

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.04.2019

Delivered on: 26.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.28540 of 2011

S.Md.Ubeydullah

...Petitioner

Vs.

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

2. The Head Office,
Bavuta Beedi Company,
No.6, Ramanuja Iyer Street,
Old Washermenpet,
Chennai-600 021.

3. The Management,
M/s.Shaik Ismail & Son,
Bavuta Beedi Branch,
No.2, Sherfuddin Street,
Arcot, Vellore District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for records from 1st respondent, relating to the impugned award dated 7th September 2011 in I.D.No.45 of

2009 and quash the same.

For Petitioner : Mr.R.Rajaram
For Respondents : Mr.John for
M/s.Fox Monday & Associates

ORDER

This Writ Petition has been filed by the petitioner, praying to issue Writ of Certiorari, to call for records from 1st respondent, relating to the impugned award dated 07.05.2011 in I.D.No.45 of 2009 and quash the same.

2. The case of the petitioner is that he joined as Accountant in 1987 in third respondent Management. According to him, he was terminated from services illegally from 1.7.2008. Therefore, he raised an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947 (in short, 'the Act') against his termination. The said dispute was numbered as I.D.No.45 of 2009. In the proceedings before the Labour Court, Vellore, the respondent Management did not appear despite notice being served on them. Therefore,

on 20.07.2009 an ex parte award was passed, ordering reinstatement of the petitioner with full backwages. On behalf of the Management, an interlocutory application in I.A.No.384 of 2009 was filed to set aside ex parte award with delay of 17 days in filing the said I.A. The ex parte award was set aside and thereafter, the Management failed to appear once again before the Labour Court. Hence, the Labour Court passed another ex parte award on 26.2.2010. The petitioner therefore, sent a registered letter on 9.4.2010 seeking to reinstate him in service as per the award. Since there was no response, he filed a computation petition under Section 33C)(2) of the Act before the Labour Court for computation of money payable in terms of the Award. Since there was no response from the Management, the C.P. is allowed on 30.08.2010. Thereafter, on 22.12.2010, the petitioner sent a letter to the Management requesting them to pay money computed by the Labour Court in C.P. No.79 of 2010. Since there was no response forth coming, the petitioner had initiated steps for taking action against the Management.

3. At this, the Management approached the Labour Court in I.A. No.40 of 2011 seeking to set aside the ex parte award dated 26.2.2010 in I.D. No.45 of 2009. The Labour Court set aside the award and restored the I.D. on file. On 9.5.2011, a written statement was filed on behalf of the Management, wherein, for the first time, raised an objection that the petitioner was not a workman and was only employed as a Manager and therefore, he cannot maintain the industrial dispute. In the proceedings before the Labour Court, after I.D. was restored, number of documents were marked on either side, particularly 18 documents were marked on behalf of the Management and on the basis of the oral and documentary evidence, the Labour Court has dismissed the industrial dispute filed by the petitioner herein by rendering a finding that the petitioner was not a workman under Section 2(s) of the Act since he was employed as a Manager. As against the dismissal of the I.D., the present Writ Petition has been filed by the petitioner herein.

4. Mr.Rajaram, learned counsel appearing for the petitioner would submit that the finding of the Labour Court is patently erroneous and perverse and the same is liable to be interfered with by this Court. According to him, the Labour Court has not appreciated the stand of the petitioner herein that he was only employed as Accountant and Clerk during the relevant time and the documents on which the Labour Court placed reliance cannot be given credence to since the petitioner has questioned about the affixure of stamp by the management, describing him as a Manager after the signatures were affixed by the petitioner himself during the relevant time. This aspect was not considered by the Labour Court though there was reference to such objection.

5. The learned counsel for the petitioner would submit that in the affidavit filed by the Management itself in I.A.384 of 2009, the Management has stated that the petitioner was employed only as Accountant. According to the learned

counsel, that even in the Written Statement filed on behalf of the Management, it was clearly contended that the petitioner was helping his father as Clerk till his father death in 2003 and some of the documents relied on by the Labour Court were the documents pertaining to the years prior to 2005 and therefore, the Labour Court has completely erred in coming to a conclusion that the petitioner was not a workman and was only a Manager in the respondent Management. In fact, the petitioner counsel would draw the attention of this Court to a reference by the Labour Court in its award in paragraph 15 which is extracted hereunder:

"15. Except the evidence of the petitioner there is no other corroborative evidence to show that when the petitioner affixed his signature in the above said documents there was no seal of the respondents unit and the same were fabricated by the management with an ulterior motive to defeat this petition. So the arguments of the petitioner is liable to be rejected on this aspect."

