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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16303 of 2021

and

W.M.P.No.17266 of 2021

Tamilnadu General Workers Union,
Rep By.Deputy General Secretary
K.Karal Marx,
Regn.No.289/CPT/1975,
No.2/1, Kovur Vaithiyanathan Street,
Chintadiripet, Chennai - 600 002.

...Petitioner

-Vs-

1. The Government of India,
Rep. by its Secretary to Government,
Ministry of Road Transport and Highways,
Rafi Marg, New Delhi.
2. The Chief General Manager -cum- Zonal Director,
National Highways Authority of India,
Sri Tower, 2nd floor, DP 34(SD),
Industrial Estate, Guindy,
Chennai - 600 032.
3. The Deputy Chief Labour Commissioner (Central),
Sastri Bhavan, 5th floor,
Haddow's Road, Nungampakkam,
Chennai - 600 006.
4. The Regional Labour Commissioner (Central)
Sastri Bhavan, 5th floor,
Haddow's Road, Nungampakkam,
Chennai - 600 006.
5. The Regional Labour Commissioner (Central)
No.5, 2nd floor Lady Doak College Road,
Chinna Chokkikulam,
Madurai - 625 002.



6. The Assistant Labour Commissioner (Central)
DA2, BSNL Staff Quarters, Jaya Nagar,
Reddiyarpalayam,
Puducherry - 605 010.

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7. The Project Director,
National Highways Authority of India,
SRI Towers, 3rd Floor,
DP-34 (SP), Industrial Estate,
Guindy, Chennai - 600 032.
8. The Project Director,
National Highways Authority of India,
Door No.11/1, Kongu Nagar West,
Back side of Appasamy Apartment,
Ramanathapuram,
Coimbatore - 641 045.
9. The Project Director DGM (T),
No.7, Kamadhenu Nagar,
Karur - 639 001.
10. The Project Director DGM (T),
National Highways Authority of India,
No.1, 2nd Floor,
Subramaniyapuram, 3rd Street,
Karaikudi - 630 002.
11. The Project Director DGM (T),
National Highways Authority of India,
Door No.259/1, Salem Main Road,
Near KKAC Petrol Bunk,
Krishnagiri - 635 001.
12. The Project Director DGM (T),
National Highways Authority of India,
No.314-E, K.P.Road,
Near Ayyappan Koil,
Parvathipuram, Nagercoil - 629 003.
13. The Project Director DGM (T),
NHAI, Plot No.3, Surya Towers,
2nd Floor, East Street, KK Nagar,
Madurai - 625 020.
14. The Project Director DGM (T),
National Highways Authority of India,
19/2B, Junction Road,
Salem - 363 004.



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15. The Project Director DGM (T),
NHAI, New No.54, First Floor,
Natarajapuram North Colony,
Medical College Road,
Thanjavur - 613 004.
16. The Project Director DGM (T),
Plot No.26, 1st Floor,
VGP Nagar West,
Vazhudhareddy Post,
Villupuram - 605 401.
17. The Project Director DGM (T),
National Highways Authority of India,
No.44, First Floor, Pon Nagar,
III Main Road, Trichy - 620 111.
18. HK Toll Private Limited,
Krishnagiri Toll Plaza,
Kothapetta Village,
Krishnagiri - 635 111.
19. SU Toll Road Private Limited,
SU-1 mettupatti Toll Plaza,
SU-2 Nathakarai Toll Plaza,
SU-3 Verasozhapuram Toll Plaza,
Mettupatti - Village,
Valapady - Taluk,
Salem - 636 111.
20. NK Toll Road Private Limited,
Rasampalayam Toll Plaza,
Rasambalayam Village,
Keerambur Post,
Namakkal - 637 207.
21. Dindigul-Samayanallur Toll Road Ltd.,
Kozhigipatti Village,
Oruthattu Post, Kodairoad,
Dindigul - 624 206.
22. Eagle Infrastructure India Ltd.,
Athur Toll Plaza,
Paranur Toll Plaza, Thozhupedu Post,
Madhurandhagam Taluk,
Sengalpattu - 303 310.



