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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.25543 OF 2021

AND

W.M.P.NO.26961 OF 2021

1. P.Nareshkumar, S/o Pachaiyappan
Emp.No.KBIW178
2. A.Kannan, S/o Arumugam,
Emp.No.KBIW028
3. R.Vimal, S/o Raja,
Emp.No.KBIW038
4. V.Vijay, S/o Velmurthy,
Emp.No.KBIW045
5. R.Senthil, S/o Raghupathi,
Emp.No.KBIW013
6. K.Velu, S/o Kali,
Emp.No.KBIW037
7. P.G.Lokesh, S/o Govindan,
Emp.No.KBIW066
8. A.Nagarajan, S/o Anbu,
Emp.No.KBIW082

.. Petitioners

Vs.

1. The Management of M/s.Kwang Sang Brake India Pvt. Ltd.,
No.49, Sengadu Village,
Sriperumbudur Taluk,
Kancheepuram-602 105.
2. Mr.Ganesan, Enquiry Officer,
C/o The Management of M/s.Kwang Sang Brake India Pvt. Ltd.,
No.49, Sengadu Village,
Sriperumbudur Taluk,
Kancheepuram-602 105.

.. Respondents



Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to restrain the respondent-Management herein from proceeding with the enquiry proceedings in respect of the show cause memo, dated 04.08.2021 without payment of the wages/subsistence allowance from 15.07.2021 and issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances of the case, award costs and render justice.

For petitioners : Mr.V.Prakash, Senior Counsel for Mr.U.Manogar

ORDER

This Writ Petition is filed praying for issuance of a Writ of Mandamus to restrain the first respondent-Management from proceeding with the enquiry proceedings in respect of the show cause memo, dated 04.08.2021 without payment of the wages/subsistence allowance from 15.07.2021 and to award costs.

2. The petitioners are the work-men of the first respondent/Management. According to them, there was industrial unrest as a consequence of an accident met by a work-man on 13.07.2021, wherein, a worker was said to have lost three of his fingers of his right hand. There was a protest thereafter by the work-men and the production of the Management, was finally brought to an end on 15.07.2021. In the conciliation before the Assistant Commissioner of Labour (Conciliation Officer), a Memorandum of Understanding (MoU), dated 15.07.2021, was also arrived at.

3. According to the petitioners, resiling from the commitment, as reduced to in terms of the MoU, the first respondent/Management had commenced disciplinary proceedings against the petitioners for the strike on 14.07.2021. The petitioners had been denied work and no salary had been paid to them. In the affidavit filed in support of the present Writ Petition, certain other extraneous issues like they being transferred, etc., were also stated, which have no bearing on the ultimate prayer that is being sought in the present Writ Petition.

4. The substance of the grievance of the petitioners/work-men is that, neither they were allowed to work, nor they were paid any salary or subsistence allowance, but the first respondent/Management is continuing to proceed with the disciplinary action against them. In the said circumstances, this Writ Petition is filed for the relief stated supra.



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5. Mr.V.Prakash, learned Senior Counsel appearing for the petitioners submitted that, it is imperative upon the first respondent/Management to pay subsistence allowance before proceeding with the disciplinary action against the petitioners.

6. According to the learned Senior Counsel, denial of work would amount to keeping the petitioners under suspension. Either the work-men are entitled to full salary and allowances payable for the period commencing from 14.07.2021, or, in case of their suspension, they are entitled to payment of subsistence allowance as a matter of right.

7. According to the learned Senior Counsel, when once a public duty is cast upon the first respondent/Management to pay the subsistence allowance, without discharging the said duty, it cannot seek to victimise the petitioners/work-men. Therefore, the present Writ Petition has been filed necessitating to protect the interest of the petitioners in the course of their facing disciplinary action initiated by the first respondent/Management.

8. This Court is unable to countenance the contentions raised by the learned Senior Counsel for more than one reason. First of all, this Court is of the view that the present Writ Petition is not maintainable against the private Management, merely because of non-payment of subsistence allowance to the petitioners. As a matter of fact, even according to the petitioners, whether they had abstained themselves on their own or they were placed under suspension at all, is in dispute.

9. In such circumstances, any right to claim subsistence allowance itself, is not premised on any concrete basis. It is trite to hold that this Court, in exercise of its Constitutional Jurisdiction, cannot decide the disputed questions of fact. This Court is also certainly not inclined to entertain the dispute as to whether the petitioners are suspended or not, or they had remained absent on their own.

10. In any event, the non-payment of subsistence allowance even assuming that the claim is allowable, an authority is constituted under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (as amended) and it is for the petitioners herein to approach the authority under the said Act, in case they are aggrieved by any violation of the first respondent-Management in terms of the scheme of the said Act. It is certainly not open to the petitioners/work-men to seek issuance of a Writ of Mandamus in a grievance like the present one, which fall entirely within the realm of the authority constituted under the said Act.



11. The arguments put-forth by the learned Senior Counsel appearing for the petitioners that a public duty being cast on the first respondent/Management, is a very specious submission, which cannot be countenanced both in law and on facts. As far as the case on hand is concerned, if this Court were to accept such a sweeping plea to entertain the Writ Petition against the private Management, this Court would be flooded with litigations of various hues under one pretext or the other.

12. This Court emphasises the position that, every infraction of statutory provisions, does not give the petitioners to approach this Court against the private Management in regard to the disputes arising under such relationship. There are several machineries created under the Labour Enactments to govern such a situation, which cannot be by-passed and the Constitutional remedy cannot be invoked for settlement of industrial disputes of the present nature.

13. For the above said reasons, this Court finds that this Writ Petition is not maintainable. Accordingly, the Writ Petition is dismissed with an observation that the petitioners are entitled to invoke the alternative remedy under the relevant Act, if they are so advised.

14. No costs. Consequently, W.M.P.No.26961 of 2021 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cs

+1cc to Mr.U.Manogar, Advocate, S.R.No.62762

W.P.No.25543 of 2021

KG(CO)
PM/16/12/2021