

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A. No.357 of 2016

and C.M.P.No.5359 of 2016

The Management,
Nicholas Piramal India Ltd.,
Post Box No.5,
Ennore, Chennai 600 057

...Appellant/Respondent

Vs.

1. The Presiding Officer,
1st Additional Labour Court,
Chennai

...R1/R2

2. V.Dayanidhi

...R2/Petitioner

Writ Appeal is filed under Clause 15 of the Letters Patent against the Order of this Court dated 24.02.2016 made in M.P.No.2 of 2015 in W.P.No.34614 of 2013.

PRAYER IN MP.2 OF 2015:

To direct the 1st Respondent/Petitioner to pay last drawn wages of Rs.2,800/- to the petitioner under Section 17 B of I.D.Act, (in MP.2/15) pending WP.34614 OF 2013 respectively.

PRAYER IN WP.34614 OF 2013:

Writ of Certiorari or any other appropriate Writ, order or direction calling for the records relating to the award passed by the first respondent herein dated 18.07.2013 made in I.D.No.249 of 2005 and quash the same.

For Appellant : Mr.R.Parthiban

For Respondents: Mr.S.T.Varadarajulu for R2
R1 - Court

JUDGMENT

[Judgment of the Court was made by P.VELMURUGAN, J.]

This Writ Appeal is filed against the Order passed by the writ court dated 24.02.2016, in M.P.No.2 of 2015 in W.P.No.34614 of 2013.

2. The facts of the case which leads to the appeal is that the second respondent was working as a cleaner in the Chemical Industrial Establishment / appellant company. The second respondent who had rendered services for a period of 240 days continuously, shall be deemed to be in a continuous service for a period of one year for the purpose of Chapter V A of the I.D.Act, 1947. The juniors who were appointed later were made permanent but the senior was treated as a contract labour which is in violation of the Contract Labour Regulation and Abolition Act, 1970. The second respondent was recruited by the Principal Employer and not by any agency for cleaning work, within the premises, since the cleaning work was entirely prohibited from the employment of contract labour system and Sub-Section (1) of Section 10 of Contract Labour Regulation and Abolition Act, 1970. The second respondent was not a worker employed by an agency or any contractor as alleged. Since the second respondent was terminated by the appellant, the second respondent raised an Industrial Dispute before the I Additional Labour Court, Chennai in I.D.No.249 of 2005 to direct the appellant / management to reinstate him in service with continuity of service, full back wages and all other attendant benefits.

3. The Labour Court passed an award on 18.07.2013 directing the management to reinstate the second respondent in service with 50% of back-wages, continuity of service and all other attendant benefits. The appellant has challenged the award passed by the Labour Court by filing the writ petition. While admitting the writ petition in WP.No.34614 of 2013, the learned Single Judge, granted an interim stay subject to the condition that the appellant should deposit 50% of back-wages to the credit of I.D.No.249 of 2005. The said condition was complied with during the pendency of the writ petition. In the above writ petition, the second respondent filed a petition in M.P.No.1 of 2015 to vacate the interim stay granted on 19.12.2013 in MP.No.1 of 2013, and MP.No.2 of 2015 claiming last drawn wages of Rs.2,800/- under Section 17 (B) of the Industrial Disputes Act. He has also filed an affidavit in support of MP.No.2 of 2015 stating that from the date of denial of employment i.e., from 07.08.2004, the second respondent was out of employment and even after his best effort, he could not

get any employment and he was denied employment. After denial of employment, his family was driven to poverty and his family were starving because of unemployment. After taken on file the MP.No.2 of 2015, the management filed counter. After hearing the rival submissions made by both the counsel, Writ Court allowed the MP.No.2 of 2015 and ordered wages under Section 17 (B) to be paid from the date of filing of the writ petition. Feeling aggrieved with the orders passed by the learned Senior Single Judge in MP.No.2 of 2015 in writ petition in W.P.No.34614 of 2013, the management has filed the present appeal.

4. Heard both sides and perused the records available.

5. According to the appellant, the second respondent was working as sweeper on behalf of a contract company owned by Mr.Mani, who is a contractor of the Chennai Corporation and he was working for nearly 10 years. Further, it is stated that M/s.Fevicom Corporation Services Private Limited entered into an agreement with Chennai Corporation to clean the streets in Tiruvottiyur and the workman was working as a sweeper under the Contract company in Zone No.1 in Ward No.14 and he was getting a remuneration of Rs.220/- per day. Suppressing the said fact and in order to extract money from the appellant, the second respondent has filed the petition in M.P.No.2 of 2015 in the above writ petition which is against the principles laid down under Section 17 (B) of the Industrial Disputes Act.

