

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.16847 OF 2004

ORDER:

This writ petition is filed questioning the Award of the 2nd respondent-Labour Court, Hyderabad passed in I.D.No.132 of 2001, dated 15.05.2004, which was published vide G.O.Rt.No.934, Labour Employment Training and Factories (LAB-I) Department, dated 10.06.2004.

2. Heard the learned counsel appearing for the petitioners and the learned Counsel appearing for the 1st respondent.

3. Originally, the 1st respondent herein moved an application before the 2nd respondent-Labour Court under section 2-A(2) of the Industrial Disputes Act against his termination order dated 01.03.2000 passed by the petitioner Corporation. The case of the 1st respondent is that he was appointed as non-technical Work Inspector in the 1st petitioner Corporation in the month of October, 1994 and he was posted at Pashamylaram and worked as such for six years on temporary basis and he was paid all allowances on par with other employees and subsequently, the petitioner Corporation without any notice terminated his services with effect from 01.03.2000 and he was not paid any compensation under Section 25 of the Industrial Disputes Act.

4. The contention of the petitioner Corporation is that the 1st respondent was never appointed as workman in the corporation at any time and there was no relationship of employer and employee between the petitioner corporation and the 1st respondent and therefore, termination of services of the 1st respondent does not arise.

5. Before the 2nd respondent-Labour Court, 1st respondent examined himself as WW 1 and produced Ex.W1 service certificate

issued by the Asst.Zonal Manager(E) of the petitioner Corporation dated 29.06.1998. On behalf of Corporation, the Zonal Manager and Assistant Executive Engineer were examined as MWs 1 and 2 before the Labour Court and documentary evidence is produced.

6. The 2nd respondent-Labour Court, after considering the oral and documentary evidence, concluded that the 1st respondent worked as non-technical work Inspector from 1st September, 1996 till his services were terminated and there was employee and employer relationship between the petitioner Corporation and the 1st respondent, and accordingly directed reinstatement of the 1st respondent into service without back wages, but with continuity of service and other attendant benefits.

7. Questioning the said award, the petitioner Corporation filed the present writ petition, contending that the 2nd respondent-Labour Court erred in holding that there is relationship of employer and employee between the petitioner Corporation and the 1st respondent; that the Labour Court ought to have seen that the 1st respondent has not filed any letter of appointment issued by the Corporation; that the Labour Court ought to have seen that the 1st respondent has not filed any pay slip to prove that he was drawing monthly remuneration on par with other employees; that the Labour Court failed to see that the 1st respondent has not examined any co-employee to establish his appointment, service and the alleged termination etc.; that the Labour Court ought to have seen that Ex.W1 Service Certificate is forged one, and even if it is genuine, it disproves the case of the 1st respondent that he was appointed in the month of October, 1994, as it reads that he was engaged from 01.09.1996 till 29.06.1998; that the Labour Court failed to see that as per Ex.W1, the 1st respondent was engaged on contract basis; and that the Labour Court has not given any specific finding that the services of the 1st respondent were terminated on

01.03.2000.

8. The point for consideration is whether there is any relationship between the petitioner Corporation and the 1st respondent, and whether the Award of the Labour Court suffers from any material infirmity, warranting interference?

Point:

9. The specific case of the respondent-workman is that he was appointed as a non-technical work inspector in the petitioner corporation to work at Pashamylaram, Medak District in October, 1994. His services were orally terminated on 01.03.2000. He further contends that he having passed SSC in 1992 and joined the petitioner Corporation.

10. The plea of the petitioner Corporation is one of complete denial. According to them, the petitioner never worked with them either on contract basis or under any other nature of employment. The petitioner Corporation denies that the workman was appointed in October, 1994 and was orally terminated on 01.03.2000.

11. When the relationship of Master and Servant is totally denied, it is incumbent on the part of the workman to *prima facie* show that he has been in the employment of the employer for the period claimed so as to invoke the provisions of the Industrial Disputes Act and the consequential benefits. Once the workman places on record some element of evidence about his employment, the same can be presumed to be true unless contrary is established by the employer.

