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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3931 of 2021
and W.M.P.No.4484 of 2021

New Democratic Labour Front
Bright Brothers Branch
Regn.No.1656/RTU/2010
Rep. by its President,
Plot No.4, Bharathidasan Street,
Thirubhuvanai Post,
Puducherry-605 107.

...Petitioner

-vs-

1. Government of Puducherry,
Rep. by its Secretary,
Labour Department,
Puducherry.
2. The Labour Officer (Conciliation),
Government of Puducherry,
No.15, 1st Floor, Nehru Nagar,
Puducherry-605 107.
3. The Management,
Bright Brothers Limited,
Rep. by its Plant Head,
Mannadipet Commune,
Puducherry-605 107.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the 3rd respondent 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 of transferring / deputing to far off places or to different organizations 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 02.06.2020 raised by the petitioner union regarding charter of demand, which is pending conciliation before the 2nd respondent as dispute no. 490/LO(C)/ AIL 2020 and further direct the 2nd respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure



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report under Section 12(4) of the Industrial Disputes Act, and in turn direct the 1st Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

For Petitioner	:	Mr.Balan Haridas
For R1	:	M/s.V.Usha
For R3	:	Mr.C.Manohar Gupta

O R D E R

This writ petition has been filed for a direction to forbear the 3rd respondent 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 of transferring / deputing to far off places or to different organizations 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 02.06.2020 raised by the Petitioner Union, regarding charter of demand, which is pending conciliation before the 2nd respondent as Dispute No.490/LO(C)/AIL 2020 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, direct the 1st Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

2. This Writ Petition, at the threshold, is not maintainable in the light of the judgment of this Court in the case of Puthiya Jananayaga Thozhilalar Munnai, Velur District vs. Government of Tamil Nadu, Rep. by its Secretary, Labour and Employment Department, Chennai and Others, reported in 2019 (2) LLN 236 (Mad.), wherein it has been held as follows:

"12...The Employees cannot presume that the Employer is going to violate the provisions and seek for an Injunction restraining the Management from proceeding further or a direction not to alter the Service conditions or to direct the Management to comply with the provisions of the Act. If there is no compliance by the Employer, the rights are protected not only in terms of the I.D. Act, but also in view of the Constitution Bench decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (cited supra).



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15. As already observed, the issue in this case is a still-born-child. There is no guarantee about the nature of punishment that may be imposed, if the charges are established and it is also not sure as to whether the Disciplinary action would be continued.

16. Apart from the fact that the Writ Petition is against the Private Management, there is no iota of evidence that there is an imminent danger or the situation is monstrous that there is violation of Statutory provisions of the Act driving the Petitioner-Union to invoke the Writ Jurisdiction of this Court under Article 226 of the Constitution of India.

18...Whether the Management has complied with the mandatory provisions of the Act or not, is a matter to be decided only in the said Industrial Dispute and this aspect of the matter cannot be gone into the Writ Petition under Article 226 of the Constitution of India. As disputed questions of fact are involved in this Writ Petition..., the Writ Petition is liable to be dismissed.

3. As the conciliation is pending before the Conciliation Officer, the same shall be continued and the Conciliation Officer shall take every endeavour to bring about a settlement between the parties. In case there is no settlement between the parties on account of divergent views, the Conciliation Officer shall conclude the proceedings within a period of two months from the date of appointment as Conciliation Officer vide notification in terms of Section 4 of the I.D.Act by the Appropriate Government and submit a Failure Report to the Government within 14 days from the date of conclusion. On receipt of the Failure Report, the Government shall take a decision within 14 days thereafter and communicate to the parties by Registered or Speed post with due acknowledgment.

4. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To:

1. The Secretary,
Government of Puducherry,
Labour Department, Puducherry.

2. The Labour Officer (Conciliation),
Government of Puducherry,
No.15, 1st Floor, Nehru Nagar,
Puducherry-605 107.

+1cc to M/s.Gupta & Ravi, Advocate, Sr.No.30650

W.P.No.3931 of 2021

UM(CO)
KKV/30/07/2021