

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.Nos.25207 and 25208 of 2003
and W.P.M.P.Nos.30974 and 30975 of 2003
Citibank N.A.
Represented by its Assistant Vice President - Human
Resources
1st Floor, 2, Club House Road
Chennai - 600 002. ... Petitioner in both WPs.
Vs

1.Government of India
represented by its Secretary
Ministry of Labour
New Delhi.

2.The Presiding Officer
Central Government Industrial Tribunal
26, Haddows Road
Shastri Bhavan
Chennai - 600 086.

3.M.Vijaya Doss

4.Maxwell Corporate Services Pvt.Ltd.
1, Railway Colony, 1st street
Nelson Manickam Road
Chennai - 600 029. ... Respondents in
W.P.No.25207/2003

1.Government of India
represented by its Secretary
Ministry of Labour
New Delhi.

2.The Presiding Officer
Central Government Industrial Tribunal
26, Haddows Road
Shastri Bhavan
Chennai - 600 086.

3.T.Ramesh

4.Maxwell Corporate Services Pvt.Ltd.
1, Railway Colony, 1st street
Nelson Manickam Road
Chennai - 600 029.

... Respondents
in W.P.No.25208/2003

Prayer in W.P.No.25207 of 2003 : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari in the nature of calling for the records connected with the order of Reference No.L - 12012/125/2003 - IR (B-I) dated 31.07.2003 passed by the first respondent and to quash the same in so far as the petitioner is concerned.

Prayer in W.P.No.25208 of 2003 : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari in the nature of calling for the records connected with the order of Reference No.L - 12012/124/2003 - IR (B-I) dated 31.07.2003 passed by the first respondent and to quash the same in so far as the petitioner is concerned.

For petitioner : Mr. Sanjay Mohan for
M/s.S.Ramasubramaniam & Associates
in both the WPs

For respondents : Mr.J.Madhanagopal Rao,
CGSC for R1
in both the WPs
R2 - Court
No Appearance for R3 & R4

COMMON ORDER

The prayer sought for in these writ petitions are for issuance of a writ of certiorari, calling for the records connected with the order of Reference No.L - 12012/125/2003 - IR (B-I) and Reference No.L - 12012/124/2003 - IR (B-I), dated 31.07.2003 passed by the first respondent and to quash the same in so far as the petitioners are concerned.

2. Since, the prayer sought for herein are similar and the issue raised in these writ petitions are one and the same and the petitioner and almost all the respondents, except the third respondent in both the writ petitions are same, both these writ petitions are being disposed of by this common order.

3. Though service has been completed against all the respondents, no one is appearing for respondents 3 and 4.

4. The short facts which are required to be noticed for the disposal of these writ petitions are as follows:

(i) The respective third respondent in both the writ petitions were claiming to be the employees under the fourth respondent, who is the contractor under the petitioner bank. It is the case of the petitioner that, the petitioner bank does not have any connection whatsoever directly with the respective third respondent

in both the writ petitions, as admittedly the third respondents have been engaged by the fourth respondent as a contractor, who would utilise the services of various individuals including the third respondent in both the writ petitions, not only to the petitioner bank but also to other organizations, if their service are required to be or need to be taken.

(ii) In that context, the respective third respondents in both the writ petitions, since were removed from service by the fourth respondent, the issue had been referred to the first respondent, Central Government for making reference under Section 10 of the Industrial Disputes Act, 1947 (herein after referred to as "the Act"). Accordingly, the first respondent in respect of both the third respondents, has passed an order of reference under Section 10(2A)(1)(d) of the Act, by order dated 31.07.2003 separately for each of the third respondent and the said order is having the following reference:-

"Whether the action of the management of Maxwell Corporate Service Pvt. Limited contractor for Citi Bank in terminating the services of workman Shri.M.Vijayadoss without following the provisions of Section 25 F of the I.D.Act, 1947 is legal and justified? If not, what relief the workman is entitled?"

"Whether the action of the management of Maxwell Corporate Service Pvt. Limited contractor for Citi Bank in terminating the services of workman Shri.T.Ramesh without following the provisions of Section 25 F of the I.D.Act, 1947 is legal and justified? If not, what relief the workman is entitled?"

