



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.21732 of 2018

Madras Metro Labour Union,
Cantonment Board Daily Wagers and
Contract Workers Union Branch,
rep. by its General Secretary,
Regn.No.891/CPT, Plot No.400,
No.40, Anna Street, Thiruvalluvar Nagar,
Old Pallavaram, Chennai 600 117.

...Petitioner

Vs.

1. Government of India,
rep. by its Secretary,
Ministry of Labour and Employment Department,
Rafi Marg, New Delhi.
2. The Assistant Labour Commissioner (Central),
O/o. The Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan,
Chennai 600 006.
3. Cantonment Board,
rep. By its Chief Executive Officer,
St. Thomas Mount cum Pallavaram,
Ministry of Defense,
Government of India,
St. Thomas Mount,
Chennai 600 016.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, declare the E-Tender Notice dated 20.07.2018, bearing E.Procure id: 2018_DGDE_363691_1 issued by the 3rd Respondent for providing casual labour from Man Power Service providers/Organizations/Agencies for the year 2018-2019 as illegal, arbitrary and contrary to law and consequently forbear the Respondent No.3 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



13.08.2018 raised by the Petitioner Union regarding regularization of the services of the 80 employees concerned in the dispute, which is pending conciliation before the 2nd Respondent as Dispute No.M.8/41/2018-B3, dated 13.08.2018 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.

For Petitioner : Mr.Balan Haridas

For Respondents 1&2 : Mr.R.Sidharth,
Central Govt. Standing Counsel

For 3rd Respondent : Mr.C.Mohan,
for M/s.King & Patridge

O R D E R

Petitioner has come up with this Writ Petition seeking to declare the E-Tender Notice dated 20.07.2018 issued by the 3rd Respondent for providing casual labour from Man Power Service providers/Organizations/Agencies for the year 2018-2019 as illegal, arbitrary and contrary to law and to consequently forbear the 3rd Respondent from altering the service conditions of the members of their Union, 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 13.08.2018 raised by their Union regarding regularization of services of 80 employees concerned in the dispute, which is pending conciliation before the 2nd Respondent as Dispute No.M.8/41/2018-B3, dated 13.08.2018 and for a further direction to 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. In the case on hand, the Charter of Demand is pending before the Conciliation Officer. According to the Petitioner/Union, at no point of time, a Contractor was roped in to engage employees and that, the employees concerned in the case on hand, who are Sweepers, numbering 80 were paid directly by the 3rd Respondent/Cantonment Board, which has been admitted by the Management. It is the case of the Petitioner/Union that, the employees in the case on hand are entitled to permanent status, apart from other issues that may be adjudicated by the appropriate forum, in case of failure of conciliation.



3. Learned counsel appearing for the 3rd Respondent/Management submitted that, there is no dispute that, there is a Charter of Demand. But, none of the employees herein are permanent employees or they have been recruited by following proper procedure. Employees herein have been working for scavenging act in Local Military Area (LMA), which includes working in isolated areas. He further submitted that, in 2018, the Government of India issued a direction that, there shall be no direct employment of any casual labourer or daily-rated employees at the very sanctioned posts and that, the engagement of the employees herein are not only irregular, but also illegal, as, they have been engaged only as casual employees. He pointed out that, the total number of employees now employed by the Management is 65 and not 80, as contended by the Union.

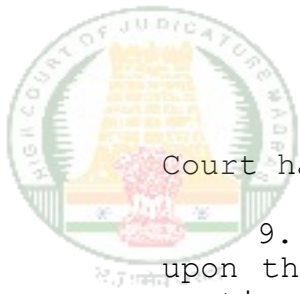
4. Heard the learned counsel on either side and perused the material documents available on record.

5. Even though, parties herein have taken different pleadings and that, the Industrial Dispute pertains to Charter of Demand, which includes permanency of the employees concerned, be it 65 or 80, it has got to be decided by the appropriate forum in case of Failure Report. In case of non-settlement between the parties, this Court directs the 3rd Respondent/employer to employ and continue to employ the employees herein, who were on the rolls as on date through the Contractors, for which, fresh tender can be issued. It is made clear that, the employment of the employees are protected, even if there is change of contract, with same benefits. The employer is also entitled to proceed with fresh tender periodically, as instructed by the Government.

6. It is further made clear that, the Union will have to establish that, employees concerned are employed continuously without third party interference, till they raise a dispute for getting the benefits of their Charter of Demand, more particularly with regard to regularisation/permanent status.

7. It is represented that, Conciliation is fixed on 02.08.2021. The Conciliation Officer is expected to conciliate and bring about an amicable settlement within a period of two months from the date of receipt of a copy of this order. In case of failure of conciliation, the Report shall be sent to the Government and the Government shall take a decision and refer the dispute for adjudication, so that, parties can work out their remedy before the appropriate Labour Court/Tribunal.

8. Whether there is violation of Section 9(A) or any other provisions, as contemplated under the Industrial Disputes Act, needs to be determined at the time of adjudication and this



Court has not rendered any finding on that aspect.

9. It is also made clear that, any observation touching upon the merits of the matter will not bind the Tribunal or the parties and the same is only for the disposal of the Writ Petition and in case, the matter is not settled and is referred to Tribunal for adjudication, then, the Tribunal is expected to decide the same within a period of six months from the date of receipt of the Reference, and all the issues are kept open for the Tribunal to decide.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected W.M.P.Nos.25496 & 25497 of 2018 are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary, Government of India,
Ministry of Labour and Employment Department,
Rafi Marg, New Delhi.
2. The Assistant Labour Commissioner (Central),
O/o. The Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan, Chennai 600 006.
3. The Chief Executive Officer, Cantonment Board,
St. Thomas Mount cum Pallavaram,
Ministry of Defense, Government of India,
St. Thomas Mount, Chennai 600 016.

+1cc to M/s.King & Patridge, Advocate, S.R.No.35251/21

W.P.No.21732 of 2018

JPL(CO)
RGA(30/07/2021)