

(2010) 10 MAD CK 0300

In the Madras High Court

Case No : Writ Petition (MD) No. 4358 of 2008 and M.P. (MD) No's. 1 to 3 of 2008

The Director, Central Electrochemical Research Institute

APPELLANT

Vs

The Assistant Labour Commissioner (Central) and C.T. Sethuraman, General Secretary

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Industrial Disputes Act, 1947 — Section 12, 12(2)

Citation : (2010) 10 MAD CK 0300

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.P.S. Palanivelrajan, for the Appellant; R. Aravindan, for R1 and V.O.S. Kalaiselvam, for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is the Management of Central Electrochemical Research Institute at Karaikudi for short (CECRI). The workers employed through various contractors on contract basis filed several writ petitions before this Court. The union, which was affiliated to AITUC, raised an industrial dispute before the Conciliation Officer. The workers employed by various labor contract societies sought for regularization of the respective workmen in the Petitioner institute.

2. Pending the Writ Petition, notice was issued to the Petitioner/Electrochemical Research Institute. The contention of CECRI was that the provisions of the Industrial Disputes Act, 1947 will not apply to them. In the reply dated 26.03.2008, submitted before the Conciliation Officer, they had also stated that the members of the Petitioner union therein are not entitled to any relief as prayed for. A reference was made to the orders passed by this Court in W.P. (MD) Nos. 11332 of 2005, 9345 of 2006 and 6432 of 2007, wherein, by an order dated 03.03.2008, this Court held that the members of the trade unions are not

entitled for any relief in the writ petition and that does not prevent the workmen from raising dispute.

3. The contention that the contract workmen cannot move a writ Court is a well laid proposition as held by the Supreme Court in its judgment in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . But that does not mean that the workmen have no right to move appropriate labor Court. In the said case, all that the Supreme Court held was that the jurisdiction under Article 226 for determining the status of workmen. The workmen in case of sham and nominal contract have right to establish their relationship with the principal employer by raising a dispute before the Labor Court. In case of abolition of contract labor the course is open to the workmen they should seek abolition of contract labor in terms of Section 10 of the Contract Labor (Regulation and Abolition) Act, 1970.

4. In the present case, at the stage of conciliation of the said issue before the Labor Officer, since the management had called for fresh tenders for watching, sweeping and gardening work, they were directed to maintain status-quo pending the dispute. This is the only advice given by the Conciliation Officer, which he is bound to do in terms of the power vested on him u/s 4 r/w Section 12 of the Industrial Disputes Act, 1947.

5. The Conciliation Officer, in terms of Section 12(2) of the Industrial Disputes Act for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

6. Therefore, by the impugned advice, they were directed to maintain status quo. If the Petitioner/management is not inclined to go by the advice, they should have insisted the Conciliation Officer to send a failure report. In the absence of a Settlement either u/s 18(1) or Under 12(3) Settlement, the Conciliation Officer was bound to send a failure report u/s 12(4) to the appropriate Government, which, in the present case, is the Government of India. It is only the Government which can decide as to whether to refer the dispute to the Court or not. But, at the threshold, the Petitioner has come to this Court to forestall further action. It is rather a very unfortunate case where a Central Government Institute, without there being any legal justification and in the absence of any legal injury suffered by it, had taken such a step. Hence, the question of maintaining such writ petition will not arise.

7. Hence, the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.