

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18854 of 2013

&

M.P.No.1 of 2013

R.Prakash Raj

...Petitioner

..Vs..

1.The Presiding Officer,
Labour Court,
Salem.

2.S.Chandran

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records in I.D.No.10 of 2010 on the file of the Labour Court, Salem, the first respondent herein, quash the award passed therein dated 25.07.2012.

For Petitioner : Mr.M.R.Raghavan

For 2nd Respondent : Mr.M.Santhana Raman for
Mr.M.R.Sivakumar

ORDER

The award dated 25.07.2012 passed in I.D.No.10 of 2010 is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner/Management made a submission that the industrial dispute raised by the second respondent is not maintainable in view of the fact that he was not a workman within the definition of Section 2(s) of the Industrial Disputes Act. The second respondent was employed in the writ petitioner/Management as Supervisor. During the course of his employment, he had indulged in serious mis-conducts like reporting to work in intoxicated state and misbehaving with women employees. Though, he was warned on several occasions, the second respondent did not change his attitude and continued to misbehave in the same manner. On 12.09.2005, he misbehaved with a female employee by name Smt.Murugeswari and she filed a Police Complaint against

second respondent regarding his misbehavior and sexual harassment.

3.The learned counsel appearing on behalf of the petitioner made a submission that all alone it is contended by the second respondent even before the Labour Officer as well as in the petitions filed before the Labour Court that he was working as Supervisor in the petitioner/Management. The Labour Officer recorded that the second respondent is a Supervisor and extracting works from other employees working in the petitioner/Management. Despite the fact that the second respondent designated himself as the Supervisor of the Company, the Labour Court entertained the industrial dispute which is in violation of Section 2(s) of the Industrial Disputes Act.

4.To substantiate the said contention, the learned counsel appearing on behalf of the petitioner urged this Court that the second respondent sent a legal notice through his Advocate, which is marked as Ex.P.1, wherein the learned counsel appearing on behalf of the second respondent has stated that he was working as Supervisor and he extracted works from the other employees. The women employee who filed a police complaint before the Kondalampatti Police Station, Salem District on 19.01.2006 in F.I.R.No.12/2006 has clearly stated that Mr.S.Chandran/second respondent was working as the Supervisor in the writ petitioner/Management and he committed sexual harassment and harassed the said complainant Smt.Murugeshwari. The second respondent filed a petition under Section 2(A) of the I.D.Act before the Labour Officer, Salem, which is marked as Ex.P.3. Even in para 1 of the said petition, the second respondent has stated that he was working as the Supervisor and he was performing his duties and responsibilities to the satisfaction of the Management.

5.The Labour Officer in his reply dated 02.09.2006, which was marked as Ex.P.4, also stated that the second respondent was working as Supervisor in the writ petitioner/Management. The second respondent herein has filed a petition before the Labour Court in I.D.No.10/2006 under Section 2A (2) of the Industrial Disputes Act. The second respondent has clearly stated that he was trained by the Engineer and he provided training to 100 employees in the writ petitioner/Management and was working as the Supervisor in the Management. In the reply sent by the Advocate for the Management, they have stated that the second respondent was working as a Supervisor. The Labour Court in its finding also repeatedly recorded that the second respondent was working as a Supervisor and however the issue regarding the fact whether the second respondent was a workman within the definition of Section 2(s) of the Industrial Dispute Act was not decided by the Labour Court. Though the Labour Court recorded

that the second respondent was working as the Supervisor with the writ petitioner/Management, the award was passed based on the merits as well as the documents filed.

6. An employee while approaching the Labour Court must establish at the first instance that he is a workman within the definition of Section 2(s) of the Industrial Disputes Act, then alone the industrial dispute can be entertained and not otherwise.

7. The learned counsel appearing on behalf of the second respondent disputed the contentions by stating that the second respondent was performing the duties and responsibilities of the workman and mere designation 'Supervisor' would not be a ground to reject the industrial dispute as the second respondent was performing some electrical works also in the writ petitioner/Management. It is further contended that the second respondent was performing all the duties and this apart, he was terminated from service without conducting any enquiry. Thus, the very order of termination is null and void as the principles of natural justice have been violated.

8. This Court is of the considered opinion that the grounds raised by the second respondent for assailing the order of termination may be valid and acceptable, however entertaining the industrial dispute under the provisions of the Industrial Disputes Act to be decided at the first instance. Once a person who is approaching the Labour Court is able to establish that he is a workman within the definition of Section 2(s) of the Industrial Disputes Act, then alone the Labour Court has jurisdiction to entertain the dispute and adjudicate the same and pass an order and not otherwise. In respect of Managerial and Supervisory staff, they are at liberty to approach the competent forum for the purpose of redressal of their grievances. Contrarily, the Labour Court cannot entertain the industrial dispute in view of the fact that the second respondent himself designated as Supervisor and was performing the duties of Supervisor and the said facts are admitted by the second respondent before the Labour Officer, Labour Court as well as in the legal notice.

9. These being the facts and circumstances, the Labour Court has erroneously entertained the industrial dispute under Section 2(A)(2) of the Industrial Disputes Act. The second respondent has to redress his grievances by approaching the competent forum and this being the factum, this Court is not inclined to adjudicate the merits and demerits as raised by the second respondent and validity of the termination order is not considered in the writ petition. It is left open to the second respondent to adjudicate the legality or otherwise the order of

termination issued by the Management against the second respondent. The writ petition is decided only on the ground that the second respondent is not a workman within the definition of Section 2(s) of the Industrial Disputes Act.

10. Accordingly, the Award dated 25.07.2012 passed in I.D.No.10/2010 is quashed and the writ petition stands allowed. No costs. Consequently the connected miscellaneous petition is closed.

11. The learned counsel appearing on behalf of the petitioner states that at the time of admission of writ petition, the Management deposited a sum of Rs.1,40,000/- and the Labour Court is directed to repay the deposited amount with the accrued interest to the writ petitioner within a period of four weeks from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (C)

//True Copy//

Sub Assistant Registrar

mrm

To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.M.R.Raghavan, Advocate, S.R.No. 94463

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W.P.No.18854 of 2013

CP (CO)
GN(30/12/2019)

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