



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

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CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.1012 of 2019

and

W.M.P.[MD]Nos.853, 2130 & 2131 of 2019

The Secretary,
K.Kasi,
S/o. Karrupusamy,
TPT Democratic Staggs Union CITU,
Near Harbour Hr. Sec. School,
Bharathy Nagar,
Tuticorin - 628 004.

: Petitioner

Vs.

1.The Regional Commissioner of Labour (C),
13A, Lady Doak College Road,
Chinna Chokkikilam,
Madurai - 625 002.

2.The Management,
PSA Sical Container Terminal Limited,
7th Berth, VOC Port Trust,
Tuticorin.

3.The Management,
Sical Coffee day Limited,
No.73, Armaniyam Street,
Chennai - 600 001.

4.The Management,
Ocean Blur Marine,
No.9/3, Muniyuappa Lane, ground floor,
Royapuram,
Chennai - 600 013.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the second respondent from altering the service conditions of the members of the petitioner union in violation of Section 33 of the Industrial Disputes Act, pending conciliation proceedings before the first respondent.



For Petitioner : Mr.D.Geetha
For Respondent No.1 : Mr.C.Nandagopal
For Respondent No.2 : Mr.S.Ravindran,
Senior Counsel
for Mr.B.Rajesh Saravanan
For Respondent No.3 : No appearance
For Respondent No.4 : R.J.Karthick

O R D E R

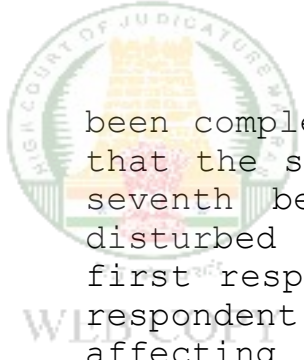
The instant Writ Petition has been filed for a Mandamus to forbear the second respondent from altering the service conditions of the members of the petitioner union in violation of Section 33 of the Industrial Disputes Act, pending conciliation proceedings before the first respondent.

2.It is the case of the petitioner union that they have raised an industrial dispute before the first respondent, who is a conciliation officer. During the pendency of the conciliation proceedings, the instant writ petition has been filed for a mandamus to forbear the second respondent from altering the service conditions of the members of the petitioner's union in violation of Section 33 of the Industrial Disputes Act.

3.It is the case of the petitioner union that there are 98 members belonging to the petitioner union who are employees of the fourth respondent, who is a contractor of the second respondent and all of them are working in the seventh berth of VOC Port Trust at Tuticorin, which is currently being operated by the second respondent. According to the petitioner union, the fourth respondent has not issued passes to their members for entering into the port for the purpose of their employment on behalf of the fourth respondent and it is also their case that there is irregularity in the payment of wages to their members from the month of January, 2019 onwards. Therefore, they have raised an industrial dispute and approached the first respondent Conciliation Officer on 28.12.2018.

4.It is the contention of the second respondent that the members of the petitioner union are not their employees. It is the case of the fourth respondent that they are only a contractor of the second respondent and prior to the award of the contract to them, the third respondent was the previous contractor. According to the fourth respondent, even then the members of the petitioner union were doing contractual work for the second respondent.

<https://hcservices.gov.in/hcservices/> 5.As it may, as of now, conciliation proceedings has already been initiated by the first respondent and according to the learned Counsel for the petitioner, two sittings have already



been completed. The only apprehension raised by the petitioner is that the services of the members of the petitioner's union on the seventh berth of VOC Port Trust at Tuticorin, should not be disturbed till the conciliation proceedings pending before the first respondent is disposed of. The apprehension of the fourth respondent is that the petitioners are resorting to sit-in-strike affecting the day-to-day operation of the contractual work, resulting in disruption of commercial activity and loading and unloading of cargo arriving by ship. On instructions, the learned Counsel for the fourth respondent has fairly conceded before this Court that the service of the members of the petitioner's union shall not be disturbed till the completion of the conciliation proceedings by the first respondent and they will be continued to be paid with their usual wages.

6.The learned Counsel for the petitioner union on instructions has also fairly conceded that the members of the petitioner's union working at seventh berth of VOC Port Trust, Tuticorin for and on behalf of the fourth respondent will not resort to any further sit-in-strike, till the conciliation proceedings are completed.

7.Since a categorical stand has been taken by the second respondent before this Court that the members of the petitioner union are not their employees and were not employed by them, Section 33 of the Industrial Disputes Act, 1947, is not applicable for the present. It is also the case of the petitioner, as seen from the averments contained in the writ petition that the members of the petitioner union are having contractual relationship only with the fourth respondent and not with the second respondent even though it is their contention that the principal employer is the second respondent. But this issue as to whether the members of the petitioner union are the employees of the second respondent or not will have to be adjudicated only before the first respondent or subsequently before the labour court. Unless and until the said issue is adjudicated, as far as the second respondent is concerned, Section 33 of the Industrial Disputes Act, is not attracted.

8.In the light of the above, the following directions are issued:

"a)The fourth respondent shall not alter the service conditions of the members of the petitioner union who have been employed by the fourth respondent till the completion of the conciliation proceedings before the first respondent.

b)The members of the petitioner union who have been employed by the fourth respondent shall also not sit-in-strike till the completion of the



conciliation proceedings by the first respondent.

c)The first respondent shall complete the conciliation proceedings within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that for the present, Section 33 of the Industrial Dispute Act is not attracted for the second respondent."

9. With the aforesaid directions, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To
The Regional Commissioner of Labour (C),
13A, Lady Doak College Road,
Chinna Chokkikilam,
Madurai - 625 002.

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-51312[F] dated 04/03/2019)

+1 CC to M/s.R.J.KARTHICK, Advocate(SR-51459[F] dated 04/03/2019)

+1 CC to M/s.SPL GP (SR-51772[F] dated 05/03/2019)

MR

ORDER MADE IN
W.P. (MD) No.1012 of 2019
01.03.2019

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