

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-09-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.13956 of 2015

And

M.P.No.1 of 2015 and W.M.P.No.23397 of 2016

R.Kesavan

..Petitioner

-VS-

1.R.L.Loganathan,
Contractor,
C/o.Turbo Energy Ltd.,
Sholinghur.

2.S.V.G. & Co.,
Contractor,
Pulivalam, Turbu Energy Ltd.,
Sholinghur.

3.The Management of M/s.Turbo Energy Ltd.,
Pulivalam Village and Post,
Sholinghur.

4.The Presiding Officer,
Principal Labour Court,
Vellore.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in I.D.No.40 of 2011 on the file of the fourth respondent and quash the Award dated 11.10.2012 passed by the fourth respondent in I.D.No.40 of 2011 so as to reinstate the petitioner into service with continuity of service, entire back wages as well as all other attendant and consequential service benefits on par with the employees who worked along with the petitioner on the date of termination of the petitioner from service and consequently make the petitioner as a permanent employee of the third respondent company on par with the co-workers.

For Petitioner : Mr.R.Shanmugham for
M/s.Shanmugha Associates.

For Respondents-1&2 : Mr.C.K.Chandrasekhar

For Respondent-3 : Mr.S.Ravindran,
Senior Counsel for
Mr.S.Bazeer Ahamed

For Respondent-4 : Labour Court

O R D E R

The common Award dated 11.10.2012 passed by the fourth respondent-Labour Court in I.D.No.40 of 2011 is under challenge in the present writ petition.

2. The writ petitioner states that he joined in the third respondent-company on 18.01.2006 as identified by the respondents 1 and 2. His last drawn salary was Rs.6,000/- per month. The writ petitioner was terminated from service without any enquiry and without following the provisions of Section 25-F of the Industrial Disputes Act. The termination was effected from 10.08.2010. The writ petitioner states that he worked for more than 300 days and was employed as a Machine Operator along with other Machine Operators in the third respondent-company. Respondents 1 and 2 have applied license to only supply manpower to the third respondent and the writ petitioner worked for more than 300 days at the time of his termination. Though the respondents 1 and 2 had obtained license to supply manpower to the third respondent-company, no valid original license/renewal was produced either by respondents 1 and 2 or by the third respondent-company, for the reasons best known to them.

3. Respondents have taken a stand before the Labour Court that the writ petitioner was not the direct employee of the third respondent-company and the writ petitioner never worked under the third respondent-company. The third respondent-company had not supervised the work of the writ petitioner. The writ petitioner has no skill or educational qualification or previous work experience to work as a Machine Operator. The writ petitioner was examined as WW-1 and Exs.W-1 to W-16 were marked and they were treated as common evidence in I.D.No.40 of 2011 and in other connected cases. On the side of the management, one Mr.Sivaraman was examined as MW-1 and marked only copies of certain documents as Exs.M-1 to M-7 as common evidence.

4. The Labour Court dismissed the industrial dispute as well as the connected cases by a common award dated 11.10.2012 with a finding that the writ petitioner joined and worked under the third respondent-company through respondents 1 and 2 contractors. The Labour Court further observed that respondents

1 and 2 paid wages as well as the employees contribution and there was no relationship of employer-employee between the third respondent and the writ petitioner. Thus, the writ petitioner cannot seek any relief as against the third respondent-company since the writ petitioner had worked only under respondents 1 and 2, who were the contractors engaged by the third respondent-company.

5. The learned counsel for the writ petitioner emphasised that respondents 1 and 2 have not examined any witness on their side and not produced any documentary evidences to substantiate their claim. Respondents 1 and 2 have raised their claim on the basis of licenses issued by the concerned authorities and no valid original license was produced by respondents 1 and 2 as well as the third respondent before the Labour Court. The Labour Court had prejudged the issue and held that the writ petitioner was not the contract employee of the third respondent. When the third respondent-company exercised complete control over the work of the writ petitioner as a Machine Operator, the findings recorded by the Labour Court, in the absence of any materials available on record, that the writ petitioner was not supervised by the third respondent-company is contrary to the facts and the evidence. Citing all these discrepancies, the learned counsel for the writ petitioner is of an opinion that the Award of the Labour Court is perverse and is liable to be scrapped.

