

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.10252 and 11199 of 2013

W.P.No.10252 of 2013:

The Management of Harrisons Malayalam Limited,
Tea Complex,
Thondamuthur Road,
Veerakeralam Post,
Coimbatore.

... Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.
2. C.Dasan
3. C.Chinnasamy
4. K.Sundaram
5. A.Nagaraj
6. (i) S.Victor @ William Victor (deceased)
(ii) V.Rani
(iii) V.Crishtober
(iv) V.Cicil David

(During the pendency of the industrial dispute,
the first petitioner-worker died and therefore,
his legal heirs have been added as petitioners
(ii) to (iv) as per order dated 08.12.2008 made
in I.A.No.1288/2008

7. C.Suppathal
8. S.Markoss
9. K.Vasantha

10. (i) A.Mohamed Ali (Deceased)
(ii) M.Aisha
(iii) Selvi M.Barithabegem
(iv) Selvan M.Liyagath Ali
(v) Selvi M.Baruin Banu

(During the pendency of the industrial dispute,
the first petitioner-worker died and therefore,
his legal heirs have been added as petitioners
(ii) to (v) as per order dated 08.12.2008 made
in I.A.No.1289/2008)

11. (i) K.Vinoth Babu (Deceased)
(ii) V.Daisy
(iii) Vasitha

(During the pendency of the Industrial Dispute, the first petitioner-worker died and therefore his legal heirs have been added as petitioners (ii) & (iii) as per order dated 08.12.2008 made in I.A.No.1290 of 2008

12. (i) K.Subramani (Deceased)
(ii) Jothimani
(iii) Susheela
(iv) Sumathi
(v) Valarmathi
(vi) Eswari
(vii) Saraswathi
(viii) Ganesan

(During the pendency of the industrial dispute, the first petitioner-worker died and therefore his legal heirs have been added as petitioners (ii) to (viii) as per order dated 08.12.2008 made in I.A.No.1291 of 2008

13. T.S.S.Manian
14. Stephen Samuel

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records of the 1st Respondent dated 16.05.2012, insofar as it is relates to awarding of monetary compensation, made in I.D.Nos.250/1995, 294/1995, 295/1995, 299/1995, 302/1995, 303/1995, 305/1995, 306/1995, 310/1995, 311/1995, 312/1995 and 319/1995, and quash the same.

W.P.No.11199 of 2013:

The Management of Harrisons Malayalam Limited,
Tea Complex, Thondamuthur Road,
Veerakeralam Post,
Coimbatore. Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. M.Karunagaran
3. M.Vettriveeran
4. A.Selvaraj
5. M.Shanmugam
6. R.Devi
7. C.Rani
8. A.Xavierpuspharaj
9. C.Murugesan
10. R.Palaniammal
11. V.Lakshmi
12. M.Rajamani

13. (i) K.Kamala (Deceased)
(ii) R.Rajendran
(iii) R.Sathiyavani

(During the pendency of the industrial dispute, the first petitioner-worker died and therefore, his legal heirs have been added as petitioners (ii) & (iii) as per order in I.A.No.412/2011, dated 29.07.2011

14. K.Vellingiri
15. K.Tamilselvi
16. M.Radhakrishnan
17. V.Balamurugan
18. M.Shivanantham
19. R.Dhanalakshmi
20. R.Prema
21. V.Jayanthi
22. Amaldas

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records of the 1st Respondent dated 16.05.2012, insofar as it is relates to awarding of monetary compensation, made in I.D.Nos.291/1995, 218/1995, 251/1995, 292/1995, 293/1995, 296/1995, 297/1995, 298/1995, 300/1995, 301/1995, 304/1995, 307/1995, 308/1995, 309/1995, 313/1995, 314/1995, 315/1995, 316/1995, 317/1995 and 318/1995, and quash the same.