6. The learned counsel would also submit that the

Management has not let in any evidence nor marked any documents through their witnesses and therefore, the Management has failed to establish the factum of the petitioner being employed as Manager. The Labour Court has unfortunately overlooked this aspect and has come to the conclusion only on the basis of the documents marked through the petitioner himself. He would submit that the petitioner has merely accepted his signature in the documents, but not accepted the affixure of stamp describing him as Manager, which according to the petitioner, was affixed later on in order to non-suit the petitioner in the proceedings before the Labour Court.

7. On the other hand, the learned counsel appearing for the respondent Management would submit that there was no necessity to let in any evidence since the Management has clearly proved its case by the documents filed before the Labour Court, viz., Exs.M1 to M18 and those documents were

marked though the petitioner himself. According to the learned counsel, the petitioner had accepted the signature of those documents which clearly described him as a Manager. He would particularly emphasis the fact that the petitioner had represented the Management before the Labour Offices and also signed certain documents addressed to the Labour Officers and other statutory authorities as Manager and unless he was employed as Manager, factually, he could not have addressed the communications to the authorities on behalf of the Management. Therefore, he was, in fact, employed only as a Manager and the Labour Court has rightly concluded its finding that the petitioner was indeed employed as a Manager and therefore, not a workman under Section 2(s) of the Act.

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8. This Court considered rival submissions of the learned counsels on either side and also perused the Award

and the exhibits relied upon by the Labour Court.

9. Although the petitioner has admitted his signature in certain documents which were marked by the Management, yet on behalf of the petitioner, affixure of stamp in the documents was disputed stating that same was affixed after the signature was affixed by the petitioner in order to describe the petitioner's designation as Manager. Once such protest has been made on behalf of the petitioner in regard to the factum of affixure of stamp describing him as Manager, the Labour Court ought have directed the Management to produce their witnesses in order to substantiate their claim. Unfortunately, the Labour Court has not chosen to direct the Management to produce their witnesses and in the absence of any evidence on behalf of the Management, the sole testimony of the petitioner himself cannot be the basis for coming to a conclusion against the petitioner himself. In fact, when the Labour Court has chosen to refer the dispute raised by the

petitioner as evidenced in paragraph 15, which is extracted supra, yet the Labour Court has rejected the contention of the petitioner without any reasons. It looks like the Labour Court has miserably overlooked the dispute raised by the petitioner in this regard in order to render a finding against the petitioner.

10. Although there appears to be some evidence in establishing the fact of the petitioner being employed as Manager, yet, the evidence of the petitioner alone cannot unimpeacheably establish the fact in the absence of any oral evidence on behalf of the Management. Moreover, in the affidavit filed by the Management in I.A., as rightly contended by the learned counsel for the petitioner, the Management itself has averred that the petitioner was employed as Accountant and in the written statement, it was stated by the Management that the petitioner was assisting his father till 2003 as a Clerk. Therefore, there appears to be uncertainty

in the type of employment in which, the petitioner was employed. There are references about the petitioner being Clerk, Accountant and Manager, etc. in many of the documents and in such event, the Management ought to have let in evidence in order to conclusively establish their case on the question of maintainability of the Industrial Dispute.

11. In this case, the Management has failed to discharge its burden regarding its objection to the maintainability of the Industrial Dispute by letting in any oral evidence and also marking documents through their witnesses. Unfortunately, the Labour Court has also not insisted upon the Management to let in any evidence and in the absence of any evidence, the benefit of doubt ought to have been given in favour of the petitioner. In any case, the ultimate finding of the Labour Court that the petitioner was not a workman, but was a Manager cannot be conclusively established in view of the dispute raised by the petitioner that the stamp affixed on his signatures in the documents marked through him, was done after his signature was affixed, behind his back in order to

frustrate his attempt to get his grievance redressed before the Labour Court. In the said circumstances, this Court is of the view that the finding rendered by the Labour Court is required to be revisited since the acceptability or rejection of the claim of the petitioner hinges on the factum of the nature of employment of the petitioner with the Management.