(iii) Even though in the said reference under the orders of the first respondent dated 31.07.2003, it has been specifically mentioned whether the action of the fourth respondent in terminating the services of the third respondent was legal and justified was directed to be adjudicated by the Industrial Tribunal, the said communication had been marked to the petitioner. Pursuant to which, the Industrial Tribunal, i.e., the second respondent had issued notices on 25.08.2003 also to the petitioner bank to appear before it as one of the party and therefore, aggrieved over the said reference made by the first respondent by order dated 31.07.2003, the petitioner bank filed these writ petitions.

appearing for the petitioner, who would submit that, even though in the very reference which is impugned herein, the first respondent has made it clear that the fourth respondent was only a contractor for the petitioner and the action of the fourth respondent in terminating the service of the third respondent in each case was referred to be decided, as to whether it was legal and justifiable, unnecessarily the petitioner also had been roped in in the proceedings by the second respondent Industrial Tribunal, where the said Tribunal had issued notice to the petitioner bank also to appear as one of the party before the said Tribunal.

6. The learned counsel appearing for the petitioner would further submit that, absolutely there is no employer employee relationship between the petitioner and the third respondent in each case and therefore the question of deciding the issue of alleged termination of services at the hands of the fourth respondent by arraying the petitioner bank also one of the party, does not arise.

7. In this context, the learned counsel appearing for the petitioner would further argue that, assuming that the third respondent are the contract labourers, who have been appointed by the fourth respondent and if they send those third respondent for service or engagement with the petitioner bank during the contract period between the petitioner and the fourth respondent, based on which, if ultimately Industrial Tribunal decides such termination of third respondent made by the fourth respondent was illegal, then it would amount to seek for remedy from the fourth respondent of course, in turn seek the same remedy from the petitioner bank during the contract period, as such kind of action was contemplated under Sec 21 of Contract Labour Regulation And Abolition Act, 1970 (hereinafter referred to as "the Contract Labour Act"). Only in that context, probably the petitioner bank has unnecessarily been roped in this issue, he has contended.

8. The learned counsel for the petitioner in this regard would further submit that, this kind of issue has already been answered by this court in number of cases long back. In this regard, the learned counsel for the petitioner relied upon the following Judgments:

1. (1990) 1 LLN 267: (1992) 64 FLR 755 (Mad): (1991) 1 LLJ 113 .. 1990 SCC Online Madras 9 in the matter of Ashok Leyland, Ltd. Vs. Government of Tamil Nadu represented by Commissioner and Secretary to Government, Labour and Employment Department), Madras and Others.

2. (2001) 2 LLN 447 : (2001) 2 LLJ 660 .. 2000 SCC Online Madras 811 in a matter of Britannia Industries Ltd., Madras Vs. Presiding Officer, Second Additional Labour Court, Madras and Others.

3. He has also relied upon a decision of the Hon'ble Apex Court in this regard in the matter of M/s.Chennai Petroleum Corporation Ltd. Vs. Lakshmanan and Others, dated 20.02.2013 in Civil Appeal Nos. 1455 - 1456 of 2013.

9. By relying upon all these decisions, the learned counsel for the petitioner would submit that, the impleading of or roping in the petitioner bank in the proposed Industrial dispute proceedings before the second respondent Industrial Tribunal is absolutely unnecessary and therefore, in that context, the petitioner has challenged the impugned reference issuing notice to the petitioner bank also to appear before the Industrial Tribunal.

10. Per contra, Mr.J.Madhanagopal Rao, learned Central Government Standing Counsel appearing for the first respondent would submit that, since it is the power of the Central Government to make a reference under Section 10 of the Industrial Dispute Act, such a reference has been made. The employees who raise the ID, though had been appointed by the fourth respondent contractor, they would in turn be pressed into service only for the petitioner bank and therefore the Central Government very cautiously made the reference stating that the action of termination of services of the workman by the Management of Maxwell Corporate Services Pvt., Ltd., (the fourth respondent) contractor for the said Bank. It means that, the termination order issued or whether the termination made by the fourth respondent in respect of the third respondent employee was legal and justified was the only issue referred in the impugned reference made in the impugned order passed by the first respondent and in this context, the status of the petitioner bank has been mentioned, with whom the fourth respondent was the Contractor. Therefore, comprehensively if the issue raised before the Industrial Tribunal is decided, the presence of the petitioner bank is also necessary and therefore there is no gainsaying that the notice has been unnecessarily given to the petitioner bank and unnecessarily the said bank has been roped in .

11. I have heard the said submissions made by the learned counsels appearing for both sides and also perused the materials placed before this court.

