

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 09-10-2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.15539 of 2003
and W.M.P.No.19524 of 2003

The Management of
Hatsum Agro Product Ltd.,
Attur Main Road,
Ramalingapuram, Salem - 636 186.
Rep. by its Manager-Personnel ... Petitioner

-vs-

1. The Labour Officer
85 Sankar Nagar,
Salem - 636 907.

2. P.Vadivel ... Respondents

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Prohibition, prohibiting the first respondent from submitting conciliation failure report in respect of the industrial disputes purporting to have been raised by the second respondent under Section 2A of the ID Act in proceeding Na.Ka.633/03.

For Petitioner : Mr.Anand Gopalan
For Respondents : R1 - Court
No Appearance for R2

सत्यमेव जयते
ORDER

This writ petition has been filed seeking for a writ of prohibition, prohibiting the first respondent from submitting conciliation failure report in respect of the industrial disputes purporting to have been raised by the second respondent under Section 2A of the ID Act in proceeding Na.Ka.633/03.

2. The issue raised by the second respondent against the petitioner / management having been referred to the Conciliation Officer seems to have been entertained by the Conciliation Officer, i.e., the first respondent. However at that juncture

the management intervened and seems to have raised an objection stating that, already there had been a settlement between the employees union and the management and in terms of the settlement, the individual employee cannot raise a dispute as has been raised in the present case, for determination or settlement through conciliation by the first respondent and accordingly on that ground, in order to prohibit the first respondent being the Conciliation Officer to look into the said issue raised by the employee, the present writ petition seeking a prohibitory order by way of writ of prohibition has been sought for by the petitioner / management.

3. When this writ petition is taken up for final hearing today, Mr. Anand Gopalan, learned counsel appearing for the petitioner / management has fairly submitted that, the issue is covered against the petitioner management in view of the Judgment rendered by this Court reported in Mgmt. Hatsun Agro Product Ltd., v. Labour Officer reported in 2007 (2) L.L.N.702.

4. Further elaborating the same, the learned counsel would contend that, in the said judgment the similar issue was raised between the parties where the learned Judge took the view that, despite the settlement between the employee and the management, still the employee is entitled to raise the dispute by referring the matter for conciliation before the Conciliation Officer and absolutely there could be no impediment for the Conciliation Officer to look into the matter and arrive at a conclusion.

5. In view of the said Judgment, the learned counsel would submit that, the issue raised in this writ petition cannot be successfully be agitated in favour of the management, hence, the learned counsel seeks indulgence of this Court accordingly.

6. The said submission of the learned counsel appearing for the petitioner is taken on record and in the said Judgment reported in 2007 (2) L.L.N. 702 (cited supra), the learned Judge has held as follows :

"The writ-petitioner-management is challenging the conciliation proceedings before the Labour Officer, Salem, the first respondent herein in respect of an issue raised by 47 workmen, who are shown as respondents 2 to 48 herein.

2. The contention of the management is that the workmen have been settled with their claims and the amount paid in full quits which has been received by them and therefore, any dispute on their behalf

cannot be termed as a termination coming within the meaning of 2A of the Industrial Disputes Act. On this plea, this Court is unable to agree with the submission made by Sri Ravindran, learned counsel representing M/s. T.S.Gopalan and Company. Section 2A has been amended as early as in the year 1965, by the Parliament, so that an individual workman can have recourse to adjudication of the issue raised by him regarding the order of termination but a competent Labour Court. Even after that amendment the procedure for sending failure report to the appropriate Government by the Conciliation Officer and issuing a formal order under S.10(1) by the Government were held intact. The State Legislature, in the year 1988, has introduced the amendment to S.2A by introducing Sub-sec.2A(2), whereby the workmen can approach the Labour Officer and on a failure report given by him, can go to the Labour Court with a claim statement with regard to the grievance regarding his termination. When the Legislature had simplified the procedure for the individual workman to approach the Labour Court for vindicating his grievance regarding his non-employment this Court under Art.226 cannot abrogate that right and stall the conciliation proceedings as no civil right of the writ petitioner is affected. Ultimately, the writ petitioner wanted to claim estoppel of the claims as their defence. Such a defence can be pleaded when the dispute taken up by the Labour Court. At this stage, the Court cannot consider the defence of the petitioner raised before the Labour Officer, who has no power to take any evidence and come to any final conclusion, thereby preventing the worker from approaching the Labour Court. A writ in the nature of prohibition will arise only when there is inherent lack of jurisdiction. That is not the case here. At best what is pleaded before this Court is on the merits or merits of the claim of the workmen. Such an issue will have to be raised before the adjudicating Court by making necessary

pleading and further letting in evidence to prove the same.

3. Under these circumstances, the writ petition lacks in merits and hence dismissed. The interim order granted earlier is vacated. In the light of the above, the miscellaneous petitions are also dismissed."

7. In view of the aforesaid as has been pointed out by the learned counsel appearing for the petitioner since the issue has already been given a quietus, the petitioner cannot seek for such an issuance of writ of prohibition restraining the first respondent from entertaining the issue for the purpose of conciliation as has been raised by the second respondent and accordingly, the plea raised by the petitioner is liable to be rejected. Hence the writ petition fails and therefore the same is dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

tsvn

To

The Labour Officer
85 Sankar Nagar,
Salem - 636 907.

+1 cc to M/s.T.S.Gopalan & Co Advocate sr33925

W.P.No.15539 of 2003

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