23. Ulundurpet Expressways Pvt. Ltd.,
Vikravandi Toll Plaza,
Vikravandi Post,
Villupuram - 605 652.
24. Trichy Tollway Pvt.Ltd.,
Sengurichi Toll Plaza,
Thirumandurai Toll Plaza,
Thirumandurai Village,
Kunnam Taluk,
Perambalur - 621 108.
25. Trichy Padalur Tollways Pvt.Ltd., (TPTPL)
Samayapuram Toll Plaza,
Sy.96, Opp Soumiya Nagar,
Chennai Main Road,
Samayapuram, Trichy - 621 112.
26. Trichy Thanjavur Expressway Ltd.,
NH-67 Vazhavandhankottai Toll Plaza,
Thuvakkudi Post,
Thiruverumbur Taluk,
Trichy - 6200 015.
27. TNDK Expressways Ltd.,
NH-44 Velanchettiyur Toll Plaza,
Oothupatti,
Thethupatti Taluk,
Tamilnadu - 639 207.
28. Salem Tollways Ltd.,
Vaigundam Toll Plaza,
Vaigundam Post,
Sangagiri Taluk,
Salem - 637 103.
29. Kumarapalayam Tollways Ltd.,
NH-54, Vijayamangalam Toll Plaza,
Kampiliyampatti Post,
Perundurai Taluk,
Erode - 638 516.
30. IVRCL Chengapalli Tollways Ltd.,
Chengapalli Toll Plaza,
Kaniyur Village, Sulur Taluk,
Coimbatore - 641 659.



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31. MVR Infrastructure & Tollways Ltd.,
Omalur Toll Plaza,
Kottakavundampatti Post,
Omalur Taluk,
Salem - 636 011.
32. Feedback Highways OMT Pvt.Ltd.,
Chennasamudram Toll Plaza,
Chennasamudram Village,
Thenkadapanthangal Post,
Walajapet Taluk,
Ranipet - 632 513.
33. Sri Akshai Pvt.Ltd.,
Shenbagampettai Toll Plaza,
Sirukoodalurpatti Post,
Thripattur Taluk,
Sivagangai - 630 212.
34. Sri Akshai Pvt.Ltd.,
Lembalakkudi Toll Plaza,
Pulivalam Post,
Thirumayam Taluk,
Pudhukottai - 622 507.
35. Sri Sai Enterprises,
Boothgudi Toll Plaza,
Rajanayakkampatti Post,
Viralimalai Taluk,
Pudhukottai - 621 316.
36. Sri Sai Enterprises,
Sittampatti Toll Plaza,
Sittampatti Post,
Mevur Taluk,
Madurai - 625 104.
37. Jaikamtanath & Company,
Lachumanapatty Toll Plaza,
T-Nallur Post,
Kulathur Taluk,
Pudhukottai - 622 515.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents No.1, 2 & 7 to 37 from in any manner alternating the conditions of service of the members of the petitioner union, including discontinuance of employment or termination or failing to provide employment under the ambit of



downsizing or restructuring, pending adjudication of the Industrial Dispute of the petitioner under Section 33 of the ID Act before the respondents No.3 to 6.

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For Petitioner	:	Mr.K.Arunagiri
For R19 & 21	:	Dr.R.Maheshwari
For R18, 20 & 25	:	Ms.Inthu Karunakaran
For R24	:	Mr.Anand Gopalan for M/S.T.S.Gopalan & Co.
For RR2 & 7 to 17	:	Mr.SU.Srinivasan
For Others	:	No Appearance

ORDER

The limited prayer sought for in the present petition is for an issuance of Writ of Mandamus, forbearing the private respondents from altering the conditions of service of the members of the petitioner-union pending adjudication of their industrial disputes raised under Section 33 of the Industrial Disputes Act, 1947.

2. While the petitioner claims that their members are the workmen of the private respondents, who claim to be the concessionaires under the first respondent herein, the private respondents would submit that the members of the petitioner-union are not their workers, but rather, they were engaged under independent contractors and sub-contractors.

