

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.7618 of 2014

and

M.P.No.1 of 2014

Orders Reserved on 01.12.2014 Judgment Pronounced on 01.12.2015

The Superintending Engineer,
Chennai Electricity District Circle/North,
Tamil Nadu Electricity Board/TANGEDCO
Anna Salai, Chennai 600 002. Petitioner

Vs.

1. The Presiding Officer,
The II Additional Labour Court,
Chennai - 600 104.

2. T.K.Angaiyan Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating C.P.No.14 of 2008 dated 03.09.2012, on the file of the first respondent and quash the same.

For Petitioner : Mrs.R.Varalakshmi

For Respondents : Mr.S.Ravi (for R2)
R1 - Court

* * * * *

ORDER

The short facts of the case are as follows:

The petitioner has stated that the second respondent herein has filed claim petition against the petitioner herein before the first respondent under Section 33-C(2) of the Industrial Disputes Act. He has further stated that the second respondent has stated in his claim petition that he was working as a contract worker, from 1989 till the date of claim petition under

one Mr.Sheshain contractor in Gummidipoondi Town Division, Thiruvallur District and that the grievance of the second respondent in his claim petition is that the Board has not granted him the Ex-gratia amount every year as paid to other workers in the Board. He has stated that the Board, on 31.03.1998, formed an Identification Committee to identify the contract labourers and pay their ex-gratia amount. After forming the committee the workers will make their presence personally and see to that their name is entered in the list for payment of the ex-gratia amount. Likewise the said committee was formed in the year 1998 and 2006. Further, the second respondent was not continuously working as contract labourer under the said Contractor Mr.Sheshian. If it were so, he would have appeared before the Identification Committee and made his name entered in the list. If at all he had worked continuously, he would have completed 480 days within the period of five years as required by the committee in 2006 and it would have given him an opportunity to appear before it even if he had been absent on the date of sitting of the committee.

2.He has further submitted that the second respondent has not come with clean hands before the court and he had not impleaded the said contractor i.e. Mr.Sheshian under whom he had said to be working from 1989, and therefore the non-impleading of the said contractor itself shows his malafide intention to grab the ex-gratia amount from the petitioner and hence the claim petition of the second respondent itself is not maintainable in law and on facts. He has further stated that the petitioner had contested the case before the first respondent vehemently and in the light of thirst to prove the case as vexatious the petitioner preferred a petition to re-call and re-open the cross-examination of PW-1, to cross examine the said witness based upon his documents and the petitioner had wanted to put the Administrative Officer, who was the then incharge of the workers and was present and assisting the Identification Committee, as the Board witness and he knows well about the persons who were working at that time during the year 1989 to 2006 and whether the second respondent was working under the said contractor from 1989. He has stated that the first respondent failed to consider the petitioner's request to re-examine the witness and passed the order on 03.09.2012 in C.P.No.14 of 2012, directing the petitioner herein to pay the ex-gratia amount of a sum of Rs.9,200/- to the second respondent herein. He has further submitted that the second respondent herein in order to receive the said amount, had filed the Execution Petition in E.P.No.203 of 2013 before the first respondent. Aggrieved by the action of the respondents, the above writ petition is filed.

3.The learned counsel appearing for the petitioner has submitted that the second respondent herein was working as a Contract Labourer under one Sheshain, who is a Contractor, from 1989. As such, there is no employer - employee relationship between the petitioner and the second respondent. Initially, the second respondent had appeared before the Identification Committee, but, he did not appear subsequently. He had not worked 480 days continuously within a period of five years as required by the Identification Committee. As such, the petitioner is not entitled to pay ex-gratia amount to the second respondent. Further, the first respondent had passed an ex parte order and hence the petitioner has filed a petition to reopen and recall the employee for cross-examination. Further, the Presiding Officer, without any documentary proof, had allowed the claim petition of the second respondent.

4.The learned counsel appearing for the second respondent has submitted that the second respondent was working as a Contract Labourer from 01.09.1989 under the petitioner / Management. But, the petitioner / Management had not paid ex gratia amount to the second respondent. Hence, he made several representations seeking ex gratia amount. Usually, the Management will pay ex gratia amount to their workers. As such, the second respondent is entitled to receive ex gratia amount of Rs.9,200/- for the period from 1989 to 2007. The second respondent had continuously worked with the petitioner / Management for more than five years. He had marked thirteen documents as exhibits, adduced oral evidence and established his case that he was the employee of the petitioner / Management.

5.On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the petitioner / Management had issued an Experience Certificate, which had been marked as Ex.P11, to the second respondent. Besides, the Chief Engineer and Junior Engineer had issued a memo to the second respondent. From these facts, it is clearly proved that there is a nexus between the petitioner / Management and the second respondent as employer-employee relationship. Hence, the second respondent is entitled to receive ex gratia amount and the same was ordered by the first respondent, which is executable against the petitioner / Management. In such circumstances, this writ petition is liable to be dismissed.

6.In the result, the writ petition fails and it is dismissed. The petitioner / Management is directed to pay the ex gratia amount of Rs.9,200/- to the second respondent, by way of Pay Order, within a period of thirty days from the date of receipt of a copy of this Order. After making the said amount, the petitioner / Management is directed to file a memo before

the first respondent in E.P.No.203 of 2013. The first respondent is directed to terminate the proceedings in C.P.No.14 of 2008 on filing such memo by the petitioner / Management. No costs. Consequently, connected miscellaneous petition is closed.

ub / krk

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To:

The Presiding Officer,
The II Additional Labour Court,
Chennai - 600 104.

Copy to:

The Superintending Engineer,
Chennai Electricity District
Circle/North Tamil Nadu Electricity Board/
TANGEDCO, Anna Salai, Chennai 2.

rsk(co)
prk16/12

W.P.No.7618 of 2014
and
M.P.No.1 of 2014

सत्यमेव जयते
WEB COPY