



WP No.3709 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-11-2022

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**WP No.3709 of 2017**

Minjur Paguthi Pothu Thozhilalar  
Sangam, Regn.No.153/TVR,  
Represented by its Secretary,  
BTR Ninaivagam,  
Athipattu Pudhu Nagar,  
Chennai-120.

..

Petitioner

VS.

1. Government of Tamil Nadu,  
Represented by its Secretary,  
Labour and Employment Department,  
Fort St. George,  
Chennai-9.
2. The Assistant Commissioner of Labour (Conciliation),  
Kuralagam,  
Chennai-108.
3. L&T Ship Building Ltd.,  
Represented by its Managing Director,  
Kattupatti Village,  
Ponneri Taluk,



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Thiruvallur District.

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Respondents

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Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to initiate forthwith action to punish the third respondent and their officials for the offence committed by them and contravening Section 33 of the I.D. Act by terminating the services of four workmen namely, M/s.Prakas, Desingh, Anand and Senthil and by altering their status and conditions of service adversely during the pendency of conciliation and without getting prior permission under Section 33(1)(a) of the Industrial Disputes Act, which is punishable under Section 31 read with Section 32 and award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents-1 and 2: Mr.G.Nanmaran,  
Special Government Pleader.

For Respondent-3 : Mr.S.Ravindran, Senior Counsel  
for Mr.S.Bazeer Ahamed.

### **O R D E R**

The Writ of Mandamus has been filed to direct the respondents 1 and 2 to initiate forthwith action to punish the third respondent and their officials for the offence committed by them and contravening Section 33 of the I.D. Act by terminating the services of four workmen namely, M/s.Prakas,



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Desingh, Anand and Senthil and by altering their status and conditions of service adversely during the pendency of conciliation and without getting prior permission under Section 33(1)(a) of the Industrial Disputes Act, which is punishable under Section 31 read with Section 32 and award costs.

2. The petitioner is Minjur Paguthi Pothu Thozhilalar Sangam, which is a registered Trade Union and affiliated to CITU.

3. The workmen-employees in various Industries and Establishments in the petitioner-establishment are the members of the petitioner-Union, which is established to protect the rights of the workmen.

4. The grievance of the writ petitioner is that the second respondent failed to act in consonance with the provisions of the Industrial Disputes Act, 1947 and the petition filed by the petitioner was not disposed of. Thus the petitioner is constrained to move the present writ petition.

5. A complaint was submitted regarding termination of four



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workmen by the third respondent-Company and thus the second respondent ought to have initiated appropriate action by invoking the provisions of the Industrial Disputes Act, 1947.

6. The learned Special Government Pleader, appearing on behalf of the respondents 1 and 2, objected the said contentions raised on behalf of the petitioner by stating that the second respondent submitted a failure report in respect of the conciliation proceedings and accepting the failure report of the second respondent, the Government issued orders in G.O.(D) No.209, Labour and Employment Department, dated 20.03.2018 and G.O.(D) No.210, Labour and Employment Department, dated 20.03.2018. Since the Government has already passed an order based on the failure report submitted by the Conciliation Officer, the petitioner-Sangam have to go for adjudication of the issues. Thus no further consideration is required in respect of the relief sought for in the present writ petition.

7. The learned Senior Counsel, appearing on behalf of the third



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respondent-Company, made a submission that the workmen referred by the petitioner-Sangam are not the employees of the third respondent-Company.

However, the Conciliation Officer-second respondent submitted his failure report, which was acted upon by the Government and orders were issued and thus, no further adjudication is required in respect of the relief sought for in the present writ petition.

8. The learned Senior Counsel, appearing on behalf of the third respondent, made a submission that initiation of penal action against the third respondent under Section 33 of the Act, would not arise in this case. Unless an adjudication was completed and a complaint is made to the Government, then alone the question of invoking the penalty clause would arise, but not otherwise. Thus the very relief sought for in the present writ petition is incorrect and not in consonance with the Scheme of the Industrial Disputes Act, 1947.

