



WP(MD)Nos.8316 & 8317 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.8316 & 8317 of 2023

Tamilnadu Arasu Pokkuvarathu
Kalaga Tholilalar Pothunala
Amaippu Sangam,
through its Secretary
Plot No.1595/169-A,
Seenivasa Nagar 6th Cross Street,
Thondi Main Road,
Sivagangai – 630 561.

... Petitioner in both cases

Vs.

- 1.The Principal Secretary to Government,
Department of Labor and Employment,
Government of Tamil Nadu,
Fort St.George, Chennai – 600005.
- 2.The Commissioner of Labour,
Government of Tamil Nadu,
DMS Campus, Teynampet,
Chennai – 600 005.
- 3.The Deputy Commissioner of Labour,
(Conciliation),
Combined Labour Department Offices,
3rd Floort, No.2, Abdul Kalam Street,
Khajamalai Colony,
Trichirappalli – 620020.



WP(MD)Nos.8316 & 8317 of 2023

4. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Regional Station, New road,
Kumbakonam – 612 001.

(R4 is suo motu impleaded vide court
order dated 12.04.2023).

... Respondents in both cases

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the third respondent's impugned order vide Na.Ka.No.A/387/2019 & Na.Ka.No.A/387/2019, respectively, dated 01.08.2022 and quash the same and consequently direct the third respondent to file a report to the second respondent on the petitioner Union's complaint dated 14.06.2019 & 26.06.2019, respectively, for making a complaint under Section 34 of the Industrial Disputes Act and pass such further or other orders as this Court may deem fit and proper in the nature and circumstances of the case.

In both cases :

Petitioners : Mr.T.Sivakumar

For Respondents : Mr.K.Balasubramani,

Special Government Pleader for R1 to R3

Mr.K.Jagadeeshbalan for R4



ORDER

Heard the learned counsel on either side.

2. The petitioner union submitted two complaints alleging that unfair labour practice are being committed by the management and that they must be prosecuted under Section 34 of the Industrial Disputes Act. The complaints had been preferred under Section 25T and 25U and 34 of the Industrial Disputes Act. The provisions are as follows :

“25T.Prohibition of unfair labour practice.—No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

25U.Penalty for committing unfair labour practices.-Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

34.Cognizance of offences.—(1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government. (2) No Court inferior to that of 2 [a Metropolitan Magistrate or a Judicial Magistrate of the first class], shall try any offence punishable under this Act.”



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The learned counsel for the petitioner relies on the order dated 01.03.2018 made in WP(MD)No.3943 of 2018 to indicate the manner in which such complaints are to be dealt with. Para 3 of the order reads as follows :

“3.In the present case, the petitioner submitted a complaint to the 3rd respondent. The 3rd respondent must be ascertain the facts of the complaint and thereafter, send the report to the Government for taking further action in terms of the statutory provision. In the present case, instead of adopting such approach, the 3rd respondent has chosen to handle the matter as if it is an industrial dispute and that conciliation process in terms of Section 12 of the I.D Act must be adopted. He has therefore, given a letter dated 25.01.2018 in this regard. The 3 rd respondent has informed the petitioner that if the petitioner is not present during the conciliation talks, failure report will be sent under Section 12(4) of the I.D Act. The approach of the third respondent is entirely misconceived. It is not an industrial dispute, in respect of which conciliation process in terms of section 12 of the I.D Act should be adopted. This is a matter that pertains to a criminal prosecution under Section 34 of the I.D Act. The third respondent is to go through the complaint, ascertain the facts set out therein and thereafter submit a report to the first respondent/Government. It is for the Government to adopt the course of action as it deems fit.”

3. This writ petition has been filed with a grievance that the third respondent herein had not properly dealt with their complaints.



WP(MD)Nos.8316 & 8317 of 2023

That is why, they challenge the order dated 1.08.2022 issued by the third respondent herein. When the matter was taken up for admission on 12.04.2023, notice was ordered. In the meanwhile, the second respondent had passed an order dated 17.04.2023 directing the third respondent to re-enquire the matter under Section 34 of the Act. Technically, challenge to the impugned order has become infructuous because the petitioner has already got the remedy before the second respondent. However, the learned counsel for the petitioner wants the third respondent to conclude the enquiry within certain time frame. Therefore, the third respondent is directed to conclude the enquiry into the petition-mentioned complaints and dispose the same within a period of eight weeks from the date of receipt of copy of this order. The third respondent will bear in mind the mandate issued by the second respondent as well as the procedure indicated in the order of this Court dated 01.03.2018 made in WP(MD)No.3943 of 2018. It is made clear that I have not gone into the merits of the matter.

4. These writ petitions are disposed of. No costs.

26.06.2023

Index : Yes / No
Internet : Yes/ No



WP(MD)Nos.8316 & 8317 of 2023

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WP(MD)Nos.8316 & 8317 of 2023

G.R.SWAMINATHAN, J.

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WP(MD)Nos.8316 & 8317 of 2023

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