

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-09-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.25400 of 2015

and

M.P.No.1 of 2015

M/s.Enbest Pumps India Private Limited

Rep. By its Director

Sripriya Gowrisankar

362/3, Somaiyam Palaiyam

Thadagam Road

Coimbatore 641 108

.. Petitioner

vs

1. Deputy Director
Industrial Safety and Health
First Division
Coimbatore 641 012

2. Vilavai Ramasamy
District Secretary
Coimbatore District New
Democratic Labour Front
Door No.137, 1st Floor
K.R.R. Complex, Thadagam Salai
K.N.G. Puthur (Division)
Coimbatore 641 108

3. R.Mahendran
4. K.Saravanan
5. V.S.Selvakumar
6. K.Parameshwaran
7. A.Anantham
8. B.Babu
9. K.Thambankalathil
10. R.Bharathiraja
11. S.Saravanan
12. B.Manikandan
13. B.Rameshkumar
14. S.Mohanraj
15. D.Kalimurugan
16. N.Muruges
17. S.Suresh
18. S.Prakash

19.S.Ismail
20.C.Sathasivam
21.K.Kannan
22.M.Sivakumar
23.R.Thiruvenkada Lakshmi
24.V.Kalaivani
25.N.Latha Devi

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the first respondent to decide the issue whether there was employer-employee relationship between the petitioner and the respondents 3 to 25 in the first instance as a preliminary issue.

For Petitioner : Mr.S.Ravindran

For Respondents : Mr.V.Subbiah
Special Government Pleader
for R1
Mr.R.Sankarasubbu
for Mr.S.Parthasarathy
for RR2 to 25

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The deponent of the affidavit, who is the Director in the petitioner-Company, would state that it is engaged in the manufacture of pumps for domestic and agricultural purposes and having it's factory at No.362/3, Somayampalayam, Thadagam Road, Coimbatore. It is the claim of the petitioner-management that the respondents 3 to 25 were undertaking job works to the petitioner on piece rate basis and consequently, there was no employer-employee relationship between the petitioner-management and the private respondents 3 to 25; however, the private respondents had invoked the jurisdiction of the first respondent by filing individual Claim Application Nos.476-1/2015 seeking conferment of permanent status to them, and the petitioner-management has filed individual counter statement contending that the private respondents 3 to 25 were individual contractors carrying out the contract work at piece rate basis, as per the work order assigned to them, and as such, they are not employees under them.

3.The grievance expressed by the petitioner-management, is that instead of deciding the preliminary issue as to whether the respondents 3 to 25 were individual contract workers and whether there was employer-employee relationship, the first respondent is taking urgent steps to decide the issue as to whether the respondents 3 to 25 had completed 480 days of service for the purpose of

declaring them as permanent workmen and hence, it came forward to file this writ petition.

4.Mr.S.Ravindran, learned Counsel appearing for the petitioner, would submit that the primordial defence projected by the petitioner-management before the first respondent, is that the private respondents 3 to 25 were individual contract workers and there was no employer-employee relationship and therefore, the said issue is to be tried as preliminary issue and it is also open to the first respondent to frame the other issue as to whether the private respondents 3 to 25 had completed 480 days of continuous service so as to enable them to get permanent status in the services of the petitioner-management and hence, prays for appropriate orders.

5.Per contra, Mr.R.Sankarasubbu, learned Counsel appearing for the private respondents 2 to 25, would submit that the respondents 3 to 25 for the purpose of proving that they were in continuous employment with the petitioner-management for more than 480 days, had enclosed documents viz. Statements evidencing contribution of Provident Fund, Salary Certificate as well as Form 16-A, and only to stall the further proceedings/adjudication, the petitioner-management is now putting forth an untenable stand and hence, prays for dismissal of this writ petition.

6.This Court has carefully considered the rival submissions and also perused the materials placed before it.

7.It is the stand of the private respondents 3 to 25 that there existed employer-employee relationship and that all of them were in continuous service for more than 480 days and to evidence the same, they have also enclosed documents, in and by which, Provident Fund contribution has been made, and they have also been issued with the Salary Certificate as well as Form 16-A. However, it is the stand of the petitioner-management that the private respondents 3 to 25 were only contractors doing piece rate work and there was no employer-employee relationship.

8.This Court, after considering the rival submissions, is proposed to dispose of the writ petition in the following manner:-

(i) The first respondent is directed to frame the issue as to whether employer-employee relationship existed between the petitioner-management and the private respondents 3 to 25 and whether the said private respondents completed 480 days of service in two years, in terms of the provisions of the Tamil Nadu Industrial Employment (Conferment of Permanent Status to Workmen) Act, 1981, and any other issues as may be required in terms of the claim petitions as well as the counter statements, and decide the preliminary issue first and

depending upon the decision as to the existence of employer-employee relationship, the first respondent may proceed further and adjudicate the other issues on merits and in accordance with law, and is also directed to complete the entire exercise and pronounce the final orders within a period of two months from the date of receipt of a copy of this order.

(ii) The petitioner-management as well as the private respondents 3 to 25 are directed to extend their maximum cooperation to the first respondent for completion of the said exercise within the time stipulated by this Court.

9. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To:

The Deputy Director
Industrial Safety and Health
First Division
Coimbatore 641 012

+ 1 cc to Mr.S.Ravindran, Advocate SR 48533

+ 1 cc to Mr.S.Parthasarathi, Advocate SR 48060

+ 1 cc to Govt.Pleader High Court, Madras SR 48313

jsv(co)
prk11/9

W.P.No.25400 of 2015

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