

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
07.12.2015	11.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.14776 to 14781 of 2002,
W.P.No.15195 to 15200 of 2002 &
W.P.M.P.Nos.949,951,953,954,957 of 2009

W.P.No.14776 of 2002

M/s.Essay Exports,
Rep., by its Proprietrix,
Mrs.Shameem Abdulla,
No.B-17, SIDCO Industrial Estate,
M.M.D.A.Colony, Arumbakkam,
Chennai - 600 106. ... Petitioner (in all Wps)

Vs.

1.K.Ezhilarasan ...1st Respondent in W.P.14776/2002
K.David Raj ...1st Respondent in W.P.14777/2002
A.Justice ...1st Respondent in W.P.14778/2002
B.Nazeer ...1st Respondent in W.P.14779/2002
K.Pandian ...1st Respondent in W.P.14780/2002
M.Anwar ...1st Respondent in W.P.14781/2002
J.Chandrasekar ...1st Respondent in W.P.15195/2002
K.Kesavan ...1st Respondent in W.P.15196/2002
Nesaiyan ...1st Respondent in W.P.15197/2002
K.Dhanapal ...1st Respondent in W.P.15198/2002
D.Babu ...1st Respondent in W.P.15199/2002
P.Murthy ...1st Respondent in W.P.15200/2002

2.The Presiding Officer,
II Addl., Labour Court,
Chennai - 600 104. ... 2nd Respondents
(in all wps)

Prayer :-Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the second respondent/Labour Court relating to its common Award dated 27.08.2001, and passed in I.D.No.336 of 1995,332,338,330,337,329,333,331,460,335,461, and 334, of 1995

Respectively and quash the same as illegal and without jurisdiction and pass such further or other orders.

For petitioner .. Mr.V.Radhakrishnan Senior
counsel for
Mr.G.Palani

For Respondents .. Mr.S.N.Narasimalu for RR1 in all
W.Ps.,

R2 - Court

C O M M O N O R D E R

The petitioner Management has filed these batch of cases challenging the common award passed by the II Additional Labour Court, Chennai in I.D.Nos.329 of 1995, etc., batch dated 27.08.2001.

2. The first respondent in each of the Writ Petitions were the workmen in the petitioner Management and they raised individual disputes under Section 2A(2) of the Industrial Disputes Act, 1947, (I.D.Act), praying for a direction to the petitioner Management to reinstate them in service with continuity of service, backwages and other benefits.

3. The workmen contended that they were employees of the petitioner company from November 1993 and they were faithfully serving in the Management. The workmen were Tailors and were paid a sum of Rs.800/- as weekly salary, and they would receive not less than Rs.2500/- per month. Further, it was stated that the workmen were paid bonus and other benefits. Whiles, the Management took a decision to dismiss the workmen from service without any reasons. The Conciliation proceedings also failed and therefore, the Workmen raised the industrial disputes contending that the termination of their services was in contravention of Sections 25G, 25N and 25F of the I.D.Act.

4. The petitioner Management resisted the claim petition by filing a counter inter alia contending that the Workmen were temporary employees and engaged on piece rate basis and since the workmen committed some mistakes in stitching, they were asked to make corrections and redo the work, which they refused to do and engaged in violent behaviour and abruptly stop reporting for work. Therefore, it was contended that having stopped reporting for work by themselves, they are not entitled to raise the dispute before the Labour Court and it is an abuse of process of law.

5. Before the Labour Court, the workmen marked one document, Exhibit W-1 which is failure report submitted by the Conciliation Officer, dated 30.03.1995, and one Workmen Mr.P.Nasir, the petitioner in I.D.No.330 of 1995 was examined as the witness on the side of the workmen as WW-1. On the side of the Management one Thiru.Padmanaban was examined as MW-1 and 11 documents were marked as Exhibits M-1 to M11, of which Exhibits M1 to M9 were said to be letters written by individual workman to the Management and Exhibits M10 & M11, the reply given by the Management to the Conciliation Officer.

6. The Labour Court upon considering the oral and documentary evidence framed five questions for consideration namely, (i) whether the stand taken by the Management that the workmen abruptly stopped reporting for work, when they were called upon to correct the mistakes committed by them; (ii) whether the workmen were justified in raising the dispute when the Management was always ready and willing to offer employment to them and whether the stand taken by the Management is correct; (iii) whether the case as pleaded by the workmen that they were denied employment from 28.01.1995, is just and proper; (iv) whether the case pleaded by the workmen is true and whether they are entitled to any relief; (v) to what relief the workmen are entitled to.

7. After considering the entire facts and circumstances by common award, dated 27.08.2001, the Labour Court held that the petitioner Management had illegally terminated the workmen and ordered for reinstatement of the workmen with backwages and continuity of service. This common award passed by the Labour Court is impugned in this Writ Petitions.

