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W.P.Nos.24311 & 35940 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

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

W.P.Nos.24311 & 35940 of 2015

and

MP.No.1 of 2015 (2 Nos.) & 2 of 2015

W.P.No.24311 of 2015:

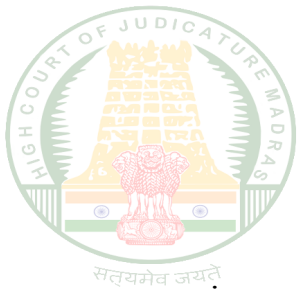
New Democratic Labour Front
Kamaz Vectra Motor Limited Branch,
Rep. by its President,
Reg.No.24/KRI, L-416, ASTC Old HUDCO,
Hosur – 635 109.

...Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by its Secretary,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.
2. Commissioner of Labour,
DMS Compound,
Teynampet, Chennai – 600 006.
3. Special Deputy Commissioner of Labour,
Officer of the Commissioner of Labour,
4th Floor, Teynampet, Chennai.
4. Management,
Kamaz Vectra Motor Ltd.,
No.7 & 8, SIPCOT, Hosur – 635 109.

...Respondents



W.P.Nos.24311 & 35940 of 2015

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the action of the 4th respondent in denying employment to the members of the Petitioner Union on and from 31.07.2015 on the ground that their services had been retrenched, is illegal, arbitrary in violation of Section 25N of the I.D. Act, 1947, in violation of Section 33 of the I.D. Act, 1947 and contrary to law and consequently direct the 4th respondent to engage the services of all the 45 members of the Petitioner Union, whose names are given in the Annexure to this affidavit, pay full wages, continuity of service and all other attendant benefits.

For Petitioner : M/s.Balan Haridas

For Respondents : Mr.K.Surendran, AGP, for R1 to R3
Mr.Sanjay Mohan,
for M/s.Ramasubramaniam & Associates, for R4

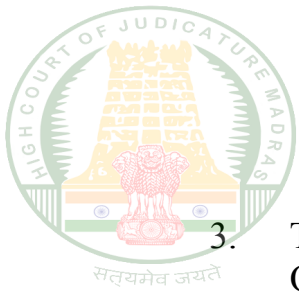
W.P.No.35940 of 2015:

M/s. Kamaz Motors Ltd.,
No.7 & 8, SIPCOT, Phase 1,
Hosur – 635 126.
Rep. by its Dy. General Manager (Industrial Relations)
Mr.I.Jacob Leander

...Petitioner

Vs.

1. Government of Tamil Nadu,
Labour and Employment Department,
Fort St. George, Chennai – 600 009.
2. The Commissioner of Labour,
DMS Compound,
Teynampet, Chennai – 600 006.



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3. The Special Deputy Commissioner of Labour,
Officer of the Commissioner of Labour,
DMS Compound,
Teynampet, Chennai.

4. Labour Officer,
No.18, Savatha Gownder Street,
Behind New Colombu Store,
Bangalore – Krishnagiri Road
Krishnagiri – 635 001.

5. New Democratic Labour Front
Kamaz Vectra Motor Limited Branch,
Rep. by its President,
Reg.No.24/KRI, L-416, ASTC Old HUDCO,
Hosur – 635 109.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records relating to the order Ref No.A4/36929/2015 dated 23.10.2015 passed by the 3rd respondent and to quash the same and consequently direct the 3rd respondent to receive the “Form R” submitted by the Petitioner.

For Petitioner : Mr.Sanjay Mohan,
for M/s.Ramasubramaniam & Associates

For Respondents : Mr.K.Surendran, AGP, for R1 to R4
M/s.Balan Haridas, for R5

COMMON ORDER



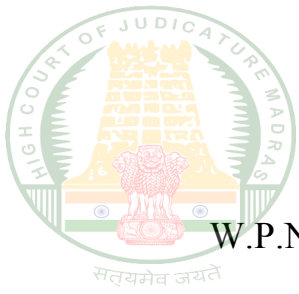
W.P.Nos.24311 & 35940 of 2015

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Though the Writ petitions have been listed separately, as the issue involved in both the writ petitions are interconnected, with the consent of the learned counsel appearing for the parties, these writ petitions are heard together and disposed of by way of this common order.