6. The learned counsel for the writ petitioner reiterated that the xerox copies of the documents marked by the management were admitted by the Labour Court and such a procedure adopted is contrary to the established principles of law. Even there are many discrepancies in the documents and the original documents were not verified by the Labour Court. This apart, the Attendance Registers were submitted in an incomplete format and therefore, the Award passed based on such xerox copies of the documents, cannot be validated by this Court.

7. The learned counsel for the writ petitioner cited judgment of the Hon'ble Supreme Court of India in the case of Director, Steel Authority of India Limited vs. Ispat Khadan Janta Mazdoor Union [(2019) 7 SCC 440], wherein the Supreme Court observed that "if the contract is found to be sham, nominal or camouflage, then the so-called labour will have to be treated as direct employee of the principal employer and the industrial adjudicator should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case".

8. Relying on such observations of the Apex Court, the learned counsel for the writ petitioner states that license of

contract between the third respondent and respondents 1 and 2 were not in force and the copy of the license produced is ambiguous. There are discrepancies even in that license and the validity of the license expired and therefore based on such invalid license, the Labour Court ought not to have arrived a conclusion that respondents 1 and 2 are the contractors of the third respondent.

9. This Court is of the considered opinion that in respect of the contract employment, the writ petitioner himself admitted in the deposition that he was paid through contractors. This apart, certain discrepancies which all are raised by the writ petitioner in this writ petition deserve no further consideration as the Labour Court had considered those aspects and arrived a conclusion that the management has established the fact that the writ petitioner was not directly engaged by the third respondent and there is no document to establish that the writ petitioner is the direct employee of the third respondent-company M/s.Turbo Energy Limited. Contrarily, the evidences and the documents placed before the Labour Court revealed that the writ petitioner was engaged by the contractors/respondents 1 and 2 and the principal employer is the third respondent.

10. This being the factum, the judgment of the Supreme Court may not have any application with reference to the facts and circumstances of the present case. The case before the Supreme Court was under The Contract Labour (Regulation and Abolition) Act, 1970 and the context in which the observation was made by the Supreme Court, cannot be applied in the facts and circumstances of the lis on hand.

11. The learned Senior Counsel appearing on behalf of the third respondent-Turbo Energy Limited disputed the contentions raised on behalf of the writ petitioner by stating that the writ petitioner raised an industrial dispute alleging his non-employment. The said dispute was adjudicated before the fourth respondent along with the batch of disputes and all the disputes were tried together. Respondents 1 and 2 are employers of the writ petitioner and other workmen and the third respondent is the principal employer arrayed as third respondent in the dispute.

12. One Mr.Venkatesan was examined as WW-1 and Exs.W-1 to W-16 were marked on behalf of the writ petitioner and other workmen. Respondents 1 and 2 did not lead any evidence. On behalf of the third respondent MW-1 was examined and Exs.M-1 to M-7 were marked as documents. A common award was passed by the fourth respondent-Labour Court on 11.10.2012, holding that the writ petitioner and other workmen were employees of contractors, namely, respondents 1 and 2. Therefore, they cannot claim any

absorption in the services of the principal employer viz., the third respondent. Consequently, the dispute raised by the writ petitioner was dismissed.

13. The learned Senior Counsel appearing on behalf of the third respondent-company relied on the wage slip issued to the writ petitioner by respondents 1 and 2, namely, the contractors. The wage slips were issued by the contractors/ respondents 1 and 2 and there was no employer-employee relationship exists at any point of time between the writ petitioner and the third respondent-company. Even the witness one Mr.Venkatesan, during the cross-examination, deposed that he was engaged by the contractors and the contractors have paid the provident fund amount. During 2008, one Mr.R.L.Loganathan, Contractor terminated the services of the witness Mr.Venkatesan. He further admits that he never raised any claim regarding payment of salary by the contractors, payment of bonus by the contractors and the deduction of provident fund amount as well as the identity card issued by the contractors. The witness further admitted that the writ petitioner has never raised any claim for permanent absorption with the third respondent-Turbo Energy Limited. Relying on the said deposition of the witnesses and further considering the materials available on record, the Labour Court arrived a conclusion that there is no employer-employee relationship exists between the writ petitioner as well as the third respondent and dismissed the industrial dispute.

14. The learned Senior Counsel appearing on behalf of the third respondent-company reiterated that the writ petitioner has never produced any document nor proved any evidence before the Labour Court that the third respondent-company namely M/s.Turbo Energy Limited appointed the writ petitioner or paid salary or any other documents to establish that the writ petitioner was the employee of the third respondent-company.

