

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35723 of 2003

N.Balu Chettiar

... Petitioner

vs

1.The Presiding Officer,
I Additional Labour Court, Chennai,
High Court Buildings,
Chennai - 600 104.

2.P.M.Govindaraju Chettiar & Co.,
Jaggery & Tamarind Merchants,
No.27, Kandappa Chettiar Street,
Chennai - 600 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records and to quash the order of the I Additional Labour Court, Chennai dated 19.02.2001 passed in C.P.No.214/98 and further direct the respondents to reinstate the petitioner in the service.

For Petitioner : Mr.B.Vijayakumar

For Respondents: Mr.V.G.Sureshkumar for R2

सत्यमेव जयते

O R D E R

Heard the learned counsel appearing for the petitioner as well as the respondent.

2.The brief facts are as follows. According to the petitioner, he joined the service of the second respondent management as an Assistant in the year 1977 and he was in continuous service till 04.02.1998. As against the retrenchment order, the petitioner raised an industrial dispute before the first respondent for continuity of service under Section 25(F) of the Industrial Dispute Act.

3.Per contra, the learned counsel appearing for the respondents would submit that the petitioner was not an employee of the management and he has not received any monthly salary from the management and he has only worked as a Katukaarar and the petitioner did his duty to the customers, for which he received the wages only from the customers. Hence, he is not coming under the definition of workmen of Section 2(A) of the Industrial Disputes Act. The institution of the claim under the Industrial Dispute Act does not arise, wherein the petitioner is not coming under the category of workmen and the claim petition itself is not maintainable under Section 33-C(2) of the Industrial Dispute Act.

4.The learned counsel for the respondents also relied on the Judgment in the case of D.Krishnan and another /Vs/ Special Officer, Vellore Co-operative Sugar Mill and another reported in (2008) 7 Supreme Court Cases 22 is extracted hereunder:

"12.We have considered the arguments advanced by the learned counsel for the parties. The fact that proceedings under section 33-C(2) are in the nature of execution proceedings is in no doubt, and such proceedings presuppose some adjudication leading to the determination of a right, which has to be enforced. Concededly there has been no such adjudication in the present case. It will be seen that the reliance of the appellant workmen is exclusively on documentary evidence placed on record which consisted primarily of the punch time cards and the representations that had been filed from time to time before the respondents. It is also true that the claim raised by the appellants had been hotly disputed by the respondents. The question that arises in this situation is whether reliance only on the documentary evidence was sufficient to prove the case".

5.The first respondent Tribunal, after considering the elaborate discussion and since no material was placed before the Industrial Tribunal, for substantiating the claim that the petitioner is workmen as defined in the Section 2(A) of the Industrial Dispute Act, rejected the claim of the petitioner.

6.When there is no documentary proof to show that the petitioner was employed in the second respondent management. Hence the order of Labour Court did not warrant any interference.

7.In the light of the above, this Court is not inclined to interfere with the order. Hence, the Writ Petition will stand dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
I Additional Labour Court, Chennai,
High Court Buildings,
Chennai - 600 104.

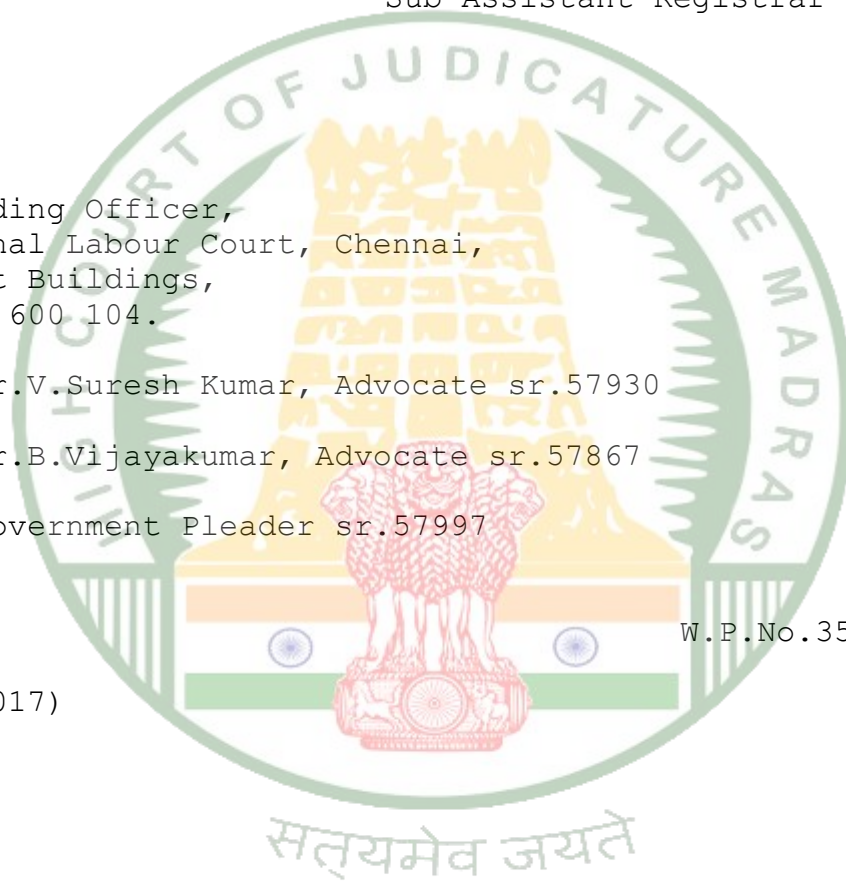
+1cc to Mr.V.Suresh Kumar, Advocate sr.57930

+1cc to Mr.B.Vijayakumar, Advocate sr.57867

+1cc to Government Pleader sr.57997

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ss(5/10/2017)



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