



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.06.2018
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

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W.P.(MD) No.4509 of 2018
and W.M.P.Nos.4620, 4621 and 6610 of 2018

Swamikkan Paulsamy

... Petitioner

-vs-

1. The Chairman,
National Highways Authority of India,
(Ministry of Road Transport and Highways)
New Delhi - 110075
2. The Regional Officer,
National Highways Authority of India,
Plot No.3, Suriya Towers,
2nd Floor, East Street,
K.K.Nagar, Madurai
3. The Deputy General Manager, (Tech)
& Project Director,
National Highways Authority of India,
Project Implementation Unit,
No.1, 2nd Floor,
Subramaniyapuram,
3rd Street, Karaikkudi
4. Theme Engineering Service Pvt. Ltd.,
B24 Gokul Vatika
Jawahar Circle, Jaipur
Rajasthan

.. Respondents

(R4 has been impleaded as respondent
vide order of this Court 25.04.2018 in
WMP No.8368/2018)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order passed in NHAI/PIU/Karaikudi/11033/01/AE/2018/297/dated 14.02.2018 on the file of the 3rd respondent herein and quash the same consequently directing the respondents to allow the petitioner to continue and complete the project Madurai Ramanathapuram National Highways NH49 as Team Leader cum Senior Highway Engineer.

For Petitioner : Mr.V.Ilanchezian

For Respondents: Dr.R.Rajagopal

Standing counsel for NHAI

No appearance for R4

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the records relating to the order passed in NHAI/PIU/Karaikudi/11033/01/AE/2018/297/dated 14.02.2018 on the file of the 3rd respondent herein and quash the same and consequently direct the respondents to allow the petitioner to continue and complete the project Madurai - Ramanathapuram National Highways NH49, as Team Leader-cum Senior Highway Engineer.

2. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents 1 to 3. Though R4 has been impleaded as one of the party respondent, no one is appearing for R4.

3. The petitioner has challenged the impugned order passed by the 3rd respondent dated 14.02.2018, by which, it has been stated that the services of the petitioner as Team Leader for the concerned Highways project was dispensed with, as he had not functioned as Team Leader for the said project under the direct control of the National Highways Authority of India (in short NHAI).

4. Initially, an interim order was granted and in order to vacate the same, the NHAI has filed a vacate stay petition in WMP No.6610/2018.

5. It is the case of the NHAI that the petitioner had never been engaged by the NHAI, as he was not appointed by the NHAI nor has been engaged directly. It is the case of the NHAI that only the fourth respondent had nominated the petitioner for project on behalf of the 4th respondent, Additional Project Contractor. Therefore, there is no relationship of employer and employee between NHAI and the petitioner. Only at that juncture, this Court, at their request, had impleaded the fourth respondent one Theme Engineering Service Pvt Ltd., Jaipur, Rajasthan.

6. At this juncture, the learned standing counsel has produced a communication issued by the fourth respondent dated 10.04.2018, where, it reads thus:

"On account of indifferent attitude and misbehaviour with NHAI officials and no corrective measures on record, services of Mr. Swamikkand Paulswami who was working as Team Leader were demobilized as mentioned in our letter 2861 dated 23.02.2018 issued to him with copy to your office.

In light of order of the hon'ble High Court Madras Madurai Bench on 02.03.2018 under WMP (MD) 4620 of 2018 Mr. Paulswami attended our office at Mana madurai at 3.30 p.m. on 07.03.2018.

On receiving above information from him on 08.03.2018 we vide our letter no.2980 dated 09.03.2018 (sent vide email dated 09.03.2018) requested Mr. Paulswami to attend our Jaipur Head Office to



finalize the issues of the concessionaire/contractor.

Shree Paulswami has not complied the instructions and is not attending his due duties till now, it is also to intimate you that Mr. Paulswami was also absent on 8th & 9th March 2018."

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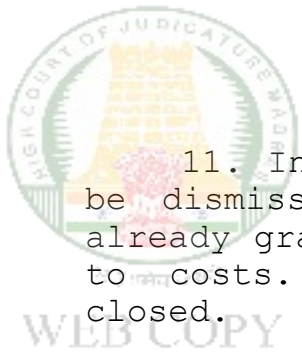
7. From the reading of the said communication of the fourth respondent, dated 10.04.2018, it become obvious that the petitioner is not the employee of the NHAI and in this regard, the fourth respondent had already sent a communication to the NHAI through the Deputy General Manager, Project Director, Karaikudi stating that the petitioner had been already directed to attend the head office of the fourth respondent at Jaipur, Rajasthan to finalize the issue. In spite of the said communication, the petitioner had not complied with the said instructions given by the fourth respondent and he had been absented on the particular day, where he was directed to appear before the head office.

8. Since the fourth respondent itself has come forward to give a categorical communication to the NHAI to state that the petitioner is their employee and in this regard, in order to sort out the issue, he is directed to appear before its Head office at Jaipur and in response to the same, the petitioner had not acted upon or appeared before the fourth respondent Head Office at Jaipur, it cannot be still stated that the petitioner is a direct employee of the NHAI.

9. In that view of the matter, he cannot maintain a challenge against the impugned order claiming to be the employee of the NHAI. Also, in this regard, after seeing the said communication, the learned counsel for the petitioner would submit that the stand of the NHAI that the petitioner is not the employee of NHAI and only the employee of the fourth respondent, can be recorded and based on which, the writ petition may be disposed of, as the petitioner would work out his remedy in the manner known to law by raising the issue before his employer, ie., the fourth respondent.

10. In view of such development in this matter and taking into account the said documents filed by the NHAI and also taking into account the submissions made by the learned counsel for both sides, this Court is inclined to pass the following order:

"that the petitioner since being the employee of only the fourth respondent and not the NHAI, he cannot have any service grievance against the NHAI and therefore, the impugned order cannot be challenged by the petitioner in the capacity of employee of NHAI and therefore, his challenge fails. Moreover, since the petitioner's counsel would submit that the stand of the fourth respondent that the petitioner is only an employee of the fourth respondent can be recorded, by recording the same, this Court is of the view that the petitioner can pursue his grievance, if any, only with his employer ie., the fourth respondent and therefore, on that ground also, the impugned order cannot be questioned.



11. In the result, the writ petition fails and it is liable to be dismissed. Accordingly, it is dismissed. The interim order already granted shall stand vacated. However, there is no order as to costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)

TO

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& Project Director,
National Highways Authority of India,
Project Implementation Unit,
No.1, 2nd Floor,
Subramaniyapuram,
3rd Street, Karaikkudi.
- + 1 CC TO Mr.ILANCHEZIAN , ADVOCATE IN SR No69595.
+ 2 CC TO Dr.R.RAJAGOPAL , ADVOCATE IN SR No.69488 .

RR

DS SKN SAR1 13 12 2018 4P 7C

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