12. It is nobody's case that, the third respondent in both the writ petitions were the employees directly under the petitioner bank. If at all, they had been appointed and engaged by the fourth respondent, if the services of the respective third respondents were terminated by the fourth respondent, certainly the issue raised before the Industrial Tribunal is pertaining to

the termination of services of the third respondent made by the fourth respondent and therefore in order to resolve the said issue, the necessary parties are only the third and fourth respondents.

13. In this context, the role of the petitioner bank is nothing as in no way the presence of the petitioner's bank before the Industrial Tribunal will help for the Industrial Tribunal to take a decision or for the third and fourth respondents to put forward their respective cases before the Industrial Tribunal.

14. However, the learned counsel for both sides would submit that, since some obligation is there to pay the wages, if ultimately the employee succeeded before the Industrial Tribunal, that obligation has to be fulfilled, not by a contractor but only by the principal employer. In this context, Section 21 of the Contract Labour Act provides the following:

"21. Responsibility for payment of wages.- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

the first respondent might have issued notices, with reference to the impugned reference, also to the petitioner bank and pursuant to which, the second respondent, Industrial Tribunal also has issued notice to the petitioner bank to appear before the Tribunal as one of the party.

16. In this context, the judgment referred by the learned counsel appearing for the petitioner can be usefully pressed into service. In 1990 SCC Online Madras (9) in the matter of Ashok Leyland, Ltd., case, the following has been stated:

"3.Sri Sanjay Mohan, the learned counsel for the petitioner, strongly argues that the dispute against the petitioner-company cannot be referred to under the Industrial Disputes Act when the petitioner-company is not an employer and the fourth respondent are not the workers under sec 2(s) of the Industrial Disputes Act, i.e., the sum and substance of the arguments of Sri Sanjay Mohan is that the workmen of the third respondent are not the employee so far as the fourth respondent is concerned. The learned counsel further argues that the petitioner's liability is only under S.21 of the Contract Labour (Regulation and Abolition) Act,1970 (Act 37 of 1970). The learned counsel refers me to rule 27(V) (a) of the Tamil Nadu Labour (Regulation and Abolition) Act, 1970, i.e., that if there is dispute, it has to be decided by the authority as prescribed under S. 10 of the Act and as matters stand, the petitioner is not an employer as far as the workers who were working under the third respondent. The learned counsel refers to the decision of the Supreme Court in Workmen of Food Corporation of India V. Food Corporation of India [1985-II L.L.N. 20]. The Supreme Court in that case has categorically held that when the contract system is in vogue the workmen employed by the contractor, certainly are not the workmen of the corporation in that case. In my view, the principle enunciated by the Supreme court in this decision fully applies to the facts of this case.

4.The learned counsel also refers to another decision in Employers in relation to Punjab National Bank V. Ghulam

Dastagir [1978-I L.L.J. 312,] to show that when a person is riot a workman, the reference to the industrial dispute was without jurisdiction. It that case, Justice Sri Krishna Iyer observed as follows:

"The reference assumes what really is the most contested point in the case as to whether Sri Ghulam Dastagir was the driver of the said bank. By definition, a workman means any person employed in any industry and so the basic jurisdictional issue is as to whether the respondent-workman was a person employed by the bank. If he was, his termination was illegal. If he was not, the reference to the industrial dispute was without jurisdiction. The Industrial Tribunal examined the matter at some length and came to the conclusion that the driver was employed by the bank. Consequently, a direction for reinstatement together with back-wages was made."

5. Sri Fenn Walter, the learned counsel for the fourth respondent, does not dispute the legal contentions raised by Sri Sanjay Mohan, the learned counsel for the petitioner. The law is settled on this aspect and as such the impugned order with regard to the petitioner alone is bad and will stand quashed. The reference in other respects will stand against the third respondent."

17. In 2000 SCC Online Madras 811 in Britannia Industries, Ltd., Madras case, similar view has been taken by a learned Judge, where the learned Judge has held as follows:

"4. Sri Sanjay Mohan, the learned counsel for the petitioner, contends that the petitioner is not a relevant or necessary part in the above I.D.No.1996 of 1992, as the petitioner is neither the employer of the second respondent nor the second respondent was appointed or terminated by the petitioner."

5.Sri.D.Govinda Reddy, the learned counsel appearing for the second respondent fairly accepts that the second respondent, was appointed and terminate only by the third respondent co-operative canteen, formed under rules 70(6) of the Rules.

