



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No.6201 of 2014
and MP(MD)No.1 of 2014

Thamizhaka Arasu Pokuvarathu Thozhilalar Sangam,
Rep. by its General Secretary,
23, B, Nesamani Nagar,
Rani Thottam,
Nagarcoil-629 001.

... Petitioner

-Vs-

1. The Presiding Officer,
The Labour Court,
Thirunelveli.

2. The Management of
Tamil Nadu State Transport Corporation (Thirunelveli) Limited,
Nagarcoil Region,
Rep. by its General Manager,
Nagarcoil.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the first respondent not to restrain the office bearers/executive members of the petitioner union in conducting cases before the first respondent under Section 36(1) of I.D Act, 1947 by imposing a condition that such office bearer/executive member of the petitioner trade union should also be a workman.

[Prayer amended vide order dated 17.12.2020 in MP(MD)No.2 of 2014]

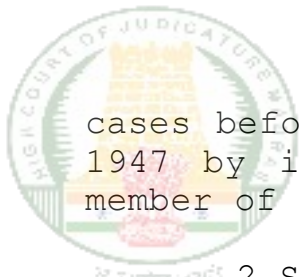
For Petitioner : Mr.S.Arunachalam

For Respondents : Court (for R1)

Mr.K.Sathiyasingh
Standing Counsel (for R2)

ORDER

The relief sought for in the present writ petition is to direct the first respondent not to restrain the office bearers/executive members of the petitioner union in conducting

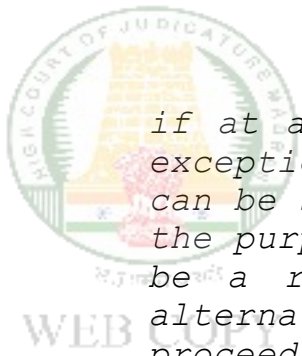


cases before the first respondent under Section 36(1) of I.D Act, 1947 by imposing a condition that such office bearer/executive member of the petitioner trade union should also be a workman.

2. Such complex disputed issues can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. The petitioner is the Tamizhaka Arasu Pokuvarathu Thozhilalar Sangam, which is registered under the Trade Unions Act, 1926. The members of the petitioner union are the workman. Thus, all such disputes are to be adjudicated before the Labour forum concerned. Contrarily, the High Court cannot entertain a writ petition for adjudication of such disputed issues. The legal principles regarding the entertainability of the writ petition with reference to the disputes arising out of Industrial Disputes Act, this Court passed an elaborate order in W.P.(MD)Nos.10416 of 2009 and 2926 of 2009, dated 25.07.2019 and the relevant paragraphs are extracted hereunder:-

"...55. Thus, this Court is bound to consider the legal principles settled by the Full Bench of this Court in the case of P.Pitchumani Vs. The Management of Sri Chakra Tyres Ltd,. As far as the judgment of the Full Bench are concerned, the principles are enumerated and those principles are to be applied in respect of entertaining the writ petition under Article 226 of the Constitution of India.

56. When an aggrieved person is a workman within the meaning of the Industrial Disputes Act, 1947 and his service conditions and service benefits are governed under 12(3) settlement, then all such workmen should first approach the Labour Court for adjudication of disputes and issues effectively and thereafter, approach the higher Courts, if their grievances are not redressed. Contrarily, a recent trend is being developed that such industrial disputes are raised before the High Court under Article 226 of the Constitution of India. An argument is put forth by stating that the Transport Corporations or certain other Companies are the Government owned or the Government has made investments on such Companies or Corporations. Such an argument can never be considered as a good proposition. Once an employee comes under the definition of "the workman" and his service conditions are governed under the Industrial Disputes Act, 1947, more specifically under Section 12(3) of the Act, then all such adjudications are to be effectively done at the first instance before the Labour Tribunal or the Court concerned. In violation of these line of procedures, large number of writ petitions are filed seeking adjudication of main issues and disputes under Article 226 of the Constitution of India, which can never be allowed and



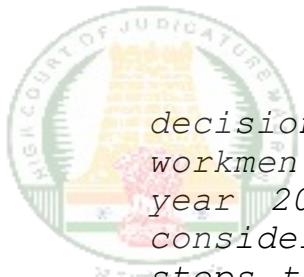
if at all, any imminent circumstance arise, then by way of exception, a writ proceedings can be entertained and issues can be settled. Contrarily, entertaining a writ petition for the purpose of adjudication of disputes and issues can never be a routine affair by the High Courts. Exhausting the alternative remedy is the rule and entertaining a writ proceedings is an exception.

