

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-08-2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WRIT APPEAL Nos.1635 TO 1641 OF 2018

1 P.GIRIJA ... PETITIONER in WA No.1635 of 2018
2 C.AMUDHA ... PETITIONER in WA No.1636 of 2018
3 BANUMATHI ... PETITIONER in WA No.1637 of 2018
4 K.MALAR ... PETITIONER in WA No.1638 of 2018
5 V.AMMANI ... PETITIONER in WA No.1639 of 2018
6 R.SAMUNDESWARI ... PETITIONER in WA No.1640 of 2018
7 T. VIJAYALAKSHMI ... PETITIONER in WA No.1641 of 2018

-VS-

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

2.The Management of WIMCO Ltd.,
Regional Office & Factory,
Thiruvottiyur,
Chennai - 600 019.

...

Respondents

Appeal under Clause 15 of the Letters Patent, against
the order dated 12.12.2014, passed in W.P.No.19752 of 2004 on
the file of this Court.

For appellant : Mr.V.Prakash,
Senior Counsel,
Mr.Sudalaikannu
R1 Labour Court.

COMMON JUDGMENT

(Judgment of the Court was delivered by Huluvadi G.Ramesh,J.)

Heard the learned Senior Counsel appearing for the appellants.

2. These Writ Appeals are directed against the common order, dated 12.12.2014, passed in W.P.Nos.19752 to 19758 of 2004, by a learned single Judge, dismissing the claim of the writ petitioners, who are the appellants herein, to reinstate them in service in the second respondent management with continuity of service, backwages and all attendant benefits. Writ Petitions were filed against the awards passed by the first respondent Labour Court, dismissing the claim of the appellants.

3. The learned single Judge, having considered the rival submissions of the parties, and also relying on a decision of the Supreme Court in International Airport Authority of India v. International Air Cargo Workers' Union and Another, 2009 (13) SCC 374, has explained the circumstances under which a contract is a sham/nominal and camouflage and the test to be applied to decide the issue involved, quoting paragraphs 37,38 and 39 of the said decision. We feel it appropriate to refer to paragraphs 19 and 20 of the order of the learned single Judge, which read as under :

"19. However, this court is of the view that considering the nature of the work done by the women workers and considering other factors as made out by way of the materials available herein, the claim of the petitioners is not substantiated. The learned counsel for the respondent management has cited the decision of the Apex Court reported in (2009) 13 SCC 374, (International Airport Authority of India v. International Air Cargo Workers' Union and another), wherein, the Apex Court has in paras 37 to 39 clearly explained the circumstances under which the contract was a sham/nominal and camouflage and regarding the test to be applied to decide the issue involved herein. For better appreciation, the same are extracted hereunder:

'37. The industrial adjudicator can grant the relief sought if it finds that contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays

the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direction and control over the employee. But where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise.

38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.'

20. Applying the same test as above stated, this Court is of the view that the employer of the petitioners was the immediate

contractor and the respondent management is only the principal employer and the assignment or allotment of the work to be done by the contract labourer was on the contract basis and there is absolutely no evidence to show that the same is sham and paper arrangement between the contractor and the respondent management and there was no direct employer and employee relationship between the respondent management and the petitioners and the findings of the Labour Court to that effect in the impugned award hence call for no interference by this court."

4. Following the ratio laid down by the Apex Court in the case of International Airport Authority of India, referred to above, the learned single Judge has concluded that the employer of the appellants/workmen is the immediate contractor and the respondent management is only the principal employer and that the assignment or allotment of work to be done by the contract labour is on contract basis and there is absolutely no evidence to show that the transaction is sham and paper arrangement between the contractor and the respondent management. The learned single Judge also held that there is no direct employer-employee relationship between the respondent management and the appellants and that the findings of the Labour Court to that effect in the impugned awards called for no interference. Accordingly, the learned single Judge has concurred with the finding rendered by the Labour Court. Added to the above, the appellants have also not established in the industrial adjudication that the contract is a sham/nominal and camouflage. Further, it is proved that there exists no relationship of employer and employee relationship between the appellants and the second respondent management. As such, we do not see any scope for interference with the order passed by the learned single Judge.

5. Writ Appeals are, therefore, dismissed. However, if any benefits are to be derived from the employer, namely, contractor, then, it is for the appellants to work out their remedy, in which event, the contractor shall be liable to settle such benefits. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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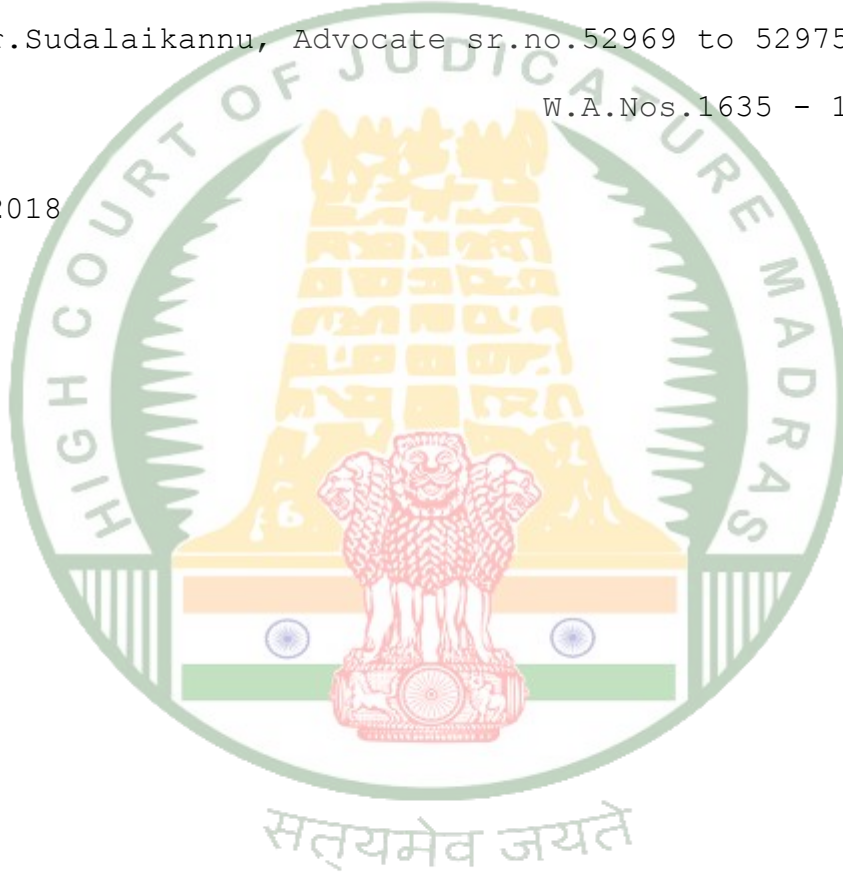
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2.The Section Officer,
Judicial Section,
High Court, Madras.

+7cc to Mr.Sudalaikannu, Advocate sr.no.52969 to 52975

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