8. Heard Mr.V.Radhakrishnan, learned Senior counsel assisted by Mr.G.Palani, learned counsel appearing for the petitioner and Mr.S.N.Narasimalu, learned counsel appearing for the respondent workmen and perused the materials placed on record.

9. Before examining the correctness of the award passed by the Labour Court, it is first necessary to consider the scope and jurisdiction of this Court while examining the correctness of an award passed by the Labour Court. The Constitution Bench of the Hon'ble Supreme Court in the case of Syed Yakoob vs. K.S.Radhakrishnan, reported in AIR 1964 SC 477, held that a Writ of Certiorari could be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the

dispute is opposed to principles of natural justice. It was further pointed out that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that the findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by a Tribunal, if it is shown to have been erroneously recorded by refusing to admit admissible and material evidence, or erroneously admitting inadmissible evidence or in cases where the finding of fact is based on no evidence, which would be an error of law and be corrected by a writ of Certiorari. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a Writ Court.

10. Bearing in mind the above legal principle, this Court proceeds to examine the impugned award. Firstly it has to be pointed out that the award has been passed after considering the oral and documentary evidence placed on record. The Labour Court clearly recorded a finding that the Management failed to prove that the circular dated 31.01.1995, has been served on the workmen and no document has been exhibited by the Management to establish the said plea and therefore, the finding of the Labour Court that the Management did not put the workmen on notice was found to be correct. If the Management has failed to produce necessary oral and documentary evidence to establish a stand, no fault can be attributed to the finding recorded by the Labour Court.

11. That apart, the findings rendered in respect of the competency of the Management witness also goes to show that the said witness was no longer an employee of the Management and not competent to depose on behalf of the Management. That apart, the Labour Court on facts came to the conclusion that it is a case of termination and not a case where the workmen refused to report for duty and consequently held that the termination of service of the workmen without following the procedure under the I.D., Act is erroneous. The reasons assigned by the Labour Court are cogent and the findings are based on the materials which was placed before the Court and the impugned award does not call for any interference, as it does not satisfy any of the exceptions carved out by the Hon'ble Supreme Court, while examining the correctness of the award of the Labour Court.

Accordingly, the Writ Petitions fail and they are dismissed.
No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

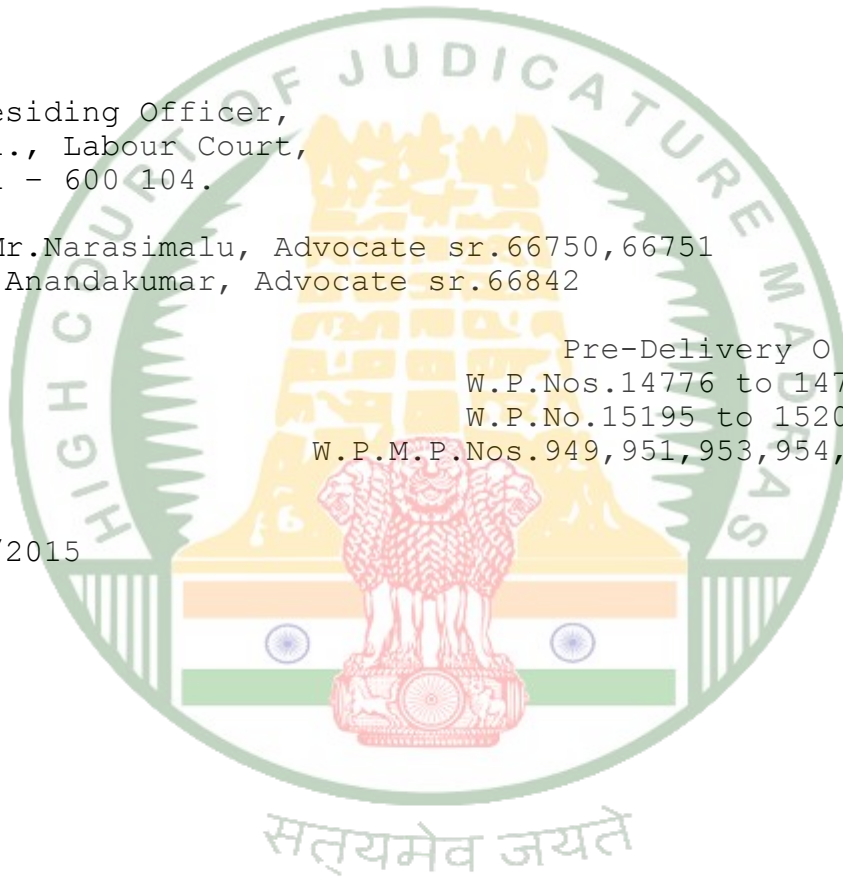
To

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

+2cc To Mr.Narasimalu, Advocate sr.66750,66751
+1cc to G.Anandakumar, Advocate sr.66842

Pre-Delivery O r d e r in
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vs[col]
srg 18/12/2015



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