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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 15985 of 2017

Tamil Nadu Race Horse Maintenance Employees Union

Regn. No. 1797/Mds

Represented by its General Secretary

No.3/2, Race Park

Guindy, Chennai - 600 032.

... Petitioner

-vs-

1. The Government of Tamil Nadu

Represented by its Secretary

Department of Labour and Employment

Chennai - 600 009.

2. The Management

Tamil Nadu Race Horses Trainers Welfare Association

No.1, Race Course Road

Madras Race Club

Guindy, Chennai - 600 032.

3. Madras Race Club Stable Staff Welfare Trust

No.1, Race Course Road

Madras Race Club

Guindy, Chennai - 600 032.

4. The Madras Race Club

Represented by its Secretary

Post Box No. 2639

Guindy, Chennai - 600 032.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in connection with G.O. (D) No. 337 dated 09.06.2017, Department of Labour and Employment and quash the same.

For Petitioner : Mr. V.Prakash, Senior Counsel
For Mr.K.Sudalaikannu

For Respondents: Mrs. C.Sangamithirai,
Special Government Pleader (For R1)

Mr. R.Asokan (For R2 & R3)

Mr. Anand Gopalan,
For M/s. T.S.Gopalan & Co. (For R4)



O R D E R

Heard Mr. V.Prakash, Learned Senior Counsel appearing for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First Respondent, Mr. R.Asokan, Learned Counsel for the Second and Third Respondents and Mr. Anand Gopalan, Learned Counsel for the Fourth Respondents 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 387 persons, who claim to be its members, for regularization of service from the respective dates on which they had joined duty in the establishment of the Fourth Respondent as its direct employees. The request of the Petitioner for referring the said demand for adjudication under Section 10(1) of the Industrial Disputes, 1947, (hereinafter referred to as 'the Act' for short) was declined by the First Respondent by G.O. (D) No. 337, Labour and Employment (A1) Department dated 09.06.2017 for the reason that the concerned persons could have approached the jurisdictional Inspector of Labour under the relevant provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, while in service and they could not claim any relief after they had ceased to be in such service, which is assailed in this Writ Petition.

3. It is beyond cavil that when multiple legal remedies are available, the choice has to be left to the persons 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. The decision of the Hon'ble Supreme Court of India in Nirchiliya -vs- Management of Safire Theatre [(1991) 1 LLJ 111] followed by this Court in the subsequent decisions in Superintending Engineer, Vellore Electricity Distribution Circle -vs- Labour Inspector, Vellore (Order dated 09.12.2003 in W.P. No. 17962 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), fortifies this view taken.

4. That apart, 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



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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 its. 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 aforesaid legal position, when 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 reason attributed by the First Respondent to decline reference is clearly untenable and it is not possible to uphold the impugned order. In such circumstances, G.O. (D) No. 337, Labour and Employment (A1) Department dated 09.06.2017 passed by the First Respondent is set aside and the matter is remitted to the First Respondent to pass fresh orders following the prescribed procedure in accordance with law, for referring the dispute for adjudication before the jurisdictional Labour Court under Section 10 of the Act. The Petitioner and the Second to Fourth Respondents are not precluded from submitting any representation to the First Respondent to buttress their versions with supporting materials by 31.03.2022. The First Respondent shall expeditiously complete the aforesaid exercise and file report of compliance by 31.05.2022 before the Registrar (Judicial) of this Court.

In fine, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Maya

To

1.The Secretary

Department of Labour and Employment
Chennai - 600 009.

2.The Management

Tamil Nadu Race Horses Trainers Welfare Association
No.1, Race Course Road
Madras Race Club
Guindy, Chennai - 600 032.



3. Madras Race Club Stable Staff Welfare Trust
No.1, Race Course Road
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4. The Secretary,
The Madras Race Club
Post Box No. 2639
Guindy, Chennai - 600 032.

5. The General Secretary
Tamil Nadu Race Horse Maintenance Employees Union
Regn. No. 1797/Mds
No.3/2, Race Park
Guindy, Chennai - 600 032.

Copy to:

The Registrar Judicial,
High Court,
Madras.

+1cc to Mr.R.Asokan, Advocate SR. No.9142
+1cc to M/s.T.S.Gopalan & Co, SR. No.8823
+1cc to Government Pleader SR. No.9238

W.P. No. 15985 of 2017

JPL (CO)
PR (11/03/2022)