

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 33092 of 2019
and
W.M.P. No. 33528 of 2019

Tamil Nadu General Workers Union
Regn. No. 289/CPT
Rep. by its General Secretary,
Tambaram Tindivanam Expressway Workers Branch
K.T.K. Thangamani Illam
No.2/1, Kovur Vaidyanathan Street,
Chintadripet
Chennai - 600 002. Petitioner

-vs-

1. Government of India
Rep by its Secretary,
Ministry of Labour and Employment Department
Rafi Marg
New Delhi.
2. Assistant Labour Commissioner (Central)
Office of the Deputy Labour Commissioner
Shastri Bhavan
No. 4, Haddows Road
Chennai - 600 006.
3. Chief General Manager,
National Highways Authority of India
DT34, 3rd Floor, Sri Towers
Thiru Vi.Ka Industrial Estate,
Guindy, Chennai - 600 032.
4. The Project Director
National Highways Authority of India,
DT34, 3rd Floor, Sri Towers
Thiru Vi.Ka Industrial Estate
Guindy, Chennai - 600 032.

5. The Managing Director
GMR Tambaram Tindivanam Expressway Limited
Local Site Office, No. 1C/B, First Floor
Rajeshwari Vedhachalam Street
Chenglepet 603 001.

6. The Management
R.K. Construction
Wahab Nagar
Opp. to Kannaiya Theatre
Tindivanam 604 307.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the 3rd to 6th Respondents from altering the service conditions of the members of the Petitioner Union whose names are given in the Annexure to the Writ Petition in any manner including discontinuance of service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Dispute dated 28.10.2019 raised by the Petitioner union regarding absorption of services of the employees, which are pending conciliation before the 2nd Respondent as dispute No.M.45/45/2019-B3 including replacing the members of the Petitioner Union with another set of employees termed to be contract employees and further direct the 2nd Respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under Section 12(4) of the Industrial Disputes Act and in turn the 1st Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

For Petitioner : Mr. Balan Haridas

For Respondents: Ms. Sunitha Kumari (For R1)
(Standing Panel Counsel)

Mr. G.Karthikeyan (For R3 and R4)
(Assistant Solicitor General of India)

Mr. Rahul Balaji (For R5)

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O R D E R
(through video conference)

Heard Mr. Balan Haridas, Learned Counsel for the Petitioner, Ms. Sunitha Kumari, Learned Standing Panel Counsel for the First Respondent, Mr. G.Karthikeyan, Learned Assistant Solicitor General of India for the Third and Fourth Respondents and Mr.Rahul Balaji, Learned Counsel for the Fifth Respondent and

perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed for restraining the Third to Sixth Respondents from altering the service conditions of the members of the Petitioner Union whose names are given in the Annexure to the Writ Petition in any manner including discontinuance of service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Dispute dated 28.10.2019 raised by the Petitioner union regarding absorption of services of the employees, which are pending conciliation before the Second Respondent as dispute No.M.45/45/2019-B3 including replacing the members of the Petitioner Union with another set of employees termed to be contract employees and further direct the Second Respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under Section 12(4) of the Industrial Disputes Act and in turn the First Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

3. The claim of the Petitioner is resisted by the Third and Fourth Respondents by contending that the members of the Trade Union of the Petitioner, who claim for regularization in the services of the Third Respondent, had never been in their direct employment and that they may have been engaged as contract labour by the Fifth Respondent with whom the Third and Fourth Respondents had a Concessionaire Agreement dated 09.10.2001, which has also expired on 08.11.2019. The Fifth Respondent contends that on successful completion, the entire project has been handed over to the Third Respondent, who is now operating and maintaining the project highway including collection of user fee/toll from the vehicles using the project facility and the Fifth Respondent has exited the project altogether, as would be clear from the communicated dated 24.02.2020 issued by the Third Respondent to that effect. In other words, it is sought to be conveyed that the question of continuing the employment of the members of the Trade Union of the Petitioner by the Third Respondent, either directly or as contract labour through the Fifth Respondent, does not arise.

4. In view of the aforesaid contentions raised which falls within the realm of disputed questions of facts, it would not be possible for this Court to express any view on the claim made by the Petitioner at this stage of the matter in the exercise of discretionary powers under Article 226 of the Constitution. At the same time, it is incumbent upon the Second Respondent to take up the conciliation proceedings in the industrial dispute raised by the Petitioner, not later than 30.09.2020, and after issuing due notice to all parties concerned, expeditiously

complete the same within the time limit stipulated in Section 12 (6) of the Industrial Dispute Act, 1947, in the manner prescribed thereunder.

5. In the event of the conciliation proceedings resulting in failure, such report shall be immediately sent to the Appropriate Government for taking a decision as to whether the matter requires to be referred for adjudication as industrial dispute. It is made clear that the respective parties are not precluded from working out their remedies before the proper forum in the manner recognized by law for enforcing any beneficial rights that they may be legitimately entitled to claim till the conciliation proceedings are completed under the relevant statutory provisions.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dm/vjt

To

1. The Secretary,
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Ministry of Labour and Employment Department
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New Delhi.
2. Assistant Labour Commissioner (Central)
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+1cc to Ms.Sunitha Kumari, Central Government Standing
Counsel, Sr.No.28872

सत्यमेव जयते

W.P. No. 33092 of 2019

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SS (CO)
GS (16/09/2020)