

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.16036 OF 2006

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with I.D.No.137 of 1999 on the file of the Labour Court, Guntur and to quash the award dated 22.6.2005 passed therein.

2. Heard Sri K. Srinivasa Murty, learned Counsel for the petitioner and Sri M. Pitchaiah, learned Counsel for the 2nd respondent.

3. Brief facts of the case are that the 2nd respondent filed the above I.D. stating that initially, he worked in the Gas filling section of the petitioner-company from 2.5.1979 to 1987 and thereafter, he was shifted to security section and he worked therein. In the year 1996, the petitioner tried to change the status of the 2nd respondent and some other workers as contract labour. In that regard, a settlement was arrived at before the Deputy Commissioner of Labour, Eluru and when the said agreement was in force, the petitioner-management retrenched the petitioner on 8.6.1999 without assigning any reasons.

4. The Labour Court passed the award impugned directing the petitioner to reinstate the 2nd respondent into service with

back wages at the rate of Rs.1,450/- per month from the date of removal i.e., 8.6.1999 till the date of order, in default to do so within one month from the date of publication of the award, to pay Rs.3,000/- p.m., till the date of reinstatement. Aggrieved by the same, the petitioner-management filed this writ petition.

5. Learned Counsel for the petitioner contended that the 2nd respondent is not a workman at all and he worked as Security Guard under a contractor on consolidated pay of Rs.1,450/- per month and that there was no relationship of employer and employee between the petitioner and the 2nd respondent and therefore, the question of termination does not arise and that the Labour Court has failed to appreciate the contentions raised by the petitioner and therefore, the award impugned is liable to be set aside.

6. Insofar as the contention of the petitioner that the respondent-workman worked with a contractor and there is no master and servant relationship between the petitioner and the respondent-workman, is concerned, the learned Counsel for the 2nd respondent-workman contended that the contractors were changed, but the respondent-workman was being engaged continuously in the establishment of the petitioner, and that the principal employer is the petitioner, and a camouflage theory of contract was introduced only to deny the benefits under the Industrial Disputes Act to the respondent-workman and that the

Labour Court after appreciating the evidence has come to a conclusion that the principal employer is the petitioner, and accordingly, granted relief to the respondent-workman. Further, the learned Counsel for the respondent-workman contended that no illegality or irregularity has been pointed out by the petitioner so as to interfere with the award passed by the Labour Court, and that the Labour Court has rightly passed the award in favour of the respondent-workman and therefore, the award impugned does not warrant any interference.

7. This Court having considered the rival submissions made by the parties is of the view that the Labour Court has rightly passed the award in favour of the respondent-workman. The Labour Court has gone through the evidence and gave a specific finding that the contractors were changed, but the respondent-workman has been continued. From the said finding, it is obvious that principal employer is the petitioner. Further, as rightly pointed out by the learned Counsel for the respondent-workman, no illegality or irregularity has been pointed out in the award passed by the Labour Court.

8. Apart from that, this Court has also gone through the judgment rendered by the High Court of Kerala in **Kerala State**

Coir Corporation Limited Vs. Industrial Tribunal¹, wherein it was held as under:

“Workman” has been defined in S.2(s) of the Act as “any person employed in any industry to do any manual, unskilled, skilled, technical, operation, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied.....” Some categories of persons have been excluded from the purview of the said definition and there is no case that any one of the eleven workmen involved in this case would fall within such excluded categories. The word “employed” in the section would postulate a master and servant relationship. No matter who supplied the person employed. The test of employment is whether the person employed is under the control and supervision of the employer. Mode of payment, whether it is direct or through any other agency, does not normally determine the status of the person as workman. There is no dispute that eleven persons were rendering security service and it was the petitioner who allotted the work to those 11 persons and controlled them and decided the nature of work they had to render. The society’s role was only to supply the persons to do the work. In such a situation those persons would be workmen falling within the purview of S.2(s) of the Industrial Disputes Act.”

In the judgment rendered by Hon’ble Supreme Court in ***Hussainbhai Vs. Alath Factory Thozhilali Union and others²*** the Hon’ble Supreme Court held as under:

“The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth,

¹ 1995 I L.L.N.365

² AIR 1978 SC 1410

though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor.”

Applying the principles of the above judgment, this Court is of the view that the petitioner is the real employer.

9. Perusal of the record discloses that the respondent-workman was continued though contractor was changed. In the light of the above judgment of the Hon’ble Supreme Court, it can be said that in the instant case, the principal employer is the petitioner. Therefore, this Court is of the view that the Labour Court has rightly passed the award in favour of the respondent-workman.

10. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated:23rd November, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI



WRIT PETITION No.16036 OF 2006

23/11/2018

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