



W.P.No.23164 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.23164 of 2018

and

W.M.P.Nos.27066 and 26067 of 2018

The Management of
DMC Automotive Private Limited
Rep., by its Managing Director,
No.5, Othappai Village,
Uttukottai Taluk,
Tiruvallur-602 023.

...Petitioner

Vs.

Mr.M.Surendhar

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of III Additional Labour Court, Chennai, made in I.D.No.145 of 2015 dated 08.06.2018 and quash the same.

For Petitioner : Mr.S.Silambanan, Senior Counsel,
assisted by Mr.M.Babu Barveen

For Respondents : Mr.V.Prakash, Senior Counsel,
for M/s.R.Gokulraj



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ORDER

This writ petition has been filed challenging the award dated 08.06.2018 passed in I.D.No.145 of 2015 by the III Additional Labour Court, Chennai, by and which award, the labour Court directed to reinstate the petitioner in service with full backwages, continuity of service and all other consequent and attendant benefits.

2.The Management company will be referred to as the petitioner and the workman will be referred to as the respondent.

3.The petitioner is a Company registered under the Companies Act, 1956. The petitioner is involved in the business of manufacturing of automobile spare parts, such as sheet metal components (engine gasket) plastic injection components, spray coating and audio panel assembly parts. The petitioner company supplies to the customers like Hyundai Motors India, with whom, it has business agreement.

4.The petitioner's case is that the respondent was engaged as a trainee vide



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appointment order dated 19.03.2013 and on 07.07.2014, the respondent was transferred to Quality Spray Department vide order dated 05.07.2014. But, the respondent refused to accept the transfer order and therefore, the petitioner informed the respondent's parents about the same and they sought some time to advise the respondent. Hence, no action was taken against the respondent. Since the respondent did not change his attitude, on 18.07.2014 the petitioner issued a memo directing the respondent to report in the quality department on or before 22.07.2024, failing which, he was threatened with suspension. The respondent did not report in the quality department. Therefore, he was suspended from 22.07.2014.

5. According to the petitioner, the respondent in his letter dated 25.07.2014 admitted the above facts and agreed to join quality department from 26.07.2014. Even though the respondent agreed to work in the quality department from 26.07.2014, instead of reporting in the general shift, he unilaterally reported in the second shift. According to the petitioner, the respondent was uncooperative and defied the orders of the petitioner.



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6. Because of the defiant attitude of the respondent, the petitioner was constrained to issue the termination order on 09.08.2014. The respondent raised the dispute against the termination order, which was registered in I.D.No.145 of 2015 before the III Additional Labour Court, Chennai. The labour Court, Chennai, allowed the said I.D, thereby setting aside the order of termination with further direction to reinstate the respondent with continuity of service, backwages and all other attendant benefits. Being aggrieved with the order of the labour Court, the petitioner has filed the above writ petition.

7. The respondent stated that the petitioner indulged in unfair labour practice by engaging workers like him as trainees, but in reality involved them in direct production work, thus depriving them of various labour welfare measures. The respondent stated that in the petitioner's factory at Thiruvallur more than 350 workers were employed and majority of them though designated as trainees were engaged in the direct manufacturing processes and only 13 workers were permanent. The respondent stated that he was subjected to test and interview for appointment and on the strength of his experience and performance in the tests and interview conducted by the Human Resources Manager of the petitioner Company,



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he was appointed vide order dated 19.03.2013. In the appointment letter of the petitioner, the respondent was designated as patrol in quality department. Though he was referred to as trainee, he was not imparted any training as stated therein. The respondent was engaged in the direct manufacturing process from the beginning in the quality department as a patrol. In short, according to the respondent, if the appointment order is read as a whole and the veil is lifted, it would be clear that the reference to the respondent is trainee was unfair labour practice. The respondent stated that he was transferred from quality department to rubber production department, which was only to harass him. It was further stated that the letter dated 25.07.2014 obtained from the respondent was illegal and not binding on the respondent. The respondent stated that the termination order was against the principles of natural justice and also in violation of Section 25N and 25 F of the Industrial Disputes Act, 1947 and hence illegal.

8.The learned counsel for the petitioner submitted that the finding of the labour Court that the appointment order dated 19.03.2013 of the petitioner company was sham and nominal, was unsustainable and was based on misconception of Ex.M.1, the appointment order. The learned counsel further



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submitted that the finding of the labour Court was based on assumptions and presumptions and therefore, deserved to be set aside. The learned counsel further submitted that the finding of the labour Court that the respondent was not a trainee but an employee and therefore termination order passed without conducting domestic enquiry, as per the standing orders was invalid and erroneous. The learned counsel therefore submitted that the award of the labour Court deserved to be set aside. The learned counsel for the petitioner relied on the judgment reported in 2007(1) SCC 214, in support of his case.