12. In view of the above, this Court is of the view that the Award passed by the Labour Court is liable to be set aside on the simple ground that the finding rendered by the Labour Court is not based on substantial material. Accordingly, the Award of the Labour Court, dated 07.05.2011 passed in I.D.No.45 of 2009 is set aside. The matter is remitted back to the Labour Court for fresh consideration as to the status of the petitioner by permitting both the parties to let in evidence afresh. Since the petitioner has already reached the age of retirement, the Labour Court based on the evidence afresh being let in by both parties, if comes to a conclusion that the

petitioner is a workman under Section 2(s) of the Act and that the termination of the petitioner was illegal or without justification, it may proceed to pass Award by ordering suitable compensation payable to the petitioner as the petitioner has already attained the retirement age and he cannot be ordered to be reinstated. As the present Industrial Dispute has been pending from 2008 onwards, the Labour Court directed to give a finding as to the status of the petitioner based on the evidence to be let in by the parties, within a period of three months after affording an opportunity to the parties and thereafter, proceed to pass final Award if necessary as directed above, within three months thereafter.

13. The Writ Petition is allowed to the extend as indicated above. No costs.

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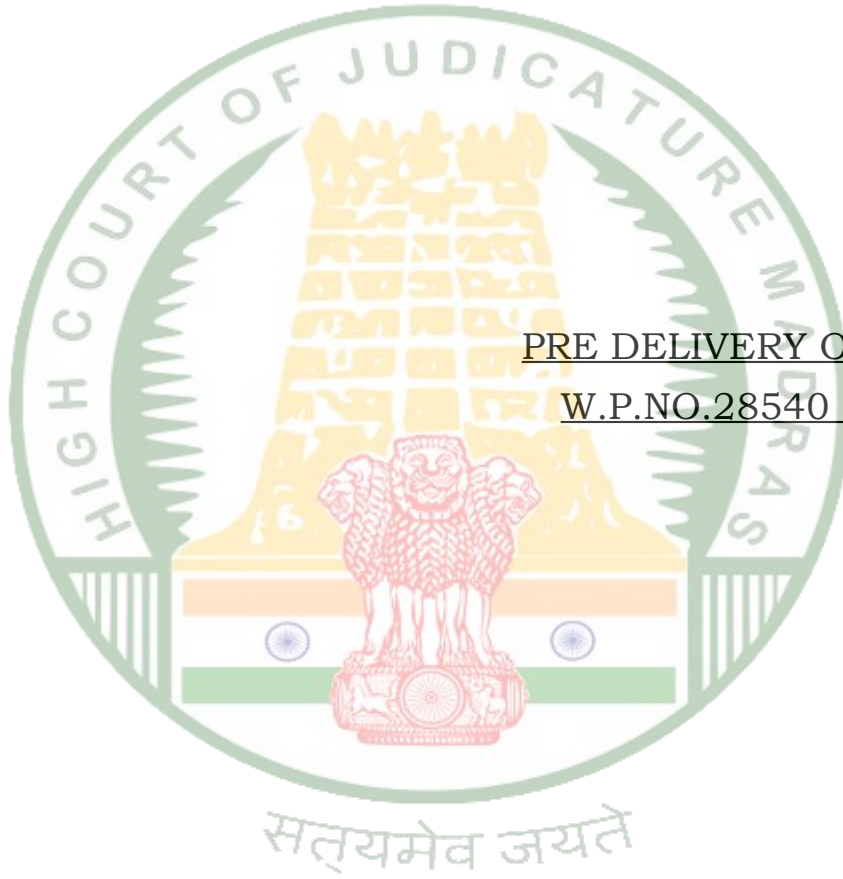
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Index: Yes/No

Internet: Yes/No

V.PARTHIBAN, J.

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PRE DELIVERY ORDER IN

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