

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.30105, 31119 to 31121 of 2003

W.P.No.30105 of 2003

S.Rajan

... Petitioner

.Vs.

1.The Management
Conti Travels
U.M.S. Building
814, Avinashi road
Coimbatore-18.

2.The Management
Athilakshmi Transport
Private Limited
135, Venkateswara complex
Opp. to Kalapatti Section
Chitra post
Coimbatore-641 014.

3.The Labour Court
Coimbatore.

4.S.Thiyagarajan

5.V.Vasanthamani
(R4 and R5 impleaded as per Court
order dated 14.08.2019 in WMP.No.304/2011
in W.P.No.30105 of 2003)

... Respondents

W.P.Nos.31119 to 31121 of 2003

V.Easwaran

... Petitioner in W.P.No.31119 of 2003

M.Mani

... Petitioner in W.P.No.31120 of 2003

1.R.Chinnasamy (died)

2.Aiyammal

3.S.Rajeshwari

4.C.Sivaraj
5.C.Sangeetha Priya
6.C.Prakash

... Petitioners in W.P.No.31121 of 2003

(Petitioners 2 to 6 are substituted as legal heirs of the deceased 1st petitioner vide order dated 05.02.2019 made in W.P.M.P.No.65 of 2013 in W.P.No.31121 of 2003).

.Vs.

1.The Management
Conti Travels
U.M.S. Building
814, Avinashi road
Coimbatore-18.

2.The Management
Athilakshmi Transport
Private Limited
135, Venkateswara complex
Opp. to Kalapatti Section
Chitra post
Coimbatore-641 014.

3.The Labour Court
Coimbatore.

.... Respondents in
W.P.Nos.31119 to 31121 of 2003

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for records of the 3rd respondent in I.A.Nos.21, 23, 24 and 22 of 2003 in I.D.Nos.87, 89, 90 and 88 of 2001, dated 18.03.2003 respectively and quash the same.

In all the WPs.

For Petitioners: Mr.A.Sivaji

For R1

: Mr.S.Silambanan

Senior Counsel for Mr.N.Umapathi

For R2

: Mr.Anand Gopalan for

M/s.T.S.Gopalan and Co.

C O M M O N O R D E R

Writ Petitions are filed challenging the order of the 3rd respondent dated 18.03.2003 made in I.A.Nos.21, 23, 24 and 22 of 2003 in I.D.Nos.87, 89, 90 and 88 of 2001.

2.The issue involved in all the writ petitions is one and

the same and hence, all the writ petitions are disposed of by this common order.

3. Heard the learned counsel appearing for the petitioners as well as the learned Senior Counsel appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

4. The petitioners raised industrial dispute in I.D.Nos.87, 89, 90 and 88 of 2001 claiming relief against the 1st respondent. The 1st respondent in the counter statement denied employer-employee relationship between the 1st respondent and the petitioners. The 2nd respondent in the counter statement has stated that the petitioners were employed by the 2nd respondent and inspite of calling upon the petitioners for reporting to duty, they failed to do so. After such a stand taken by the respondents 1 and 2, the petitioners filed I.A.Nos.21, 23, 24 and 22 of 2003 for amendment of prayer in I.D.Nos.87, 89, 90 and 88 of 2001 stating that if the 3rd respondent comes to the conclusion that the petitioners are employees of the 2nd respondent, both the respondents 1 and 2 are liable to grant relief and the claim petitions may be amended. The respondents 1 and 2 separately filed counter affidavits in the above interim applications and opposed the same. The 3rd respondent considering the averments made in the affidavits and counter affidavits and the judgment relied on by the respondents, dismissed the interim applications filed in the above I.Ds. Against the order dated 18.03.2003 made in I.A.Nos.21, 23, 24 and 22 of 2003 in I.D.Nos.87, 89, 90 and 88 of 2001, the petitioners have come out with the present four writ petitions. Pending W.P.No.31121 of 2003, the petitioner viz., R.Chinnasamy died and his legal heirs were impleaded as petitioners 2 to 6.

5. Mr. A. Sivaji, the learned counsel appearing for the petitioners contended that the 3rd respondent has adopted a too technical approach to the facts of the case, which is unwarranted. The 3rd respondent failed to see that the petitioners have raised industrial dispute under Section 2A(2) of the Industrial Disputes Act and there is no reference by any authority to the 3rd respondent. The 3rd respondent failed to see that there is no restricted reference as found by the 3rd respondent. The judgment relied on by the learned counsel appearing for the 2nd respondent is not applicable to the facts of the present case. The amendment sought for is necessary in view of the facts and circumstances of the present case. The new relief is asked against the 2nd respondent, who is already arrayed as a party to the industrial dispute and hence by allowing the interim applications, no prejudice will be caused to the respondents 1 and 2. The 3rd respondent has to mould the relief. The finding of the 3rd respondent that the proposed

amendment will go beyond the order of reference, is not correct and prayed for allowing all the writ petitions.