3. It is brought to the notice of this Court that the issue as to whether the members of the petitioner-union are workers under the concessionaires or contractors or sub-contractors, are subject matter of various Industrial Disputes raised before the concerned Conciliation Officers, where negotiations are pending.

4. When the petitioner claims that they are the workmen under the respondents'/concessionaires and would attempt to submit that their conditions of service cannot be alternated in view of Section 33 of the Act, the statute itself prescribes a remedy under Section 33-A, whenever any contraventions to the provisions of Section 33 is made.

5. When an alternative remedy is provided under the Act itself, invoking the powers of this Court under Article 226 of the Constitution of India cannot be maintained, in view of various well established precedents of the Hon'ble Supreme Court of India. In accordance with this legal ratio, an Hon'ble Division Bench of this Court, in the case of The Management of Tata Consultancy Services Ltd. Vs. Selvinth Gnanesh Joshua &



another reported in 2015 (2) LW 127, had held that such a prayer in a writ petition seeking for a remedy prohibiting the employer from altering the service conditions pending adjudication of the Industrial Dispute, is not maintainable, in view of Section 33-A of the Act. The relevant portion of the order reads as follows:

22. Yet in another decision in Sharad Kumar vs. Govt. of NCT of Delhi and Others², referring to and relying on several earlier decisions rendered by the Supreme Court, the Supreme Court observed as under:

"19. On a fair reading of the provisions in Section 2(s) of the Act it is clear that "workman" means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including any such person who has been dismissed, discharged or retrenched.

20. The latter part of the section excludes 4 classes of employees including a person employed mainly in a managerial or administrative capacity, or a person employed in a supervisory capacity drawing wages exceeding Rs 1600 per month or exercises functions mainly of a managerial nature. It has to be taken as an accepted principle that in order to come within the meaning of the expression "workman" in Section 2(s) the person has to be discharging any one of the types of works enumerated in the first portion of the section. If the person does not come within the first portion of the section then it is not necessary to consider the further question whether he comes within any of the classes of workmen excluded under the latter part of the section. The question whether the person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing order or the appointment order or in any other material in which the duties assigned to him may be found. When the employee is assigned a particular type of duty and has been discharging the same till the date of



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the dispute then there may not be any difficulty in coming to a conclusion whether he is a workman within the meaning of Section 2(s). If on the other hand the nature of duties discharged by the employee is multifarious then the further question that may arise for consideration is which of them is his principal duty and which are the ancillary duties performed by him. In such a case determination of the question is not easy at the stage when the State Government is exercising the administrative jurisdiction vested in it for the limited purpose of satisfying itself whether the dispute raised is an industrial dispute within the meaning of Section 2(k) of the Act. While deciding the question, designation of the employee is not of much importance and certainly not conclusive in the matter as to whether or not he is a workman under Section 2(s) of the Act.

31. x x x x x x x x x x We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."

Thus, now, it is well settled that the dispute with regard to status of an employee as to whether one is workman or an employee other than a workman, has to be decided only by the Industrial Tribunal or the Labour Court, having adjudicatory power.



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23. The second question is as to whether the Conciliation Officer is competent to determine the status of an employee in the light of definition under Section 2(s) of the I.D. Act. Section 12 prescribes for duties of a Conciliation Officer. On a bare perusal of the said provision, it is crystal clear that the Conciliation Officer is obliged to consider only bringing about settlement of the dispute, after proper investigation and also examining other matters necessary for settlement of the dispute, by inducing the parties to come to a fair and amicable settlement. No adjudication is involved in conciliation process, as, conciliation can be achieved only by inducing the parties to come to a fair and amicable settlement. If a party to the dispute questions the status of the complainant that the employee is not a workman under the definition of Section 2(s) of the I.D. Act, the Conciliation Officer may not proceed with the matter for adjudicating the issue of status of the employee. The Conciliation Officer can proceed with the reference for settlement, only in the event, both the parties are in agreement with the status of the employee making the reference that he is a workman. Thus, the contention of the learned Senior Counsel appearing for the first respondent that a conjoint reading of provisions of Section 12 of the I.D. Act and Rule 39 of Rules empowers the Conciliation Officer to examine the evidence for the purpose of adjudicating the status of an employee, cannot be countenanced.

