



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 6381 of 2014
and
M.P.(MD) No. 1 of 2014

Tamil Nadu Arasu Pokkuvarathu
Thozhilalar Sangam (CITU),
rep. By its General Secretary,
3/1/5, Mudiyarasan Salai,
Karaikudi.

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Department of Labour and Employment (B1),
Fort St.George, Chennai.

2.The Management of Tamil Nadu State
Transport Corporation (Kumbakonam) Ltd.,
Karaikudi Region,
Rep.by its General Manager,
Maruthupathi, Karaikudi.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records from the First Respondent relating to the impugned order dated 12.07.2012 passed in Government Order (D)No.314 and the impugned letter dated 14.03.2013 in Letter No.30660/B1/2012-4, quash the same and consequently to direct the first respondent to refer the dispute raised by the petitioner union against the second respondent corporation and given the detail thereof in the failure report of the Labour Officer, Ramanathapuram in Na.Ka.556/08 dated 12.02.2010 relating to the demand of permanency to the workman J.Jecob employed as driver in the second respondent and consequential benefits to him and award cost.

For Petitioner : Mr. S.Arunachalam

For First Respondent : Mr. R.M.Sivakumar

For Second Respondent : Mr. D.Sivaraman



ORDER

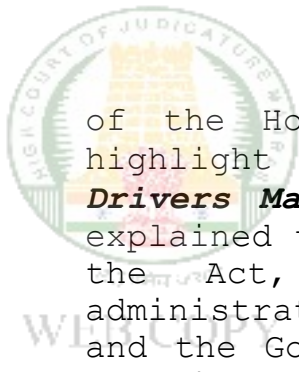
(through video conference)

Heard Mr. S.Arunachalam, Learned Counsel for the Petitioner, Mr. D.Sivaraman, Learned Counsel for the Second Respondent and Mr. R.M.Sivakumar, Learned Counsel for the First Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which is a Trade Union, seeks to espouse the cause of its member for regularization of his service in the establishment of the Second Respondent, viz., Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Karaikudi Region, Karaikudi. The request of the Petitioner for referring the said demand for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), was declined by the First Respondent, viz., Government of Tamil Nadu, by G.O.(D) No. 134, Labour and Employment (B1) Department, dated 12.07.2012 for the reason that the relief for grant of permanent status to the person concerned could be made under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The application made by the Petitioner for review of that decision was rejected by the First Respondent in the order in letter No. 30660/P1/2012-4 dated 14.03.2013 reiterating the earlier decision and it was further stated that an application for execution of settlement could be made under Section 11-B of the Industrial Disputes Act, 1947, as amended by Tamil Nadu Act, 2008. The said orders of the First Respondent are challenged in this Writ Petition.

3. It is asserted by Learned Counsel for the Petitioner that when multiple legal remedies are available, the choice has to be left to the person who seeks relief and in the absence of any legal bar conferring exclusive jurisdiction only under one of the fora, the refusal to entertain the claim on the ground that the alternative remedy is available cannot be sustained. He relies on the decision of the Hon'ble Supreme Court of India in **Nirchiliya -vs- Management of Safire Theatre** [(1991) 1 LLJ 111], which has been followed by this Court in the subsequent decisions in **Superintending Engineer -vs- Labour Inspector, Vellore** (Order dated 09.12.2003 in W.P. No. 17692 of 1999 etc., batch) and **A.Kajendran -vs- Presiding Officer, Central Government Industrial Tribunal, Chennai** (Order dated 04.02.2011 in W.A. No. 1881 of 2010) in that regard.

4. There is considerable force in the contentions raised by the Learned Counsel for the Petitioner assailing the impugned orders passed by the First Respondent. The limited scope of jurisdiction of the appropriate Government under Section 10 of the Act to determine as to whether dispute exists or is apprehended and then refer it to adjudication on merits has been reiterated in a series of decision



of the Hon'ble Supreme Court of India. It would be useful to highlight that the Hon'ble Supreme Court of India in **Telco Convoy Drivers Mazdoor Sangh -vs- State of Bihar** [(1989) 3 SCC 271] has explained that while exercising power under Section 10(1) of the Act, the function of the appropriate Government is administrative in nature and not a judicial or quasi-judicial one and the Government cannot delve into the merits of the dispute in carrying out that exercise and take upon itself the determination of the *lis*, which would certainly be in excess of the power conferred on it. Again in **M.P. Irrigation Karamchari Sangh -vs- State of M.P.** [(1985) 2 SCC 103], it has been restated that it has to be understood as a rule that adjudication of demand made by workmen should be left to the Tribunal to decide and the same could be refused only on the ground of patent frivolousness. In view of the dictum laid down in the aforesaid decisions cited by the Learned Counsel for the Petitioner, which squarely apply to the fact situation in this case, where there is no legal bar under any of the statutory provisions requiring the concerned workmen to resort to a specific legal remedy when options to pursue before any of the different fora is available, the only reason attributed by the First Respondent to decline reference that there is availability of other remedies, cannot be sustained.

5. In view of the foregoing discussion, it is not possible to uphold the Order in G.O. (D) No. 314, Labour and Employment (B1) Department dated 12.07.2012 passed by the First Respondent declining to refer the dispute raised by the Trade Union of the Petitioner for regularization of its member in the establishment of the Second Respondent and the review order in letter No. 30660/P1/2012-4 dated 14.03.2013 passed by the First Respondent, which are set aside and the matter is remitted to the First Respondent to pass fresh orders for referring that dispute for adjudication before the jurisdictional Labour Court under Section 10 of the Act. Such exercise shall be completed by the First Respondent expeditiously and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 30.09.2021 under written acknowledgment.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

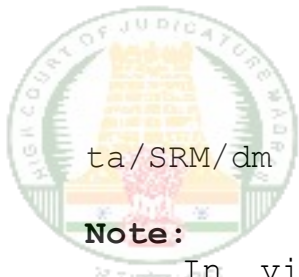
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



ta/SRM/dm

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Secretary,
Department of Labour and Employment (B1),
Fort St.George, Chennai.
- 2.The Management of Tamil Nadu State
Transport Corporation (Kumbakonam) Ltd.,
Karaikudi Region,
Rep.by its General Manager,
Maruthupathi,
Karaikudi.

Copy to

- 1) The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.
- 2) The Section Officer, Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-17474[F] dated 26/04/2021)

W.P. (MD) No.6381 of 2014

23.04.2021

CN(16.06.2021) 4P 6C