the 4th respondent/Management in order to ascertain the actual membership of rival claims as between the petitioner and the 5th respondent/Union in regard to permanent workmen employed by the 4th respondent/Management.

ii) The 2nd respondent is directed to issue notice to both the petitioner as well as the 4th and 5th respondents and fix any date for conduct of secret ballot in the 4th respondent/Management premises within a period of two weeks from the date of receipt of a copy of this order. It is open to the 2nd respondent to fix the date and time for conduct of secret ballot and on conclusion of the conduct of secret ballot, the 2nd respondent is directed to declares the results forthwith.

iii) On such declaration, it is open to the 4th respondent/Management to negotiate with the Union, which has the maximum membership strength on the basis of such declaration.

iv) This order is passed in view of the consensus arrived at between the petitioner as well as respondents 4 and 5 although this Court is conscious of the fact that there is no statutory requirement for the 2nd respondent to conduct such secret ballot.

v) The parties are directed to extend their fullest co-operation to the 2nd respondent to carry out the exercise within the time stipulated.

5. This writ petition is disposed of with the aforesaid observations and directions. Consequently, connected

miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Government of Puducherry
rep. By its Secretary to Govt.
Dept. of Labour, Chief Secretariat
Union Territory of Puducherry.
2. The Labour Commissioner
2nd Floor, Labour Department Complex
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Puducherry 605 609.
3. The Labour Officer (Conciliation)
Office of the Labour Officer
Government of Puducherry.
Karaikal, U.T. Of Puducherry.

+1 cc to M/s.Row & Reddy, Advocate, Sr.No. 37444
+1 cc to Mr.S.Bazeer Ahmed, Advocate, Sr.No. 36525
+1 cc to Mr.Balan haridass, Advocate, Sr.No. 36565
+1 cc to The Government Pleader, SR.No.36783

ORDER IN
W.P. NO.12682 OF 2018

CSL/04.06.2019

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