6. It is not in dispute that the second respondent was doing cleaning works under the appellant company and he was working for more than 240 days in the year and he was terminated from service and he was not given any employment subsequently. Therefore, the second respondent challenged the termination order passed by the appellant before the I Additional Labour Court, Chennai in I.D.No.249 of 2005. The Labour Court passed an award for reinstatement of the second respondent. The appellant / management challenged the award passed by the Labour Court in ID.No.249 of 2005 dated 18.07.2013. Challenging the award of the Labour Court, the appellant filed a writ petition before this Court in W.P.No.34614 of 2013. While admitting the writ petition, the Writ Court has directed the appellant to deposit 50% of the back-wages awarded by the Labour Court. The second respondent entered appearance and filed two applications in the above writ petition, one to vacate the interim stay granted by the Writ Court on 19.12.2013 and another application in MP.No.2 of 2015 claiming last drawn wages of Rs.2800/- under Section 17 (B) of the Industrial Disputes Act stating that he is out of employment and therefore, as per Section 17 (B) of the Industrial Disputes Act, during the pendency of the writ proceedings, he is to be paid last drawn wages.

7. The specific case of the appellant is that there is nothing on record to show that the second respondent was working with the contractor for ten years. Even there is no record to show when the contract was awarded to the said company. The second respondent lost his employment in the year 2004 and since he belongs to scavenger community he cannot survive without any employment. Further he has clearly stated that whenever the VIP comes to that area, the contractor needs more manpower and he would be engaged for one or two days not more than that, which would not mean that he was in gainful employment. At the time of termination, the salary was only Rs.2800/-. When he would get employment for one or two days to clean the roadsides, he would get only Rs.220 per day as wages and that too, not continuously as stated by the appellant. There is no proof to show that the second respondent was gainfully employed and as stated earlier that he lost his employment in 2004 and the writ petition was filed in the year 2013. For more than 9 years without employment, it is difficult for him and his family members to survive. Being a coolie worker, work for one or two days would not amount to gainful employment. The learned Senior Single Judge elaborately discussed all these aspects and followed the Full Bench Judgment of this Court. The relevant portion of the order made by the learned Single Judge is extracted hereunder.

" 6. The Honourable Full Bench of this Court in *Godrej Boyce Manufacturing Company Limited, Madras Vs. The Presiding Officer, Principal Labour Court, Madras and another*, (CDJ 1991 MHC 481) held that three conditions have to be fulfilled for a workman to be entitled to last drawn wages under Section 17-B of the Act, viz., (1) the Labour Court should have directed reinstatement of the workman; (2) the employer must have preferred proceedings against the award of proceedings in the Court; and (3) the workman should not have been employed in any establishment during the pendency of the proceedings. If the Court is satisfied that these parameters have been fulfilled, it would be entitled to exercise its power under Article 226 of the Constitution and order the employer to pay to the workman during the pendency of the proceedings in the Court full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule, the condition being the workman has to file affidavit that he has not been gainfully employed during such period. It was further pointed out that in case the workman is found gainfully employed in any other establishment, the Court accordingly order wages to be paid for such period of gainful employment or less the wages to

be paid depending upon the nature of gainful employment. A word of caution was added stating that the Court should be slow and cautious in accepting the allegations of employer and except in the rarest of rare cases, it shall implement the law and grant to the workman wages at the rate last drawn by him inclusive of maintenance allowance admissible to him under any rule except for the period during which he is found to have been gainfully employed."

8. In view of the above discussion and considering the nature of the work done by the second respondent, there is no suppression of materials as alleged by the appellant. Further, the appellant has not established that the second respondent was employed in any establishment during the pendency of the proceedings. Even though the second respondent himself admitted the fact that he used to get scavenger work one or two days but not continuously and that too he would get only Rs.230/- per day, such employment would not amount to gainful employment. Therefore, this Court has no reasons to take different view.

9. In the result, the Writ Appeal is dismissed by confirming the Order passed by the learned Single Judge in M.P.No.2 of 2015 in W.P.No.34614 of 2013 dated 24.02.2016. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-ix)

//True Copy//

Sub Assistant Registrar

lok/tar

To
The Presiding Officer,
1st Additional Labour Court,
Chennai.

+1cc to Mr.R.PARTHIBAN, Advocate, S.R.No.21709
+1cc to Mr.ST.VARADARAJULU, Advocate, S.R.No.21983

W.A. No.357 of 2016
and C.M.P.No.5359 of 2016

RV(CO)
TR(21/06/2018)