9. The learned counsel for the petitioner-Sangam in reply



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contended that under Section 31 of the Industrial Disputes Act, penalty can be imposed if any employer contravenes the provisions of Section 33, which is a punishable offence with imprisonment for a term, which may extend to six months or with fine, which may extend to Rs.1,000/- or with both. Therefore, the Conciliation Officer has to adjudicate the issue regarding the violation of the provisions of Section 33, if any, committed by the third respondent-Company.

10. Section 33 of the Act, contemplates conditions of service etc., to remain unchange under certain circumstances during the pendency of proceedings. It is not in dispute that the Conciliation proceedings were pending before the second respondent. The complaint made by the writ petitioner-Sangam is that four workmen, who were serving in the third respondent-Company, were terminated from service in violation of Section 33 of the Industrial Disputes Act. However, the third respondent denied the said contention by stating that those workmen are not their employees.

11. Adjudication of issue on merits are left open to the parties,



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which is to be done before the Competent Authorities-Forum. As far as the Scheme of Industrial Disputes Act, is concerned, no doubt violation of conditions of service during the pendency of the conciliation proceedings under Section 33 of the Act, if established, then the penalty clause can be invoked under Section 31 of the Act. In such circumstances, the Government would be the appropriate Authority is one aspect of the matter. Secondly, Section 33-A was inserted by Act 48 of 1950 and it is a special provision for adjudication as to whether the conditions of service etc. changed during the pendency of the proceedings. Thus the amended provisions significantly made a progress before invoking the penalty clause under Section 31 of the Act. Thus the Scheme of the Act, is to be understood as, in the event of violation of any of the provisions under Section 33 of the Industrial Disputes Act, then an aggrieved person shall go for an adjudication under Section 33-A of the Act and thereafter, the penalty clause may be invoked by filing an appropriate complaint before the Government, who is the Authority to initiate penal proceedings.

12. Presuming that if the penalty clause is invoked under Section



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31 of the Act, before exhausting Section 33-A, then the very object and purpose of amendment would be defeated and the amendment is intended to facilitate the parties to resolve the issues before invoking the penalty clause. Section 33-A of the Act, provides promoting the settlement of the industrial disputes. Mediation is also contemplated. Thus Section 33-A is intended to provide an opportunity to the employer and the workmen to mediate or arrive for a settlement or otherwise before approaching the Competent Authority under Section 31 of the Act, for the purpose of punishing the violators.

13. Thus in the event of violation of any of the conditions of service etc., under Section 33 of the Industrial Disputes Act, 1947, Section 33-A would be applicable and accordingly during the pendency of the impugned conciliation proceedings, a complaint is to be submitted in a prescribed manner, which is to be adjudicated for the purpose of arriving a settlement or otherwise and even after that, if it is not resolved, then Section 31 of the Act, may be invoked.



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14. This being the Scheme of the Industrial Disputes Act, this Court is of the considered opinion that the impugned conciliation proceedings in the present writ petition is now ended with the Government Order.

15. The learned counsel for the petitioner-Sangam contended that complaint regarding violations are pending before the second respondent and which is to be adjudicated. If at all any such complaint is pending before the second respondent regarding the violation of the provisions of the Act, the petitioner-Sangam is at liberty to approach the second respondent for the purpose of adjudicating the issues in the manner contemplated under the provisions of the Act. In the event of any approach by the petitioner-Sangam, the second respondent shall consider and take decision as expeditiously as possible.

16. As far as the relief sought for in the present writ petition is concerned, no further consideration is required, since the Government has already accepted the conciliation failure report and passed orders in G.O.(D) No.209, Labour and Employment Department, dated 20.03.2018 and G.O.(D)



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No.210, Labour and Employment Department, dated 20.03.2018 respectively.

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17. With the abovesaid liberty, the writ petition stands disposed of. However, there shall be no order as to costs.

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Index : Yes/No.  
Internet : Yes/No.  
Speaking Order/Non-Speaking Order.  
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To

1.The Secretary,

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Government of Tamil Nadu,  
Labour and Employment Department,  
Fort St. George,  
Chennai-9.

2.The Assistant Commissioner of Labour (Conciliation),  
Kuralagam,  
Chennai-108.

**S.M.SUBRAMANIAM, J.**

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