9.The learned counsel for the respondent on the other hand submitted that the findings of facts of the labour Court could not be overturned by this Court as the findings were based on evidence. The learned counsel further submitted that there was no error apparent on the face of the record or any perversity in the findings of the labour Court and hence the well considered award of the labour Court should not be disturbed. The learned counsel for the respondent relied the following judgments of the Hon'ble Supreme Court, in support of his case:

(i)In ***Trambak Rubber Industries ltd.,-Vs-Nashik Workers Union and Ors.***, reported in ***MANU/SC/0468/2003***.



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(ii)In ***Central Council for Research in Ayurvedic Sciences and Ors.,-Vs-***

Bikartan Das and Ors., reported in ***MANU/SC/0888/2023***.

(iii)In The ***Indian Hume Pipe Co., Ltd.,-Vs-The Presiding Office, Employees Provident Fund Appellate Tribunal and Ors.***, reported in ***MANU/TN/9422/2007***.

10.I have heard both the learned counsels and I have perused the materials placed on record.

11.It is to be first seen, whether the finding of the labour Court that Ex.M.1, the appointment order was sham and nominal one is valid. At the outset, I would like to quote the judgment of the Hon'ble Supreme Court in *Bikartan Das and Others*, on the scope of jurisdiction of the High Court under Article 226 of the Constitution of India. The relevant portion of the judgment is as follows:

"50.The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the



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evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

Keeping in view the above legal proposition let us now consider the merits of the case.

12. According to the learned counsel for the petitioner, the terms of the appointment order were very clear and therefore, the only conclusion that could be drawn is that the respondent was only a trainee and the finding of the labour Court to the contrary, was unsustainable.

13. On the other hand, it is the contention of the respondent that a bare reading of the appointment order would establish that the respondent was not a trainee. The labour Court, on the basis of the evidence on record and on appreciation of the oral evidence of MW1, concluded that Ex.M.1, the appointment order, was sham and nominal.

The relevant portions of Ex.M.1, are as follows:



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"This appointment letter is in reference to your application and subsequent tests and interview, for a suitable assignment.

DMC Automotive Pvt. Ltd., finds pleasure in employing you under the following terms and conditions of our company.

1.Date of Appointment:Your appointment will be effective from 19.03.2013.

2.Designation:You will be designated as patrol in Quality Department.

3.Remuneration:Your Gross salary will be Rs.6,500/-(Rupees Six Thousand Five Hundred Only) per month. The perquisites applicable to your grade are subject to alteration and amendment and you will be entitled to the same as per the rules of the company.

4.Place of posting:You will initially be posted at Thiruvallur - Othappai Village on your joining. You are liable to be transferred to another department, post or place either in India or abroad, either in existence or which may come in existence hereinafter either at the place of the posting or at any place where the Management may establish/open its branch/ office/ works latter on. Upon such transfer the rules & regulations of service applicable to such post or at the place of transfer will become applicable to you.

5 Confirmation:You will be on trainee for a period of two years and one year probation from the date of your joining, thereafter, if your services are found satisfactory, you will be confirmed in writing. If found necessary, trainee/probation period may be extended at the



sole discretion of the management or may be dispensed with earlier during the initial or extended period of trainee/probation. Unless confirmed in writing, you will be deemed as trainee after the expiry of initial or extended period of trainee/probation."

14.The crucial terms of the appointment order that support the respondent's case are:

(i)The respondent was selected based on his application, tests and interview.

(ii)The appointment letter speaks of designation of the respondent as patrol in quality department.

(iii)The remuneration is termed as Gross Salary and not stipend and it was also further stated that the perquisites applicable to the respondent's grade were subject to alteration and amendment.

(iv)The respondent was liable to be transferred to any department, post or place either in India or abroad etc.

(v)Confirmation, on which heavy reliance is placed by the petitioner states that the respondent would be on "trainee" for a period of two years and one year probation from the date of joining etc and further unless confirmed in writing he would be deemed as trainee after the expiry of initial or extended period of trainee/probation.



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WEB The petitioner taking refuge under Clause-v states that the respondent was only a trainee and not a regular employee.

15.From the terms of the appointment order, it is clear that though the respondent was referred to as a trainee, the other terms clearly show that the respondent was employed on regular basis with salary designation, transfer etc. The labour Court relied on the evidence of MW1 to draw an adverse inference against the petitioner for not producing documents showing the training imparted to the respondent as a trainee. Even the evidence of MW1 did not inspire the confidence of the Court in as much as MW1 clearly and categorically admitted in his cross-examination that only 13 workers were permanently employed out of large work force of 350 workers.