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28. The next issue that arises for consideration is as to whether the High Court, while exercising its power under Article 226 of the Constitution of India, can pass an order to maintain status quo under Section 33 or 33-A of the I.D. Act.

29. Section 33 of the I.D. Act prescribes that during the pendency of any conciliation proceedings before the Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall alter, to the prejudice of the workmen concerned in such dispute, the conditions



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of service applicable to them immediately before the commencement of such proceeding.

30. Section 33-A of the I.D. Act prescribes that where an employer contravenes the provisions of Section 33 during the pendency or proceedings before a Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, to such Conciliation Officer or Board, arbitrator, Labour Tribunal or National Tribunal, as the case may be.

31. In the aforesaid conspectus of the facts, the authority competent to consider the dispute in respect of provisions of Section 33 and also to grant relief in case of contravention, is the authority before whom the dispute is pending consideration. Our view, in this respect, is fortified by an observation of the Supreme Court in *Straw Board Manufacturing Company Ltd., Saharanpur vs. Govind*⁵ (See para 3). There was no occasion to seek the second relief, i.e., maintaining status quo as required under Section 33 of the I.D. Act and as such, the second prayer for maintaining status quo as required under Section 33 of the I.D. Act, is also not maintainable, when the first respondent has not approached the Conciliation Officer, making a complaint in writing, that there was a contravention of the requirement of Section 33 by the employer. There was no grievance of non-action or wrong action by the Conciliation Officer, in the writ petition. The Writ Court ought to have restrained itself from considering the issue and passing an order. In such view of the matter, we are of the considered opinion that the learned Single Judge has over-stepped in passing the order to maintain status quo, without referring the matter back to the authority, wherein, the dispute was pending consideration.

32. The last issue that arises for our consideration is whether the writ petition was maintainable, as pleaded by the learned Senior Counsel appearing for the appellant, firstly, at the stage, when the first respondent, without waiting for the statutory period of two weeks or further time extended with the consent of the



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parties, has approached this Court under Article 226 of the Constitution of India and secondly, the relief sought by the first respondent, seeking a direction, is against the appellant, a private party.

33. On a perusal of the relief sought in the writ petition, it appears that the relief is in two-fold. Firstly, a mandamus is sought to the Conciliation Officer to conciliate and decide the question with regard to status of the first respondent and secondly, a direction to allow him to continue in employment with the appellant.

34. The first respondent has made a reference for conciliation on 19.01.2015 and on the same day, has come up with the instant writ petition. Thus, the writ petition ought not to have been entertained without knowing the steps taken by the Conciliation Officer. At that stage, there was no cause or cause of action which impelled the first respondent to take recourse to writ jurisdiction under Article 226 of the Constitution of India."

6. The aforesaid extract is self explanatory. When the petitioner has an alternate remedy under Section 33-A of the Act for the cause of action alleged in the affidavit filed in support of this petition, invoking Article 226 of the Constitution of India is impermissible, in view of the aforesaid ratio laid down.

7. Thus, this Court does not find any merits in this writ petition. Accordingly, the Writ Petition stands dismissed. However, it is open to the petitioner-union to workout their remedies subject to the outcome of the pending conciliation proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

hvk/ata



To

1. The Secretary to Government of India,
Ministry of Road Transport and Highways,
Rafi Marg, New Delhi.
2. The Chief General Manager -cum- Zonal Director,
National Highways Authority of India,
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Karaikudi - 630 002.



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11. The Project Director DGM (T),
National Highways Authority of India,
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National Highways Authority of India,
No.44, First Floor, Pon Nagar,
III Main Road, Trichy - 620 111.

+1cc to Mr.K.Arunagiri, Advocate Sr No.49828

+1cc to Mr.SU.Srinivasam, SCGSC Sr No.49294

+5ccs to Ms.Inthu Karunakaran, Advocate Sr No.49653

+1cc to M/s.T.S.Gopalan & Co, Advocates Sr No.50048

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GJ (CO)
PR (25/10/2021)