6.The learned Senior Counsel appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent separately contended that amendment now sought for is beyond the scope of industrial dispute raised by the petitioners. The petitioners have come out with the case that the 1st respondent did not provide work and directed them to go to the 2nd respondent. On such allegations, the petitioners have claimed the relief only against the 1st respondent and hence amendment sought for is not maintainable.

7.In addition to the above contentions, the learned counsel appearing for the 2nd respondent also contended that when the 2nd respondent called upon the petitioners to report for duty, the petitioners failed to do so. Even now the petitioners have not stated that they are the employees of the 2nd respondent. In such circumstances, the dismissal of the interim applications by the 3rd respondent is valid. The 3rd respondent has given valid reason for dismissing the applications. The petitioners filed industrial dispute under Section 2A(2) of the Industrial Disputes Act and its scope is very restricted. The petitioners have to make it clear who is their employer and their pleadings are also not clear. The provisions of Section 25F of the Industrial Disputes Act will arise only when the 2nd respondent denied the employment to the petitioners. The 2nd respondent shifted their office and informed the petitioners, but the petitioners did not want to work and they want to work only with the 1st respondent. In support of his contention, the learned counsel relied on the following judgment reported in (1998) 5 SCC 635 (Municipal Committee Tauru vs. Harpal Singh and another);

"9.Even in labour matters a claimant goes before the Court or Tribunal with a case and it is upon the merits of that case that relief is to be granted or refused to him. To look to his case is not to look at technicalities. There is no substantial justice when the Court or Tribunal gives relief to a workman which is on a basis that is totally contrary to the basis upon which he approached it; which, indeed is the employer's case. Substantial justice must be done both to the employer and the employees."

8.The petitioners raised dispute before the Conciliation Officer under Section 2A of the Industrial Disputes Act claiming employment from the 1st respondent. The conciliation ended in failure and the petitioners raised industrial dispute under Section 2A(2) of the Industrial Disputes Act. Earlier, the

Labour Court or Industrial Tribunal will have jurisdiction to entertain the industrial dispute only when the dispute is referred to it by the competent authority. Subsequently, by amendment to the Industrial Disputes Act, the dispute can be directly raised before the Labour Court or Industrial Tribunal as the case may be. Such a dispute is equivalent to an industrial dispute being referred to the Labour Court or Industrial Tribunal by the authority.

9. In the present case, the petitioners have come out with specific case that they were employed by the 1st respondent and suddenly, they were asked to report for duty to the 2nd respondent. Challenging the said direction of the 1st respondent, the petitioners raised dispute claiming relief only against the 1st respondent even though the 2nd respondent was made a party. The 1st respondent in the counter statement filed before the 3rd respondent in the industrial dispute denied the employer-employee relationship between the petitioners and 1st respondent and has stated that the petitioners are employees of the 2nd respondent. The 2nd respondent in the counter statement has stated that due to administrative reasons, they have shifted their office to Door No.135, Venkateswara complex, Kalapatti Pirivu, Sitra, Coimbatore 641 014 and instructed all the employees to report to that place. The petitioners did not report to the 2nd respondent for work and the petitioners have not reported even after receiving letter from the 2nd respondent. Even after such a stand taken by the 2nd respondent, the petitioners are not admitting that they are employees of the 2nd respondent. On the other hand, the petitioners in their affidavits, have stated that "if the 3rd respondent comes to the conclusion that the petitioners are employees of the 2nd respondent, both the respondents 1 and 2 are liable to grant relief and the claim petitions may be amended". From the above statement, it is clear that the petitioners are claiming relief only against the 1st respondent and at the time of conclusion of the trial, if the 3rd respondent comes to the conclusion that the petitioners are employees of the 2nd respondent, the relief may be granted to the petitioners against the respondents 1 and 2. The petitioners can claim relief either against the 1st responder or 2nd respondent and they cannot claim relief against both the 1st respondent management and 2nd respondent management. The respondents 1 and 2 have contended that they are separate entities and they are private limited companies. This statement is not disputed by the petitioners.

10. The 3rd respondent considering the averments made in the affidavits filed by the petitioners and counter affidavits filed by the respondents 1 and 2, has concluded that the petitioners are not certain about from whom they want relief. The 3rd respondent considering the dispute raised before the

Conciliation Officer and averments made in the claim petitions, has concluded that the relief now sought for in the amendment is beyond the scope of the dispute raised by the petitioners. The reason given by the 3rd respondent for such a conclusion is cogent and valid and there is no error or irregularity in the said reasoning. The judgment relied on by the learned counsel appearing for the 2nd respondent is applicable to the facts of the present case.

11. In the result, all the writ petitions are dismissed. No costs.

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Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Labour Court
Coimbatore.

+1cc to M/s. Kaavya Silambanan Associates, vide SR.No.70324

+1cc to Mr. A. Sivaji, Advocate, SR.No.69556

+1cc to M/s. T.S. Gopalan & Co., Advocate, SR.No.69269

W.P.Nos.30105, 31119 to 31121 of 2003

Kak(31/10/2019)

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