For Petitioner in both W.Ps. : Mr.R.Parthiban
For 2nd Respondent
in W.P.No.10252 of 2013 : Mr.G.B.Saravanabhavan

For Respondents 3 to 13
in W.P.No.10252 of 2013 : No appearance

For 14th Respondent
in W.P.No.10252 of 2013 : Mr.I.Abrar Md. Abdullah

For Respondents 2 to 22
in W.P.No.11199 of 2013 : No appearance

C O M M O N O R D E R

Both Writ Petitions are filed by the Management of Harrisons Malayalam Limited, Coimbatore, challenging the Award dated 16.05.2012 passed by the Presiding Officer, Labour Court, Coimbatore in I.D.Nos.250/1995, 294/1995, 295/1995, 299/1995, 302/1995, 303/1995, 305/1995, 306/1995, 310/1995, 311/1995, 312/1995, 319/1995 and in I.D.Nos.291/1995, 218/1995, 251/1995, 292/1995, 293/1995, 296/1995, 297/1995, 298/1995, 300/1995, 301/1995, 304/1995, 307/1995, 308/1995, 309/1995, 313/1995, 314/1995, 315/1995, 316/1995, 317/1995, 318/1995, respectively.

2. As the issue involved in both Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

3. According to the Petitioner-Company, they engaged eligible Contractors to undertake particular type of work for the purpose of Blending, Mixing and packing of different kinds of Tea, and connected activities like loading and unloading. As the workmen involved in the above Writ Petitions had certain disputes with the Contractors herein, the Petitioner-Company terminated the Agreement entered into with such Contractors. Aggrieved by the termination, the workmen herein raised Industrial Disputes against the Petitioner-Company.

4. During the pendency of the Industrial Disputes, the Petitioner-Company filed Interlocutory Applications in the Industrial Disputes in question, to implead the Contractors as necessary parties. The said Applications were stoutly opposed by the workmen. The Labour Court, after considering the submissions of the parties, dismissed the Interlocutory Applications, by a common order dated 09.12.1996.

5. Aggrieved by the said order, the Petitioner-Company filed Writ Petitions Nos.14558 to 14569 and 14570 to 14589 of 1997, and obtained an order of stay of the operation of the common order dated 09.12.1996 passed in the said Interlocutory Applications. However, by an order dated 27.06.2008, the said Writ Petitions were dismissed. Challenging the same, the Petitioner-Company preferred Writ Appeals in W.A.No.333 to 364 of 2009 and vide judgment dated 01.04.2009, a Division Bench of this Court allowed the same, by holding that the Contractors are necessary parties to the Industrial Disputes.

6. Pursuant thereto, the Contractors were impleaded as parties to the Industrial Disputes in question. After perusing the oral and documentary evidence, the 1st Respondent/Labour Court passed an Award on 16.05.2012 invoking Section 11-A of the Industrial Disputes Act, 1947, that monetary compensation shall be paid to all the contract workmen depending upon their service with the Petitioner-Company. Challenging the same, the Petitioner-Company is before this Court.

7. Learned counsel for the Petitioner-Company submitted that the provisions of Section 11-A of the Industrial Disputes Act could be invoked, only in case, a dispute had arisen between the Management and the workmen, who have been dismissed from service on the ground of misconduct. In the case on hand, there is no employer-employee relationship between the Petitioner-Company and the workmen herein, and that the Petitioner-Company never dismissed them. It is his contention that when the Labour Court had observed in its Award that the Contractors involved in these cases are the employers of the respective workmen, then, its direction to the Petitioner-Company to pay monetary compensation to the workmen herein, is unsustainable, and on that basis, the Award is liable to be set aside.

8. Heard the learned counsel for the parties and gone through the material documents available on record.

9. It is seen that no order of punishment has been passed by the Petitioner-Company against the workmen herein, to invoke Section 11-A of the I.D. Act. Secondly, the Petitioner-Company has not produced documents to establish the existence of principal employer-employee relationship between the Petitioner/Management and the workmen herein.

10. The Labour Court, finding that the workmen herein have not established that their job is perennial in nature, has categorically held in the Award, that the Industrial Disputes are liable to be dismissed. However, as the services of the workmen herein have been utilized by the Petitioner-Management, who is the principal employer through the Contract, the Labour Court had directed the Petitioner/Management to pay compensation to the workmen. The Labour Court has also observed that the workmen herein did not take steps to seek abolition of the Contract Labour system.

11. From the pleadings, it is very clear that the workmen herein are seeking employment under the principal employer, on the ground, that the contract between them and the principal employer, is sham and nominal, but the same has not been established. Only if the contract is sham and nominal, the

Tribunal/Labour Court is empowered to direct regularization of the services of the workmen, and the principal employer can be directed to award compensation, depending on the facts and circumstances of the case. If the contract is genuine, the Tribunal/Labour Court has to direct the parties to approach the authorities concerned, to seek abolition of Contract Labour System, and, as such, the Labour Court/Tribunal has no power to abolish the Contract Labour System.

