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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2590 of 2021

1. P.Maruthairaj
2. I.Natarajan
3. G.Yuvaraj
4. A.George Ruben
5. M.Rooba

The Five Men Committee of Employees of
Tamil Nadu Pollution Control Board,
No.16/26E, Old Velachery Road,
Pasumalai, Madurai 625 004.

... Petitioners

Vs.

1. Government of Tamil Nadu,
rep. by its Secretary,
Labour and Employment Department,
Fort St. George, Chennai 600 009.
2. The Special Joint Commissioner of Labour,
Office of the Commissioner of Labour,
Teynampet, Chennai 600 006.
3. The Deputy Commissioner of Labour,
Headquarters,
Office of the Commissioner of Labour,
5th Floor, Teynampet,
Chennai 600 006.
4. The Assistant Commissioner of Labour - 3,
Kuralgam, 3rd Floor,
Chennai 600 108.
5. Tamil Nadu Pollution Control Board,
rep. by its Member Secretary,
No.76, Mount Road,
Chennai 600 032.
6. Management of Trinity Man Power Services,
No.1/70, Pazaya Velachery Road,
Pasumalai,
Madurai - 625 004.



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7. Management of Jahova Man Power Services,
No.6/2, Menchur Grammam,
Vattanam Post, Thondi,
Ramanathapuram District.
8. Management of M.M. Enterprises,
Civil Engineering Contractor and Labour Supplier,
No.28/14, Kamaraj Nagar,
Trichy - 10.
9. Management of Nellai Service,
No.177/5B, Mariam Plaza,
Nellaiappar Main Road,
Tirunelveli.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, after calling for the concerned records from the 2nd and 3rd Respondents, quash the order of the 3rd Respondent dated 23.12.2020, bearing Letter No.B2/28463/2020 and the order of the 4th Respondent dated 14.09.2020 bearing Na.Ka.No.B/101/2020, as illegal, arbitrary and contrary to law and consequently direct the 3rd Respondent to continue the conciliation proceedings on the dispute raised by the Petitioners on 18.03.2020, pursuant to its Conciliation Notice dated 07.08.2020 bearing Na.Ka.No.Aa/101/2020.

For Petitioners : Mr.Balan Haridas
For Respondents 1 to 4: Mr.L.S.M.Hazan Fizal,
Government Advocate

O R D E R

Five Men Committee of the employees, representing the fourteen employees employed in the 5th Respondent/Tamil Nadu Pollution Control Board, have come up with this Writ Petition seeking to call for the concerned records from the 2nd and 3rd Respondents, and to quash the order of the 3rd Respondent vide Letter No.B2/28463/2020, dated 23.12.2020, and the order of the 4th Respondent vide Na.Ka.No.B/101/2020, dated 14.09.2020 and for a consequential direction to the 3rd Respondent to continue the conciliation proceedings on the dispute raised by them on 18.03.2020 pursuant to the Conciliation Notice vide Na.Ka.No.Aa/101/2020, dated 14.09.2020.

2. Petitioners have raised a dispute on 18.03.2020 to get absorption/conferment of permanent status in the 5th Respondent/Tamil Nadu Pollution Control Board and that, the



Contractors, who are shown as Respondents 6 to 9 in the Writ Petition are sham and nominal and that, the entire control vests only with the principal employer.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. It is seen that, the Authority who dealt with the issue on hand has communicated that, the employees are staggered and working in different areas and that, the Industrial Dispute has to be raised in the respective areas concerned.

5. Admittedly, the principal employer is in Chennai. The issue is with regard to absorption/conferment of permanent status to workmen. In the impugned communication dated 23.12.2020, it is stated by the 3rd Respondent that, the employees need to approach the Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, in short 'Conferment of Permanent Status Act'. The Five-Men Committee has not sought for any relief under the Conferment of Permanent Status Act, but, has raised a dispute invoking the provisions under Section 2(k) of the Industrial Disputes Act, 1947.

6. When there are two forums open to the employees, it is for them to choose one forum. Workmen in the case on hand have decided to seek relief invoking the provisions of the Industrial Disputes Act. The violation of not only the provisions of Conferment of Permanent Status Act, but also the violation of Contract Labour (Regulation & Abolition) Act, 1970, can be looked into by the Industrial forum. If the Contract is genuine, the Labour Court or the Tribunal can direct the Government to take a decision with regard to the abolition of contract labour and direct the Union/employees to approach the Authorities under the Contract Labour (Regulation & Abolition) Act, 1970. If the contract is sham and nominal, the Industrial forum has got powers to grant the relief sought for by the employees.

7. But, at the threshold, directing the employees to go to a different forum for conciliation may not be correct. When the five-Men Committee has raised a dispute on behalf of the workmen, the Conciliation Officer, who has been notified in terms of Section 4 of the Industrial Disputes Act, 1947, more so, the 3rd Respondent or even the 2nd Respondent is empowered to conciliate and submit a Report, in case of failure of conciliation, so that, the Government can take a decision about the reference of the issue to the appropriate Tribunal/Labour Court.



8. In the counter filed by the 3rd Respondent herein, it is stated that, the Five-Men Committee has raised a dispute and that, the 5th Respondent/Tamil Nadu Pollution Control Board has hired the services of 14 employees, who are concerned in this Writ Petition and that, they have been engaged by the 6th, 7th, 8th and 9th Respondents/Contractors, on contract basis. As stated in paragraph 6 of the counter Affidavit, merely because, 14 employees have been scattered and are working in the Districts of Madurai, Dindugal, Cuddalore, Ramanathapuram, Tirunelveli and Pudukottai, it does not mean that, the jurisdiction of the Conciliation Officer under Section 4 of the Industrial Disputes Act, 1947, is ousted. The Five-Men Committee has not sought the relief under the Conferment of Permanent Status Act. It does not mean that, the Labour Court has no powers to look into the provisions of the Conferment of Permanent Status Act, when a dispute is taken up for permanent adjudication, in case, it comes to the knowledge of the Authority that, the contract is sham and nominal.

9. Hence, the 3rd Respondent herein is directed to conciliate the Industrial Dispute once it is re-presented before him, and in case of failure of conciliation, submit a Failure Report within two months, in order to enable the Government to take a decision as to the reference of the dispute to the appropriate Tribunal/Labour Court by including the Contractors as parties, within a period of one month thereafter, in order to enable the said Tribunal/Labour Court to decide the dispute without adjourning the same beyond seven working days at any point of time in terms of Rule 34(9) of the Tamil Nadu Industrial Disputes Rules, 1958.

The Writ Petition is ordered accordingly. No costs. Consequently, connected W.M.P.No.2926 of 2021 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

(aeb)
To:

1. The Secretary,
Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai 600 009.



2. The Special Joint Commissioner of Labour,
Office of the Commissioner of Labour,
Teynampet, Chennai 600 006.

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3. The Deputy Commissioner of Labour,
Headquarters,
Office of the Commissioner of Labour,
5th Floor, Teynampet,
Chennai 600 006.

4. The Assistant Commissioner of Labour - 3,
Kuralgam, 3rd Floor,
Chennai 600 108.

5. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road,
Chennai 600 032.

+1 CC to M/.s. Balan Haridas, Advocate sr 28315

+1 CC to The Government Pleader sr 28525.

W.P.No.2590 of 2021

PMK(CO)
SP(20/07/2021)