

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25TH DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A. No.1126 of 2018

in

C.S. No.822 of 2018

M.Milton Peeris
S/o.Manickam Peeris
No.29, Second Street
Rekha Nagar
M.M.Colony
Chennai - 600 051.

...Applicant/Plaintiff

-Vs-

1.Tamil Nadu Electricity Board
Accounts and Executive Staff Union
(Regn.No.2472)
Rep.by its General Secretary
No.29, Meeran Sahib Street
Anna Salai, Chennai - 600 002.

2.E.Sithaiyan
S/o.Elumalai
No.3, F, Kalayani Block
First Floor, Ragamaliga Flats
Medavakkam
Chennai - 601 302.

...Respondents/Defendants

Original Application praying that this Hon'ble Court be pleased to grant ad interim injunction restraining the 2nd Respondent/Defendant from functioning as the Asst.General Secretary of the 1st Respondent/Defendant pending disposal of the above suit.

This Original Application coming on this day before this court for hearing the court made the following order:

Heard Mr.K.M.Ramesh, learned counsel for the applicant; Mr.S.Elamurugan, learned counsel for the first respondent, Mr.K.Krishnamoorthy, learned counsel for the second respondent and perused the materials available on record.

2. The plaintiff has come up with this application seeking an order of interim injunction, restraining the second respondent / second defendant from functioning as Assistant General Secretary of the first respondent-Union pending disposal of the suit.

3. The suit has been filed for declaration, declaring that the nomination of the second defendant as Assistant General Secretary of the first defendant Union in the State Executive Meeting held on 28.10.2018 as illegal and for permanent injunction restraining him from functioning as Assistant General Secretary of the first defendant.

4. The case of the applicant is that the second respondent had retired from service on attaining the age of superannuation on 31.05.2009 and since he was holding the post of Regional Secretary, he was treated as Honorary Member of the first respondent-Union, however, the period expired on 14.10.2018. The further case of the applicant is that after retirement of the second respondent he ceased to

be the member of the first respondent and hence, he was not able to contest in the election held in the year 2018, however, in the State Executive Meeting convened on 28.10.2018, he was nominated as Assistant General Secretary.

5. According to the learned counsel for the applicant, the post of Assistant General Secretary is not enumerated in the Bye-laws of the first respondent-Union and no decision was taken by the Branch Executive Committee, in which, the second respondent was a member and hence, his nomination is invalid and the applicant is entitled for interim injunction. He further adds that no subscription nor levy has been paid by the 2nd respondent, but false evidence is created to suit the case of the respondents.

6. *Per contra*, the learned counsel for the respondents, by referring the Bye-law 20(c) would argue that the State Executive committee is supreme body of the first respondent-Union and it empowers State Executive Body to nominate the second respondent as Assistant General Secretary. It is further contended that out of 41 members, who participated in the Executive Committee Meeting on 28.10.2018, only 7 raised queries with regard to appointment of the second respondent as Assistant General

Secretary and the queries were answered and as per the decision of the majority members, the second respondent was nominated.

7. It is next contended by the learned counsel for the respondents that the applicant has come up with the prayer of declaration to declare that the nomination of the second respondent as illegal and for permanent injunction and unless, he succeeds in the main suit, the prayer for interim injunction need not be considered at this juncture, since it would amount to dealing the suit without trial.

8. The learned counsel for the first respondent further contended that it is not the first time that State Executive Committee appoints Assistant General Secretary and other posts for distinct activities, but in the meeting held on 08.08.2010 at Karamadai, one Mr.K.Jeevanandam was nominated as Assistant General Secretary and in the meeting convened on 12.10.2014, one Mr.Muruganandam was nominated as Legal Secretary, which post was not enumerated in the Bye-laws and one T.Dhayalan was nominated as Assistant General Secretary in the meeting convened on 03.07.2014 at Avinasi. It is further submitted that the second respondent has been serving in the first respondent-Union since 1975 until 2018, in various capacity, but so far, no allegation has been levelled against him. Though the first

respondent has a membership of 7000 and odd, except applicant, no other member has opposed the nomination of the second respondent.

9. Heard the rival submissions and perused the materials available on record.

10. It is not in dispute that the second respondent was a member of the first respondent-Union and he retired from service on 31.05.2009. It is also not in dispute that in the subsequent elections held in the year 2011, 2014, 2016, he was elected as an Executive Member of the first respondent Union. The case of the applicant is that after retirement on 31.05.2009, since he was holding the post of Finance Secretary, he was treated as Honorary Member of the Union and after expiry of his period on 14.10.2018, he ceased to be the member of the Union. I am not able to agree with the submission for the reason that Bye-law 4(1)(c) states that a Member of the Union, who retired from service can continue as a Member of the respective branch subject to the Branch Executive Committee's decision. It is the case of the second respondent that even after retirement, he continues to be the member of the first respondent and he paid subscription / a levy for the year 2018. The learned counsel has also attempted to produce the receipt to substantiate his case.

11. It is an admitted fact that by exercising the powers under 20(c) of the Bye-laws of the first respondent, the State Executive Committee has nominated the second respondent as Assistant General Secretary by the decision of majority. The earlier instances relied upon by the respondents would support the nomination of the second respondent in the year 2018. Further, the State Executive Committee had taken a decision approving the membership of the second respondent.

12. In the light of the above facts, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of interim injunction. In such view, the application fails and the same is dismissed.

Sd/-M.K.K.S.J.

25.01.2019

//Certified to be a true copy//
Dated this the day of 2019.

DL/12.02.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.