57.The contentions of the writ petitioners that the Judgment of the Honourable Full Bench of this Court cited supra was in a case where the employer is a Private Company. Such an argument undoubtedly has no relevance. The Full Bench has answered the question and decided the principles and held the importance of exhausting the alternative remedy by the workman before the Labour Court at the first instance. Thus, the very argument of the writ petitioners deserves no merit consideration. Once a settlement is arrived between the Management and the Workmen under Section 12(3) of the Industrial Disputes Act, 1947, it is binding on the parties to the agreement and accordingly, the disputes, issues and grievances are to be adjudicated and resolved only through the procedures contemplated and as well as before the Forums created and bypassing such procedures or mandatory provisions of the statutory can never be dispensed with nor be waived.

58.This being the legal principles to be followed, the Full Bench judgment in the case of P.Pitchumani cited supra, categorically enumerates that if the Industrial Dispute relates to enforcement of a right or an obligation created under the Act, then, the only remedy available is to adjudicate the same under the Act. It is made clear that the grievances of the writ petitioners are in relation to their service conditions which were recognised under the Settlements under Section 12(3) of the Industrial Disputes Act. Therefore, those rights and service conditions are to be enforced through appropriate adjudication under the provisions of the Industrial Disputes Act more specifically before the Labour Court. Even in the absence of issuing any such 9-A notice, it is to be construed as violation of the provisions of the Industrial Disputes Act. Then also, the "workmen" is entitled to approach the Industrial Labour Court for redressal of their grievances.

59.All such grievances even in the absence of any notice or in the absence of any order can be adjudicated before the competent Industrial Labour Court and it is not necessary that those cases are also to be entertained by the High Court under Article 226 of the Constitution of India.

60.In the present case, this Court is of the opinion that it became unnecessary on account of the counter filed by the respondents that the respondents have not taken any



decision to alter or modify the service conditions of the workmen. Therefore, entertaining a writ petition for the year 2009-10, keeping it pending for about 9 years and considering the fact that the respondents have not taken any steps to alter certain conditions became meaningless. Under these circumstances, this Court is of the considered opinion that the workmen must approach the Labour Court at the first instance instead of approaching the High Court based on certain apprehensions.

61. The principles laid down by the Full Bench are enumerated in paragraphs 7 and 14, which are extracted hereunder:

"7. General contract of employment is governed by common law and any breach of the contract and dispute arising therefrom is to be adjudicated by common law Court. But, if the matter is governed by the I.D. Act or the Standing Orders relating thereto, by necessary implication, the common law remedy is barred and more so, if the adjudicatory forums, be it Labour Court or Industrial Tribunal, are constituted under I.D. Act. Earliest is the judgment of the Supreme Court in Premier Automobiles Limited Vs. Kamlakar Shantaram Wadke and others, 1975 (2) LLJ 445. In the said case, there was a dispute as to whether a civil suit was maintainable in a matter arising under the Industrial Disputes Act. The case related to the payment of the amounts under the Memorandum of Settlement and as to whether there was an infraction of Section 9-A of the Industrial Disputes Act, 1947. A suit in representative capacity was filed under Order 1, Rule 8 of C.P.C., and it was partly decreed, against which an appeal was filed questioning the jurisdiction of the Civil Court, but the appeal failed. Then the matter was taken in a Letters Patent Appeal, but there also the finding with regard to sustainability of the suit before the Civil Court was upheld, and later on the matter landed in Supreme Court. The legal contentions were comprehensively considered by referring to several important judgments and following are the legal principles stated in the said case:

