

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6737 of 2021

and

W.M.P.No.7299 of 2021

United Labour Federation,  
Rep. by its Secretary,  
4<sup>th</sup> Floor, CJ Complex,  
No.149, Thambu Chetty Street,  
Chennai-600 001. .... Petitioner

-vs-

1. The Deputy Commissioner of Labour (Conciliation-1),  
Irunkattukottai, Sriperumbuthur,  
Kanchipuram District.
2. M/s.Foxconn Technology (India) Pvt. Ltd.,  
Rep. by its Director,  
High Tech Special Economic Zone,  
SIPCOT - Sunguvarchathiram,  
Sriperumbudur,  
Kanchipuram District-602 106. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1<sup>st</sup> Respondent to decide the dispute of the petitioner relating to the protected workmen status sought for by it in the Application dated 30.12.2020, Na.Ka.No.Aa.923/2020.

For Petitioner : Mr.V.Prakash, Senior Counsel  
For Mr.U.Manogar

For R1 : Mr.L.S.M.Hasan Fizal  
Govt. Advocate

For R2 : Mr.S.Ravindran, Senior Counsel  
For Mr.S.Makesh

O R D E R

This Writ Petition has been filed for a direction to the 1<sup>st</sup> Respondent to decide the dispute of the Petitioner-Union relating to the protected workmen status sought for by it in the

Application dated 30.12.2020 in Na.Ka.No.Aa.923/2020.

2. The case of the Petitioner / Union (in short 'Union') is that the Assistant Commissioner of Labour had earlier issued proceedings dated 29.08.2019, by giving the benefit of the status of protected workmen to five Office Bearers in the year 2019, holding that the Order would be valid till 30.09.2019 or for six months, whichever is earlier. The Management challenged the said proceedings in W.P.No.30086 of 2019 and this Court, by an order dated 04.09.2020, disposed of the Writ Petition, on the ground that since the period had already lapsed on the expiry of six months, nothing survives for consideration in the matter. It is also the case of the Union that a representation was submitted to the 2<sup>nd</sup> Respondent for granting the status of protected workmen to the following Officer Bearers for the subsequent year of 2020:

| Sl.No. | Name                               | Post held in the Union |
|--------|------------------------------------|------------------------|
| 1      | S.Tamizharasan<br>(E.No.FT0000120) | Branch President       |
| 2      | K.Dhanasekar<br>(E.No.FT0000091)   | Branch Vice President  |
| 3      | S.Suresh (E.No.FT0000035)          | Branch Secretary       |
| 4      | J.Veeramuthau (E.No.0000098)       | Branch Joint Secretary |
| 5      | S.Karuppaiya<br>(E.No.FT0000082)   | Branch Joint Secretary |
| 6      | V.Baskaran (E.No.FT0000133)        | Branch Treasure        |

2.1. It is the grievance of the Union that since there was no response on the representation of the Union, the Union filed an application before the 1<sup>st</sup> Respondent for recognition of certain workmen of the 2<sup>nd</sup> Respondent as 'protected workmen', which is still pending with the 1<sup>st</sup> Respondent, due to which, there is an attempt by the 2<sup>nd</sup> Respondent / Management to proceed against the key office bearers to weaken the Union. It is stated that the 2<sup>nd</sup> Respondent issued a charge memo dated 30.09.2019 to the President of the Union and after conclusion of enquiry proceedings on 29.11.2020, a 2<sup>nd</sup> show cause notice was issued against the President.

2.2. The Petitioner / Union has come forward with the present Writ Petition for early disposal of the Application, stating that in terms of Section 33 of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947') r/w Rule 65 of the Tamil Nadu Industrial Disputes Rules, 1958, the Authority will have to take a decision in respect of the dispute between the employer and any registered Trade Union in connection with

recognition of "protected workmen" by taking into account 30th September of the subsequent year, viz., 2020, as the date for determining the representative character of each union.

3. Mr.V.Prakash, learned Senior Counsel for the Petitioner and Mr.S.Ravindran, learned Senior Counsel appearing for the Management requested this Court to fix an earliest of point time for the 1<sup>st</sup> Respondent to decide the issue with regard to protected workmen.

4. Heard Mr.V.Prakash, learned Senior Counsel for the Petitioner, Mr.L.S.M.Hasan Fizal, learned Government Advocate for R1 and Mr.S.Ravindran, learned Senior Counsel for R2 / Management.