15. Contrarily, the documents submitted before the Labour Court by the respective parties reveal that the writ petitioner was engaged by the contractors and the salary was paid by those contractors and the work of the writ petitioner was controlled by the contractors, namely, respondents 1 and 2.

16. Further, the learned Senior Counsel appearing on behalf of the third respondent-company, disputed the contentions of the learned counsel appearing on behalf of the writ petitioner, in paragraph-6 of the counter-affidavit, which is extracted as under:-

"The grounds (a) to (j) raised by the petitioner is without any merits. When genuineness of Exhibit M-1 to M-7 was not questioned by the petitioner before the

fourth respondent, the petitioner cannot content that he was not given opportunity to verify Exhibit M-1 to M-7 with original documents. Similarly, when the petitioner had not claimed any relief against the respondents 1 and 2, their non-examination before the fourth respondent would hardly matter. The contention of the petitioner that he was not allowed to engage a qualified advocate before the fourth respondent is a reckless allegation. The petitioner's contention with regard to non-production of records mentioned in ground (j) is without any merits. These records were not called for to be produced by the petitioner before the fourth respondent. These records are irrelevant to decide the issue of non-employment alleged by the petitioner."

17. The Labour Court, in its categorical findings, observed Ex.M-5 18(1) Settlement, stating that the revised wages for contract workers upto 5 years, 10 years and 15 years amount to unfair labour practice since the workers cannot be expected to work for 15 years as contract labour. The counter argument of the third respondent-Turbo Energy Limited that there is no specific plea regarding unfair labour practice and no evidence can be let in or no argument can be put forth without specific plea is acceptable and hence the terms of 18(1) Settlement (Ex.M-5) cannot be analysed in this regard. The writ petitioner relied on the case of Air India Statutory Corporation Etc., vs. United Labour Union and Others [1997 LLJ Volume 1 Page 1113] and contended that the principal employer is under statutory obligation to absorb the contract labour on abolition of the contract labour system.

18. In this regard, the third respondent-company relied upon the judgment of Hon'ble Supreme Court of India in the case of Steel Authority of India Ltd vs. National Union Water Tank Workers [CDJ 2011 SC 517], wherein the Supreme Court held that the judgment in Air India's case is overruled prospectively and held that the notification has been issued with clause (3) that neither Section 10 of the CLR and Act nor any other provisions in the Act, whether expressly or by necessary implication provides for automatic absorption of contract labour or issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employer of contract labour, in any process, operation or other work in any establishment.

19. Consequently, the principal employer cannot be required

to order absorption of the contract labour working in the concerned establishment. The legal precedent overruling the earlier case in Air India Statutory Corporation is not in favour of the writ petitioner though abolition or absorption of contract labour is not the issue in the present case and reinstatement alone is sought for by the writ petitioner. The Labour Court categorically found that respondents 1 and 2 contractors pay the wages and extend the statutory benefits and have exercised primary control and supervision over the writ petitioner and therefore, there is no existence of employer-employee relationship between writ petitioner and the third respondent and any such existence of employer-employee relationship was not proved by the writ petitioner.

20. This being the categorical findings of the Labour Court, there is no error in applying the law prevailing as of now. The Labour Court rightly relied upon the legal principles settled by the Supreme Court in the case of Steel Authority of India Ltd vs. National Union Water Tank Workers [CDJ 2011 SC 517]. The Apex Court has overruled the earlier legal principles held in the case of Air India Statutory Corporation Etc., vs. United Labour Union and Others [1997 LLJ Volume 1 Page 1113]. Thus, the Labour Court has applied the correct law in deciding the issues and there is no infirmity as such.

21. Accordingly, the common award dated 11.10.2012 passed by the Labour Court in I.D.No.40 of 2011 is confirmed and Consequently, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Svn

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To
The Presiding Officer,
Principal Labour Court,
Vellore.

+1cc to Mr.C.K.Chandrasekhar, Advocate, SR.No.83114
+1cc to Mr.S.Baseer Ahamed, Advocate, SR.No.82747
+1cc to M/s.Shanmugha Associates, Advocate, SR.No.82574

W.P.No.13956 of 2015

Kak (01/11/2019)