12. In the instant case, the workman in I.D.No.132/2001 examined himself as WW 1 and he reiterated that he was engaged on contract basis as non-technical work inspector from 01.09.1996 and in proof thereof he produced Ex.W1. Except for producing Ex.W1 and his self-serving statement, the workman has not placed any evidence of whatsoever nature to show that he was engaged by the petitioner Corporation. Ex.W1 reads as under:

“TO WHOMSOEVER THIS MAY

CONCERN

The services of Sri P.Balaswamy have been provided on contract basis as non-technical work inspector (with SSC qualification) for the period from 1st September, 1996 to till to date assist during execution of civil works like WOM Roads and storm water drains group-I and II at IDA Pashamylaram, Phase-III, 50000 gallons sump, Ph-III Pashamylaram, store shed-cum-section office Ph-III, Pumping main rom 9 nos bore wells, Ph-III, Pashamylaram service centre-cum-Administn. Buldg. At Ph-III, Oil seed godowns at Narsapur, Jogipet & Habnoora etc.

He is reliable hard working and sincere.

Sd/- Assistant Zonal Manager (E)”

The said certificate does not contain any date of issuance and does not contain any seal of the Corporation and it is only issued on the Letterhead of the writ petitioner Corporation. It was issued by the Assistant Zonal Manager(E) and it is to the effect that the workman was in the employment of the petitioner Corporation from 01.09.1996 till date. Underneath the signature of the Assistant Zonal Manager (E), the date is mentioned as 29.06.1998.

13. Ex.W1 do not establish that it is the respondent-workman who was engaged by the petitioner Corporation on contract basis. It is not a salary certificate or a service certificate. It looks like a general conduct certificate. It was issued by the Assistant Zonal Manager(E), who is not even the Authority competent to issue any such certificate.

14. On behalf of the petitioner Corporation, before the Labour Court, the Zonal Manager was examined as MW 1 and the Executive Engineer, who had issued Ex.W 1 in the capacity of Assistant Zonal Manager was examined as MW 2. Both of them denied the authenticity of Ex.W1. Even if Ex.W1 is taken as having been issued by MW 2, it does not in any way establish that the respondent-

workman worked with the Corporation for the period from 01.09.1996 till 29.06.1998. According to MW 2, he worked on deputation as Assistant Zonal Manager till 10.06.1998. By the time of issuing Ex.W1, MW 2 was not the Assistant Zonal Manager. In addition to that the contents of Ex.W1 disprove the claim of the workman. It may be recalled that the specific case of the respondent workman is that he was appointed as non-technical work inspector in October, 1994 and orally removed on 01.03.2000. Ex.W1 shows that the workman worked in the corporation from 01.09.1996 till 29.06.1998. Neither the date of commencement of the employment nor the date of his termination tallies with the claim of the respondent-workman.

15. Another aspect which needs to be placed on record is about the age of the respondent-workman. The specific contention of the workman is that he completed his SSC in the year 1992. According to workman, he was appointed as non-technical work inspector in October, 1994. In the ID filed by the workman before the Labour Court in the year 2001, the workman has shown himself to be aged about 25 years. Therefore, on the date when the workman is said to have been joined as non-technical work inspector in the petitioner corporation, it is doubtful as to whether he was major having completed the age of 18 years.

16. The learned counsel appearing for the writ petitioner corporation contends that in the absence of there being any reasonably acceptable evidence to show that the respondent-workman worked in the petitioner corporation, it cannot be held to be so and the learned Labour Court has clearly erred in concluding that the workman was in the employment of the Corporation for the period claimed by him. The learned counsel for the petitioner corporation relied upon a decision of this Court in ***Deccan Chronicle, Secunderabad v. G.Pedda Reddy***^[1] which supports the case of the writ petitioner Corporation. Para-17 of the said judgment reads as under:

“From the evidence on record, it is clear that the

1st respondent-workman miserably failed to establish that the writ petitioner appointed him Security Guard. As there is no relationship of employer and employee, the question of termination does not arise. It is not proper on the part of the Tribunal in accepting the surrender letter as termination of the 1st respondent-workman to Annapurna Security Services as he is alleged to have misbehaved with the Management Partner of the writ petitioner. Ex.M2, dated 22.11.1991 cannot be treated as an order of termination. Therefore, from the evidence on record, the Tribunal gave an incorrect finding. Hence, the award, dated 20.4.1995 in I.D.No.392 of 1993 passed by Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad dated 20.4.1995 is liable to be set aside and it is accordingly quashed.”