2. For brevity, the petitioner in W.P.No.24311 of 2015 and the 5th respondent in W.P.No.35940 of 2015 is hereinafter referred to as the 'Union' and the petitioner in W.P.No.35940 of 2015 and 4th respondent in W.P.No.24311 of 2015 is hereinafter referred to as the 'management'

3. The Workers Union has come up with W.P.No.24311 of 2015 seeking to declare the action of the management in denying employment to the members of the Union on and from 31.07.2015 on the ground that their services had been retrenched, as illegal, arbitrary, in violation of Sections 25N and 33 of the Industrial Disputes Act, 1947 and contrary to law and consequently direct the management to engage the services of all the 45 members of the Union, whose names are given in the Annexure to this affidavit, pay full wages, continuity of service and all other attendant benefits. On the other hand, the management has come up with



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W.P.No.35940 of 2015 seeking quashment of the order of the 3rd respondent

in Ref.No.A4/36929/2015 dated 23.10.2015, in and by which the "Form R" notice of intimation submitted by the management to the authorities concerned has been returned on the ground that they have employed more than 100 employees and to consequently direct the 3rd respondent to receive the "Form R" submitted by the Management.

4. Mr.Balan Haridass, learned counsel appearing for the Union contended that the action of the Management dated 31.07.2015 retrenching the members of the Union, while the conciliation proceedings are pending, that too without taking prior permission from the 3rd respondent under Section 33 of the Industrial Dispute Act, 1947 is highly condemnable. It is further contended that without taking prior permission from the 1st respondent, the Management has denied employment to the members of the Union and the same is contrary to Section 25N of the I.D. Act and therefore, prays for interference.

5. Mr.Sanjay Mohan, learned counsel appearing for the Management



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would contend that the impugned order of the 3rd respondent suffers from gross violation of the principles of natural justice and would add that despite the Management's submission during the conciliation proceedings that the company has much less than 100 workmen, the 3rd respondent never called for the relevant documents and had such an opportunity been given to the management, it would have produced all the material documents available with the Management to show that there were indeed only 49 workmen employed in its factory in the preceding 12 months. The learned counsel would further contend that the 3rd respondent, as a conciliation authority, in the retrenchment dispute under Section 12 of the ID Act, should investigate the dispute and in case a settlement is not possible, send a failure report to the Government for adjudication, however, the 3rd respondent had unilaterally arrived at a factual conclusion and returned the Form R submitted by the Management. It is also contended that if at all there is any alleged violation of any of the provisions of the ID Act, it could be decided only by way of adjudication by a Labour Court or Tribunal in a reference made under Section 10(1) of the ID Act and therefore prays for interference.

6. Heard the learned counsel for the parties and perused the materials available on record.



WEB COPY 7. The question that arises for consideration in these writ petitions is that whether the Management has scrupulously followed the procedures as contemplated under Industrial Disputes Act, while effecting retrenchment of its employees, pending conciliation proceedings. Though there are controverting submissions from either side, it is for the Labour Court/ Tribunal to decide the issue based on oral and documentary evidence for the alleged violation of any of the provisions of the Industrial Disputes Act, 1947. The prayer sought for by the management as well as the Union cannot be granted by this Court under Article 226 of the Constitution of India and the proper remedy available to the parties is only to approach the Labour Court.

8. In view of the above, this Court, without going into the merits of the case and without interfering with the order impugned, directs the 1st respondent to refer the dispute with regard to the retrenchment done by the management and whether the management had employed more than 100 persons or less than 100 persons during the period between 01.07.2014 and 31.07.2015. Upon such reference being made by the 1st respondent, the



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competent Labour Court shall decide the issue on merits and in accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order, after affording opportunity of personal hearing to both the parties.

9. With the above observations and directions, these Writ petitions stand disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

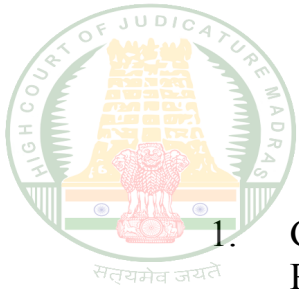
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NCC	: Yes / No
Speaking Order	: Yes / No
Index	: Yes / No

To:

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M.DHANDAPANI, J.

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