(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the Civil Court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief, which is competent to be granted in a



(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

14. In view of what is stated supra, we hold that

(i) only such violations under I.D. Act, which involve public duties, are amenable to Writ Jurisdiction under Article 226 of Constitution of India;

(ii) dismissals, transfers and other matters concerning the service conditions of employees governed by I.D. Act, have to be adjudicated only by the forums created under the said statute and not otherwise;

(iii) it is needless to mention that the disputes relating to matters not governed by I.D. Act have to be resolved only by common law Courts;

(iv) the transfers effected in these cases do not involve any public duties and involve the disputed questions of fact and they should be resolved only before the forums under the I.D. Act.

(v) the appellants / petitioners - employees shall be entitled to seek for reference by filing application under Section 10 of the I.D. Act within two weeks from the date of receipt of a copy of this order;

(vi) if any industrial disputes are raised, then the concerned forums be it Labour Court or Industrial Tribunal, shall dispose of the same within four months from the date of receipt of the reference, after affording opportunity to either party;

(vii) without prejudice to the contentions of the appellants / petitioners - employees, on weeks time from the date of receipt of a copy of this order is given to the employees to join at the transferred places and in respect to such of those dismissed employees, for non-joining at the transferred places, the delay is condoned if they join as stipulated above and in that event, dismissal orders passed against them disappear automatically; and

(viii) the respondents - managements shall sympathetically consider the payments of wages / salaries to the appellants / petitioners - employees so as to maintain the industrial peace and harmony.

The Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, the connected Writ Appeals and Writ Petitions are closed."



62.The above judgment of the Hon'ble Full Bench of this Court is also unambiguous that the Workmen should approach the Industrial Labour Court at the first instance and thereafter, if their grievances are not redressed, then they are at liberty to approach the High Court under Article 226 of the Constitution of India challenging the order / award passed by the Competent Industrial Labour Court. As far as the present writ petitions are concerned, the apprehensions of the writ petitioners were clarified by the respondents that no such change in service conditions are made and the apprehensions are baseless and presumptive. In view of the facts and circumstances this Court is of the opinion that entertaining a writ petition for issuing a writ of Mandamus should not be entertained where the workmen approaches the High Court directly under Article 226 without exhausting the remedy provided under the Industrial Disputes Act before the competent Industrial Labour Court. Thus, this Court is of the undoubted opinion that the writ petitions for Mandamus based on certain apprehensions filed by the Workmen aggrieved under the provisions of the Industrial Disputes Act, cannot be entertained.

63.The General principles is that no writ petition can be dismissed on the ground of maintainability. The power of judicial review under Article 226 of the Constitution of India is extraordinary. Thus, High Court would not dismiss a writ petition on the ground of maintainability. However, the High Court is rejecting a writ petition on the ground that the statute provides a remedy by approaching competent forums / Tribunals / Labour Courts specially created for such adjudications of the issues and to redress their grievances. Thus, the writ petitioners in all such circumstances are bound to approach the Industrial Labour Court in order to resolve the issues arising out of the violations of the provisions of the Industrial Disputes Act, violations of the service conditions or the violations of the terms and conditions of the settlement or otherwise. This being the conclusion, the present writ petitions are devoid of merits.

64.Accordingly, the writ petitions stand dismissed. No costs. Consequently, M.P.[MD]No.1 of 2010, for impleadment and other miscellaneous petitions are closed."

3.In view of the principles settled in the order cited *supra*, the petitioner is at liberty to approach the competent labour forum for the purpose of redressal of his grievances in the manner prescribed.



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4. With this liberty, the writ petition stands disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

To

The Presiding Officer,
The Labour Court,
Thirunelveli.

+1cc to Mr.K.Sathiya Singh, Advocate in SR.No.26191

W.P. (MD) .No.6201 of 2014
17.12.2020

sjj

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