5. At the first blush, this Court feels it appropriate to extract hereunder Section 33(3) & (4) of the I.D.Act, 1947 for the sake of convenience and for the purpose of issuance of suitable directions in this case:

"(33) (3) - Notwithstanding anything contained in sub- section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation - For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(33) (4) - In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub- section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such

protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen."

6. It is seen that the previous Writ Petition, which was filed and contested by the Management before this Court in W.P.No.30086 of 2019 to decide about the issue of "protected workman" was disposed of by this Court on 04.09.2020, on the ground that the period was already expired. Though Commissioner of Labour or Deputy Commissioner of Labour or Assistant Commissioner of Labour or Labour Officers may be appointed as Conciliation Officers under the I.D.Act, 1947, it does not mean that they do not have powers to deal with cases, falling under different provisions of the Act, namely, Sections 33 (1) or 33 (2)(b) or 33(3). It is the duty cast upon the Authority concerned to pass an order after adjudication, with regard to recognition of protected workmen, who were not recognized or rejected by the Management. It is needless to mention that as the period prescribed is six months or 30<sup>th</sup> September of the year, whichever is earlier, this Court is of the view that the Authority will have to take up the matter on a day-to-day basis and decide the issue on or before 31.07.2021. It is made clear that this direction to dispose of the application in respect of the issue of protected workmen is applicable, not only for this case, but also to all cases, coming up for hearing before the Authority concerned.

7. Registry is directed to send a copy of this order to the Principal Secretary, Labour and Employment, Chennai and the Commissioner of Labour, Chennai, who are in turn expected to issue a Circular to all the Authorities concerned dealing with the issue pertaining to protected workmen, by framing guidelines for disposal of applications of this nature,.

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

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To:

The Deputy Commissioner of Labour (Conciliation-1),  
Irunkattukottai, Sriperumbuthur,  
Kanchipuram District.

Copy To

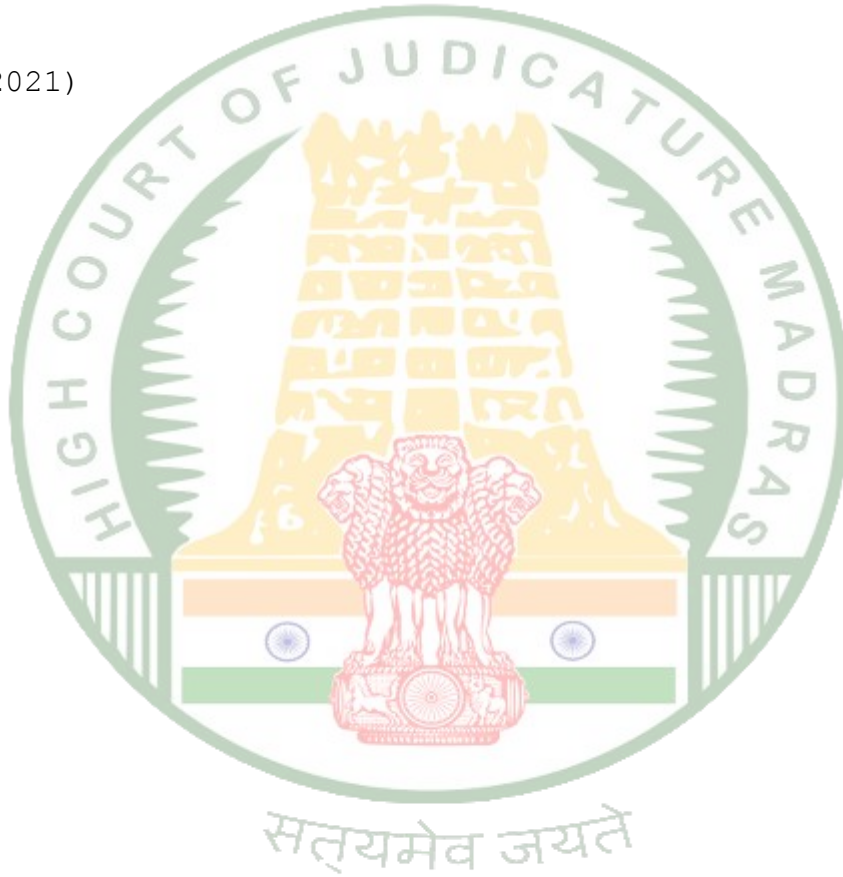
1.The Principal Secretary,  
Labour and Employment,  
Chennai.

2.The Commissioner of Labour,  
Chennai.

+lcc to the Government Pleader, S.R.No. 28451

W.P.No.6737 of 2021

KJ(CO)  
GN(08/07/2021)



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