



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P. (MD)No.14751 of 2012

and

M.P (MD)Nos.1 and 2 of 2012

1.The Management through the General Manager,
Tamil Nadu State Transport Corporation,
Ranithottam, Nagercoil,
Kanyakumari District.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai Division II) Tirunelveli Ltd.,
No.19, Tiruvanandapuram Road,
Vannarapettai,
Tirunelveli-3.

... Petitioners

Vs.

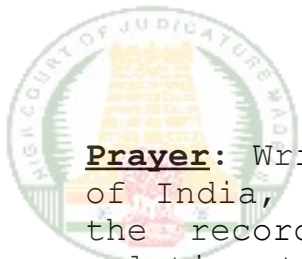
1.The Presiding Officer,
The Labour Court,
Tirunelveli.

2.The State General Secretary,
Tamil Nadu Labourers Grievances,
Labour Union,
173-B, 6th Street
Sakthi Nagar,
Thindal
Erode-12.

3.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division II)
By pass Road,
Madurai-3.

4.The Special Officer,
Tamil Nadu State Transport Corporation,
(Madurai Division II) Tirunelveli Ltd.,
Tirunelveli and Nagercoil Region,
No.19, Tiruvanandapuram Road,
Vannarapettai,
Tirunelveli-3.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent Labour Court, Tirunelveli relating to the impugned Award passed by it in I.A.No.295/2011 in S.O.A.No.1 of 2010 dated 22.08.2011 and quash the same and direct the 1st respondent Labour Court to allow an advocate to represent the Writ Petitioner Corporation and to conduct the case on behalf of the writ petitioner Management in the Labour Court.

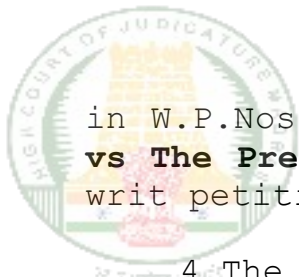
For Petitioner : M/s.K.Sathiya Singh
For R2 : Mr.S.Vellaichamy
For M/s.M.V.Venkataseshan
For R3 : (No appearance)

O R D E R

This writ petition is filed by the petitioner seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records from the Labour Court, Tirunelveli, relating to the impugned Award passed in I.A.No.295/2011 in S.O.A.No.1 of 2010 dated 22.08.2011 and quash the same and further direct the Labour Court to allow an Advocate to represent the Writ Petitioner Corporation and conduct the case, on behalf of the writ petitioner Management in the Labour Court.

2.In the affidavit filed in support of this petition, it has been stated that the petitioners are the General Manager and the Managing Director of the State Transport Corporation. The second respondent has raised an industrial dispute before the first respondent seeking to declare the applicability and adoptability of the old Standing Order for the Pandian Transport Corporation by the writ petitioners Management as bad in law. Pending the said Industrial Dispute, the second respondent has filed an Interlocutory Application in I.A.No.295/2011 in S.O.A.No.1 of 2010 alleging that the Officers of the writ petitioners Management were highly qualified persons and they have obtained the knowledge of law and also well trained in law and when the writ petitioners Management is represented by the Lawyers and the second respondent labourer is represented by the Trade Union Leader who did not know the law, the odd is heavily loaded in favour of the writ petitioners Management, that because the Lawyers represented by the Management and Labourer is represented by a Law-ignorant and illiterate Trade Union Leader, the labour is suffering for want of knowledge of law under Section 36 (4) of Industrial Dispute Act. Accepting the plea raised by the second respondent/workman, the said application was allowed. Challenging the same, the present writ petition is filed.

3.The learned counsel appearing for the petitioner submitted that the issue involved in the present writ petition is no longer *res integra* and the said issue was already settled before this Court



in W.P.Nos.20933 and 23606 of 2006, dated 20.01.2007[**The Management vs The Presiding Officer**]. Hence, he prays for allowing the present writ petition.

4.The learned counsel appearing for the second respondent would submit that the second respondent workman is represented by the Trade Union Leader and he is not a lawyer in profession and he did not complete B.L., Degree and he cannot be compared with the lawyer of the petitioner Management. Further, the learned counsel submitted that as per Section 36(4) of the Industrial Disputes Act, without consent of the respondent workman, the petitioner Management is not entitled to represent their own Lawyer and in view of the expressed provisions, the order of the Labour Court cannot be interfered with. Hence, he prays for dismissal of the present writ petition.

5.The facts in the present case are not in dispute. Admittedly, the issue that arose in the present writ petition was already settled and the relevant portions of the order, dated 20.01.2007 passed in W.P.Nos.20933 and 23606 of 2006[**The Management vs The Presiding Officer**] are extracted hereunder:

23. In the present sets of writ petitions, it is seen that though the workmen were technically represented by a leader of the Trade Union to which they belong, but, however, the said representative (G.Muthu) is an Advocate practising before the High Court and the other Subordinate Courts and who has rich experience in dealing with labour laws for over 30 years. If the same benefit is denied to the Management on the basis of the workmen not giving consent in terms of Section 36(4) of the I.D. Act, certainly it will result in an imbalance being created in defending the case before a quasi-judicial body and it will violate Article 14 of the Constitution of India. This type of withholding of consent by the workmen was never contemplated in a case where workmen have a trained lawyer whereas the Management (in the second set of cases, a Public Sector Management) is not being allowed to defend its case by a legal practitioner. This had resulted in an anomalous situation. In fact, in the garb of exercising their right of withholding consent in the first set of cases, the workman and his representative waited for 55 adjournments and had allowed the Management to be represented by a lawyer including filing vakalat at an earlier point of time and have raised this issue after a period of five years.

25. Therefore, for the aforesaid reasons, I hold that in the case of the respondents / workmen engaging a trained reasoned lawyer in the garb of a trade union leader, the writ petitioner Managements should not be



denied the very same right by relying upon Section 36(4) of the I.D. Act. This will result in grave injustice and will be in violative of Article 14 of the Constitution of India in the light of A.K.Roy's case and Bombay Port Trust case (cited supra). Therefore, the impugned orders passed by the first respondent Labour Courts dated 03.3.2006 and 19.6.2006 are hereby set aside and it is directed that the respondent Managements are entitled to engage a legal practitioner of their own choice in the peculiar facts and circumstances of the cases.

6.The above decision is squarely applicable to the present case. Hence, the petitioners/Management is entitled to represent their own Lawyer. By applying the aforesaid ratio cited supra, the matter is remanded back to the first respondent for fresh consideration and the award passed by the Labour Court in I.A.No.295/2011 in S.O.A.No.1 of 2010, dated 22.08.2011, is set aside. However, since I.A.No.295 of 2011 in S.O.A.No.1 of 2010 is pending for more than 10 years, the Presiding Officer/Labour Court is directed to dispose of the said I.A, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.S.)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Presiding Officer,
The Labour Court,
Tirunelveli.

1CC TO MR. K.SATHIYA SINGH, ADVOCATE SR 8787
1CC TO MR. M.V.VENKATASESHAN, ADVOCATE SR 9078

GS
05/05/2021
4P/4C

M. DHANDAPANI, J.

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