6.Rule 70(6) of the Rules, reads as follows:

"Whether the workers of a factory in which a canteen has been provide by the occupier in accordance with rules 65 to 67 for the use of the workers, desire to run the canteen by themselves on a co-operative basis with share capital contributed by themselves, the management may permit them to run the canteen in accordance with the bye-laws of the co-operative canteen, the Madras Co-operative Societies Act, 1932 (now the Tamil Nadu Co-operative Societies Act, 1998), and the rules framed thereunder, subject to such conditions as the Chief Inspector may, in consultation with the Registrar of Co-operative Societies, Madras, impose."

7.If that be so, I am unable to understand how the petitioner -management is a necessary and relevant party to the impugned I.D.No.1996 of 1992 and, therefore, I do not find any justification to permit the first respondent to adjudicate the I.D.No.1996 of 1992 against the petitioner-management, as the second respondent was neither appointed not terminated by the petitioner-management.

8.That apart, in view of the admitted fact the second respondent was appointed and terminated only by the third respondent co-operative canteen which is a separate entity in the eye of law registered under the co-operative societies for running a canteen."

18. In both the aforesaid decisions it has been held that if there is no employer employee relationship available between the employee and the principal employer

and everything was done by the immediate employer or the contractor, then the reference roping the main employer was unnecessary. In view of the obligation on the part that the principal employer (like the petitioner herein) especially in the context of Section 21 of the Contract Labour Act, if ultimately the third respondent employees succeeded in the Industrial dispute, in order to execute the award to be passed in this regard, during the contract period between the petitioner bank and the fourth respondent, certainly the role of the petitioner bank would become inevitable.

19. However, in this context, the learned counsel for the petitioner has very much relied upon the Chennai Petroleum Corporation Ltd., case, of the Hon'ble Supreme Court (cited supra), where also a similar situation was under consideration, where their Lordships held as follows :

"It is evident from the above that the respondent employees are seeking no relief against the corporation. It is also evident that the respondent employees admit that the appropriate authority to reinstate them in service and to pay back wages is the society by whom they have been employed. That the proposed addition of the Corporation is entirely based on an apprehension which the employees have expressed about the efficacy of the award of the Labour Court is also evident from the averments extracted above. Mr. Vishwanathan was, therefore, justified in arguing that an apprehension which by itself has no basis could not provide a reasonable ground for the Labour Court or the High Court to add the Corporation as a party respondent. Having said that Mr. Viswanathan submitted on the instructions of the appellant-Corporation that if the respondent employees eventually succeeded in getting their dismissal order set aside by the Labour Court with a direction that they should be reinstated back in service of the society, and if the society upon such reinstatement deploys the employees to work with the Corporation in terms of the subsisting contract with the society, the appellant-corporation shall have no objection to such deployment. That statement should in our opinion, sufficiently allay the apprehension of the employees that even if they succeed before the Labour Court, they may be able

to go back to the place of work from where they were removed pursuant to the complaint of theft made against them. The statement should in our opinion also obviate the necessity of adding the Corporation as a party respondent especially when no relief is being claimed against it by the employees.

In the result, we allow these appeals set aside the order passed by the High Court, quash the order passed by the Labour Court adding the Corporation as a party respondent and direct that I.D.Nos. 531 of 2003 and 82 of 2004 pending before the Labour Court be disposed of expeditiously on their merit uninfluenced by any observations made by the Labour Court or the High Court in their proceedings. We make it clear that in case the employees succeed in getting their dismissal set aside from the Labour Court and the society reinstates them pursuant to such an award and deploys them to work with the appellant-Corporation, the corporation shall not object to any such deployment and shall allow them to work on conditions as are otherwise applicable to workman deployed under the terms of the contract between the Corporation and the Society. No costs"

20. From the reading of the aforesaid judgment of the Apex Court, it is to be noted that, in that case also, there was an apprehension and in order to allay the said apprehension, it was submitted on behalf of the employer corporation that ultimately if the employee succeeded in the I.D. between the employee and his immediate employer and in order to execute the same, the appellant corporation therein had to fulfil its obligation and the corporation was ready and willing to fulfil during the contract period between the appellant corporation and the immediate employer of the employee. That position accepted by the appellant corporation in that case was recorded by the Hon'ble Apex Court, in the order referred to above, and accordingly the impleading or roping of the appellant corporation therein was considered to be unnecessary and therefore, the said SLP was allowed.