“2014 ஆம் ஆண்டு மனுதாரர் பணியில் இருக்கும் சமயத்தில் நிரந்தர தொழிலாளிகளின் எண்ணிக்கை 13 மற்றும் தான் இருந்தது என்று சொன்னால் இருந்திருக்கலாம், 2014 ன் போதும் சுமார் 300 முதல் 350 பேர் தொழிலாளர்கள் வேலை செய்கு கொண்டிருந்தனர்,



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16.From the reading of the evidence of MW1, it is very clear that the entire production activity in the company was carried out by the so-called trainees. Further, the evidence of MW1 was that the entire production department was run by the trainees, which is evident from the following deposition in cross-examination:

"Rubber Production Department பிரிவில் நிரந்தர தொழிலாளி என்று யாரும் வேலைபார்கவில்லை என்று சொன்னால் இருக்கலாம், Rubber Department-ல் வேலை செய்த அனைத்து தொழிலாளர்களும் trainees என்ற அடிப்படையில் நாங்கள் வேலைக்கு வைத்திருந்தோம் என்று சொன்னால் சரிதான், Rubber Production Department-ல் உள்ள ஆறு மெஷின்களுமே trainee என்று நாங்கள் நியமித்துள்ள தொழிலாளிகளால்தான் இயக்கப்பட்டு வருகிறது என்று சொன்னால் சரிதான்."

17.From the above evidence, it is clear that the entire Rubber Production Department was carried out by the workers, who were designated as trainees. The trainee is one to whom training is imparted. The specific evidence of the petitioner was that in the production department, there were no permanent



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employees, but only trainees. Therefore, in my view the finding of the labour Court that the appointment order was sham and nominal cannot be faulted. In this regard, the judgment of the Hon'ble Supreme Court in ***M/s.Trambak Rubber Industries Ltd.,-Vs-Nashik Workers Union & Ors.***, reported in ***2003(6) SCC 416*** can be usefully referred to. The relevant portion is extracted hereunder:

"It would be impossible to believe that the entire production activity was being carried on with none other than the so-called trainees. If there were trainees, there should have been trainers too. The Management evidently came forward with a false plea dubbing the employees/workmen as trainees so as to resort to summary termination and deny the legitimate benefits. On the facts and evidence brought on record, the conclusion was inescapable that the appellant-employer resorted to unfair labour practice."

18.Once it is found that the appointment order was sham and nominal, then the termination of the respondents services without following the procedure contemplated under the provisions of the Industrial Disputes Act, cannot be sustained. One other aspect that needs to be noted is that assuming that the respondent was not a permanent employee, even then, in my view the respondent would be entitled to notice and domestic enquiry as per the Standing Orders of the



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19. Clause-3 of the Standing Orders of the petitioner is relevant:

"3.Definition and Classification of Workmen:

The workmen will be classified as follows

1.Permanent

2.Probationer

3.Temporary

4.Casual

5.Trainee

6.Apprentice

7.Part time employment"

Clause 3.5 defines the trainee as follows:

3.5.A "Trainee" is one who is engaged either by an agreement or by appointment letter for a period not more than 24 calender months and on the basis of monthly stipend.

Therefore, the trainee is engaged on the basis of monthly stipend as already referred to above, the respondent was not appointed on a stipend, but was appointed on gross salary of Rs.6,500/-. Further, Clause 46 of the Standing Orders relates to the suspension of an employee pending enquiry into alleged misconduct

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and procedure for dealing with cases of misconduct.

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"46.Suspension of an employee pending enquiry into alleged misconduct and procedure for dealing with cases of misconduct:

46.1.None of the punishments mentioned in clause above will be enforced without first giving an opportunity to explain his/her case. A show cause notice/charge sheet will, therefore, invariably be served on him/her before award of any of these punishment.

46.2.If a punishment under clause of the above Stating Order is to be awarded, the workmen concerned should be served with a charge-sheet and an enquiry be set out.

46.3.Any workmen against whom an enquiry has to be held shall be given a charge sheet clearly setting forth the charges against him/her indicating there in the nature of offence or misconduct with full particulars thereof. The charge-sheet will invariably end up by calling upon the workmen to give his/her explanation in writing by a stipulated date. If his/her reply is not considered satisfactory by the management or if no reply is received within stipulated time or any extension thereof, an enquiry shall be held by an enquiry officer appointed for the purpose. During this enquiry the concerned workmen will be given all reasonable



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opportunities to defend him/her etc."

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20.Clause 46.3 of the Standing Orders states that any “workmen” against whom an enquiry has to be held shall be given a charge sheet clearly setting forth the charge against him/her indicating therein the nature of offence or misconduct with full particulars thereof. When under the Standing Orders, trainee category is also included in the definition of workmen then the respondent would be entitled to an enquiry before dismissal as per clause 46.3.

21.Admittedly, no charge sheet was issued, no enquiry was conducted in the present case. Therefore, viewed from any angle, the termination of the respondent, without serving the charge sheet and conducting domestic enquiry, is illegal and against the provisions of the Industrial Disputes Act and also the Standing Orders of the petitioner. Further in the appointment order it is clearly stated that the respondent would be bound by the rules and regulations including the conduct, discipline and appeal rules of the petitioner company.

22.The learned counsel for the petitioner relied upon the judgment of the



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Hon'ble Supreme Court in *National Small Industries Corpn. Ltd.,-Vs-*

V.Lakshminarayanan, reported in (2007) 1 Supreme Court Cases 214. I find that the facts of the case are distinguishable and therefore, I find that the reliance placed on the said judgment is misplaced.

23.I find no grounds for interference with the Award of the labour Court and hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

01.03.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

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Chennai.
- 2.The Management of
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