12. Thus, when the workmen herein have not established their relationship with the Petitioner/Management, certainly, the Award passed by the Labour Court has to be interfered. However, Mr.R.Parthiban, learned counsel for the Petitioner/Management, using his good office, submitted that the workmen herein should not be left in lurch, and on humane grounds, minimum compensation need to be paid to them. In this regard, he produced a communication received from the Petitioner/Management, and submitted that the Petitioner/Management is willing to pay a sum of Rs.5,000/- to each of the 32 workmen involved in the above Writ Petitions.

13. Accordingly, the Petitioner-Company is directed to deposit the compensation amount of Rs.5,000/- (Rupees Five Thousand only) payable to each workman herein, to the credit of the respective Industrial Dispute pending before the Labour Court, within 30 days from the date of receipt of a copy of this order, and within six (6) weeks from the date of deposit, the compensation shall be disbursed to the respective workman, and in case of their death, the amount shall be paid to their legal heirs, after proper verification.

14. It is made clear that the compensation ordered to be payable to the workmen herein, cannot be construed that, there is a contract between the principal employer and the workmen herein, as the finding rendered by the Tribunal/Labour Court, cannot be put against the principal employer, i.e. the Petitioner/Management, unless it is established through proper evidence, that the contract is sham and nominal.

In fine, both Writ Petitions are disposed of with the above direction and observation. No costs. Consequently, connected M.P.Nos.1 and 1 of 2013 in the respective Writ Petitions, are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

(aeb)

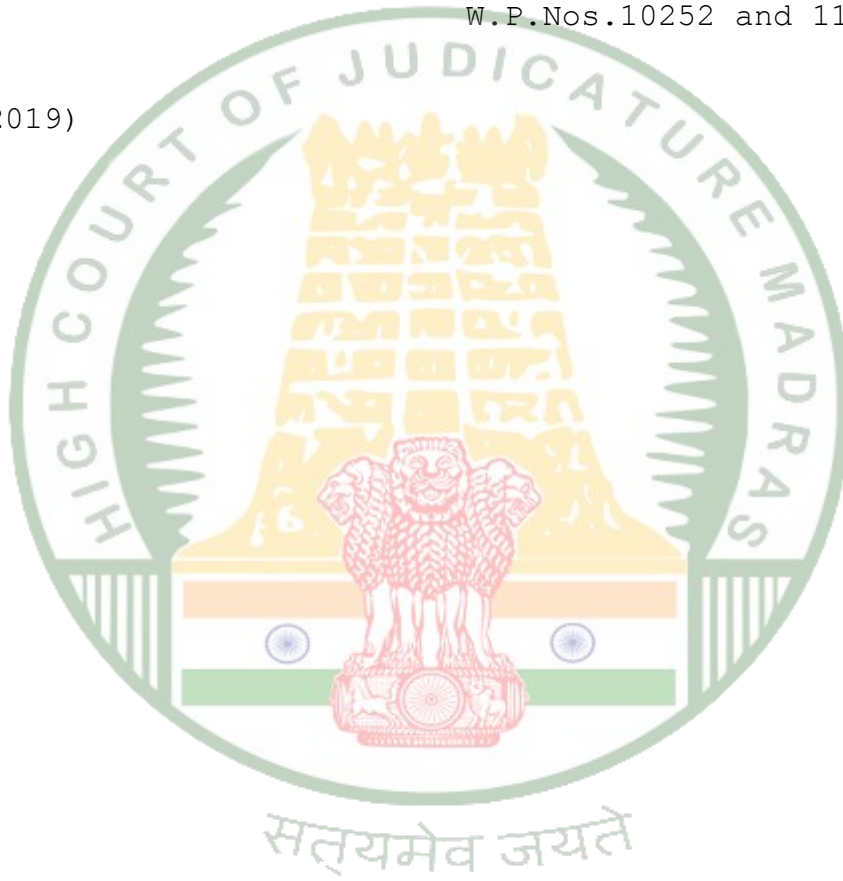
To:

The Presiding Officer,
Labour Court,
Coimbatore.

+1 CC to Mr.R.Parthiban, Advocate sr 73815.

W.P.Nos.10252 and 11199 of 2013

NR(CO)
SP(25/10/2019)



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