21. If the same logic is applied to the facts of the present case also, such kind of statement or undertaking has to be given by the petitioner bank. In this context, Mr. Sanjay Mohan, learned counsel for the petitioner has,

in unequivocal term, made submissions during the argument that, in case if ultimately the I.D raised by the third respondents in both the cases against the first respondent ended in favour of the employees and pursuant to which, in order to comply with the award to be passed by the second respondent, the role of the petitioner bank would become necessitated only for the contract period between the petitioner bank and the fourth respondent and in that case, certainly the petitioner would not have any objection for such liability only to the extend of the contract period between the petitioner and the fourth respondent.

22. When such a statement of undertaking is given on behalf of the petitioner bank by the learned counsel for the petitioner in the line of the undertaking given by the appellant corporation before the Hon'ble Apex Court in the Judgment in Chennai Petroleum Corporation Ltd., (cited supra), this court is of the view that, by recording the same, the clutch on the petitioner bank as of now before the second respondent Industrial Tribunal in the proposed I.D between the third and the fourth respondent, can be removed.

23. For all these reasons stated and the discussions made above, this Court is inclined to pass the following order :

i) The impugned reference insofar as implicating the petitioner bank is concerned, is here by quashed. However the remaining portion of the reference are to be sustained intact.

ii) If ultimately, the third respondent employees in each case succeeded in the proposed Industrial dispute before the second respondent Industrial Tribunal and in order to execute such award to be passed in this regard during the contract period between the petitioner bank and the fourth respondent, certainly the liability of the petitioner bank would be ensured and in that case, the petitioner bank shall not shirk its responsibility as a principal employer.

With these directions and observations, the writ petitions are ordered on the terms indicated above. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mp / tsvn

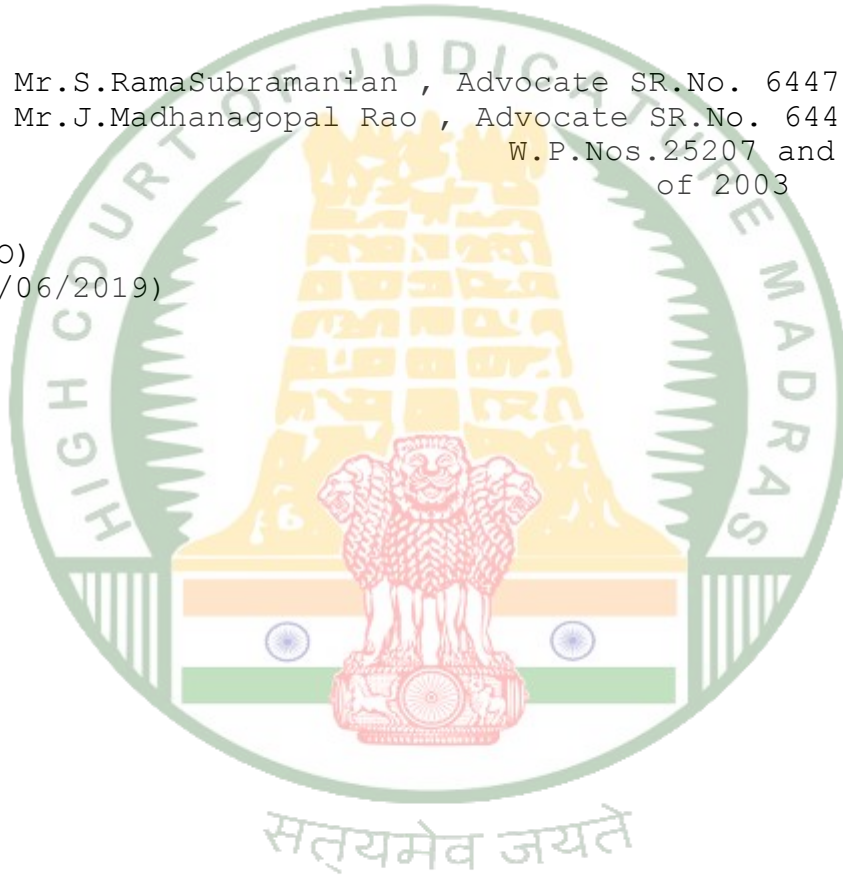
To

1. The Secretary
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2. The Presiding Officer
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+1cc to Mr.S.RamaSubramanian , Advocate SR.No. 64479
+1cc to Mr.J.Madhanagopal Rao , Advocate SR.No. 64477
W.P.Nos.25207 and 25208
of 2003

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