17. The contention of the writ petitioner corporation is also substantiated by a decision of the Hon'ble Supreme Court in

Rajasthan State Ganganagar S.Mills Ltd. V. State of Rajasthan^[2]

wherein under para-6 it has been held as under:

“It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in *Range Forest Officer v. S.T.Hadimani* {(2002) 3 SCC 25}. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed. Even if that period is taken into account with the period as stated in the affidavit filed by the employer, the requirement *prima facie* does not appear to be fulfilled. The following period of

engagement which was accepted was 6 days in July 1991, 15-1/2 days in November 1991, 15-1/2 days in January 1992, 24 days in February 1992, 20-1/2 days in March 1992, 25 days in April 1992, 25 days in May 1992, 7-1/2 days in June 1992 and 5-1/2 days in July 1992. The Labour Court demanded production of muster roll for the period of 17.6.1991 to 12.11.1991. It included this period for which the muster roll was not produced and came to the conclusion that the workman had worked for more than 240 days without indicating as to the period to which period these 240 days were referable.”

18. On the other hand, the learned counsel appearing for the respondent-workman relied upon a decision of the Hon’ble Supreme Court in ***Raj Kumar Dixit v. Vijay Kumar Gauri Shanker, Kanpur Nagar***^[3]. Upon perusing the facts of the said case, it is noticed that the same are altogether different from the point in controversy in the present writ petition. The facts of the case before the Hon’ble Supreme Court were that the workman was working as Accounts Clerk in the establishment and when he abstained for some days and demanded for outstanding salary, the workman was terminated by the employer. The challenge in the said case is with regard to the nature of termination of the workman.

19. The learned counsel for the respondent-workman also relied upon a decision of the Hon’ble Supreme Court in ***Sudarshan Rajpoot v. U.P.SRTC***^[4]. In the said case the fact that the workman was working in the corporation was not denied, but the point in controversy is as to whether it was contractual appointment or a regular appointment. Considering the material on record, the Hon’ble Supreme Court held that the workman was permanent workman but not a contract employee and that therefore, his termination was set aside. The admitted evidence in that case was that the workman was appointed as a driver in the corporation and continuously worked from 11.03.1977 till 29.07.2000, and therefore, he has rendered continuous

service of more than 240 days. The said authority is also not relevant to the facts of the present case.

20. As already stated, in the instant case, the relationship of Master and Servant has been consistently denied by the petitioner corporation. The respondent-workman failed to produce any cogent evidence to show that he worked as a non-technical work inspector from October, 1994 till 01.03.2000 on which day he is said to be orally terminated. Neither an order of appointment nor any pay-slip is produced nor any oral evidence is adduced to show or to say that the respondent-workman worked in the petitioner corporation for 6 (six) long years. As stated above, the only document that is relied upon by the respondent-workman, which found favour with the Labour Court is Ex.W1 and it do not in any way show that the respondent-workman worked in the petitioner corporation and hence the same cannot be believed for the reasons discussed above.

21. In view of the foregoing discussion, the order of the Labour Court cannot be sustained and the same is liable to be set aside.

22. Accordingly, the Writ Petition is allowed. The impugned Award of the Labour Court dated 15.05.2004 is set aside. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 16.12.2015

Dsr

[\[1\]](#) 2004(4) ALD 382

[\[2\]](#) (2004) 8 SCC 161

[\[3\]](#) LAWS(SC)-2015-5-31

[\[4\]](#) (2015) 2 SCC 317