

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.04.2019

Order Reserved on: 27.03.2019	Order delivered on: 05.04.2019
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CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.440 of 2019
and
C.M.P.No.4006 of 2019

VESTAS Wind Technology India Private Limited,
(Production Business Unit)
Rep. by V.P/Factory Manager,
No.298, Rajiv Gandhi Salai,
Sholinganallur,
Chennai - 600 119.

... Appellant

-VS-

1. M.Arul Prakasam

2. The Presiding officer,
Third Additional Labour Court,
Chennai.

... Respondents

PRAYER: Writ appeal filed under Clause 15 of Letters and Patents Act against the order made in W.M.P.No.36458 of 2017 in W.P.No.31673 of 2017 dated 24.09.2018.

W.M.P.No.36458 of 2017:-

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an Interim Direction directing the 1st Respondent either to reinstate the Petitioner in service as per the award dated 07.10.2017 of the Labour Court or pay him the full last drawn wage from the date of award under Section 17-B of the Industrial Dispute Act and continue to pay the same every month on or before 10th day of Every English Calendar month till disposal of WP.31673 of 2017.

W.P.No.31673 of 2017:-

Writ of Certiorari to call for the records connected within I.D.No.209/2013 and quash the Award dated 07.10.2017 passed by the 1st Respondent i.e. the presiding Officer, III Additional Labour Court Chennai

For Appellant : Mr.Sanjay Mohan
Senior Counsel
for M/s.S.Ramasubramaniam Associates

For Respondents
R1 : Mr.P.R.Thiruneelakandan

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal is directed against the order in W.M.P.No.36458 of 2017 in W.P.No.31673 of 2017 filed by the first respondent herein for a direction to the appellant before us to either reinstate him in service as per the award of the Labour Court or pay him full last drawn wage from the date of the award under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2.The miscellaneous petition filed by the first respondent herein was allowed by the impugned order dated 24.09.2018. The appellant Management, who is the original writ petitioner who had challenged the award passed by the Labour Court is on appeal as against the order passed in the miscellaneous petition.

3.We have heard Mr.Sanjay Mohan, learned Senior Counsel for M/s.S.Ramasubramaniam Associates and Mr.P.R.Thiruneelakandan, learned counsel for the first respondent.

4.The first respondent had filed the miscellaneous petition in the writ petition filed by the appellant Management contending that in terms of Section 17B of the Act if the employer challenges the award of the Labour Court which directs reinstatement of the workmen and the said workmen has not been gainfully employed anywhere in any establishment and an affidavit is filed by the concerned workmen to that effect during the pendency of the writ petition, he should be paid full last drawn wage from the date of the award. It is further submitted that despite several representations given by the first respondent to the appellant Management they have neither

reinstated the first respondent nor paid wages under Section 17B of the Act and therefore approached the Court by filing the miscellaneous petition. The appellant Management resisted the prayer by contending that the first respondent has made false statements in the affidavit filed in support of the miscellaneous petition and the petition is liable to be dismissed in limine. It was further stated that it has come to the notice of the appellant Management that the first respondent is running a Construction Company under the name and style of M/s.Srilekha Homes at Plot No.33/1A, Priyadharshini Nagar, Sithalapakkam, Chennai - 73 and consequently gainfully employed. It is further submitted that the first respondent is earning income from and out of his business and they relied upon the following documents to support their stand that the first respondent is running his own Construction Company and has employed people under him and therefore gainfully employed.

- i. Advertisement of Srilekha Homes posted by Arul Mani with his photo in his Facebook profile on 27.03.2013 that has been downloaded by the management from the Internet.
- ii. Advertise of his construction business namely Srilekha Homes is posed in the website of Sulekha property wherein it mentions that Arul Prakasam is agent as on date.
- iii. Online advertisement made in www.magicbricks.com (which shows that Srilekha Homes is a construction firm that is engaged in the business of real estate development) containing description of Srilekha Homes given by Mr.Arul Prakasam as on date. The advertisement also contains his profile as well as photograph. A copy of the same as downloaded from the Internet is annexed herewith.
- iv. Facebook profile of Mr.Arul Mani with his photo showing that he works as an Assistant Manager of Vestas as on 11.12.2014 that has been downloaded from the Internet.
- v. His mobile number stated in Srilekha Homes 94449 88877 & 98841 27766 is classified as Construction and Real Estate Business.
- vi. Photos of Srilekha Homes available in www.justdial.com containing visiting card of Mr.Arul Prakasam, Srilekha Homes as on 12.07.2017 that has been downloaded from the Internet.

5.The learned Single Bench by the impugned order rejected

the stand taken by the appellant Management that the reluctance to rely upon the Facebook evidence is based upon a fear that such information was inherently unreliable due to the possibility of the creation of false Facebook sites or the posting of false messages by a "hacker". Thus it is held that without proof the Facebook entires cannot be relied on. The first respondent before the learned Single Bench has relied upon certain decisions of the Hon'ble Supreme Court and this Court for the proposition that personal avocation of the workmen or transient employment does not disentitle the workmen to claim wages under Section 17B of the Act.

6. When we heard this appeal we afforded an opportunity to the first respondent to file a counter affidavit to the stand taken by the appellant before us. Accordingly, a counter affidavit has been filed by the first respondent.

7. Mr. P. R. Thiruneelakandan, learned counsel for the first respondent reiterated the contentions raised in the counter affidavit by submitting that the appellant has not produced any legally acceptable and admissible evidence to show that there is a Company under the name and style of M/s. Srilekha Homes and the said Company is owned by the first respondent or he has shares in the Company. Further, it is contended that the appellant has not produced any such document to show that the said Company is incorporated with the Registrar of Companies or with the Registrar of Firms, etc. and therefore, the existence of the Company itself is in question. Further, it is contended that the documents relied on by the appellant in the counter affidavit filed before the learned Single Bench are false, fabricated, generated by the appellant for the purpose of the case and such documents can be generated by anyone in any other persons name and the documents are not public documents and they are not legally admissible or acceptable documents and those documents cannot be relied on without affording an opportunity to the first respondent to cross examine them to testify the genuineness and veracity of the documents. By relying on the various decisions of the Hon'ble Supreme Court and this Hon'ble Court, it is reiterated that personal avocation of the workmen or transient employment does not disentitle him to claim wages under Section 17B of the Act. Further, it is submitted that the payment of wages under Section 17B of the Act is a pre-condition to entertain a writ petition challenging an award of reinstatement that could not have been denied when the conditions stipulated under Section 17B of the Act is complied with by the concerned workmen.

8. Before, we examine as to whether the learned Single Bench was right in recording a finding that the Facebook entries are false entries and could be hacked, we first need to take note of the requirements which are to be fulfilled for a workman to be entitled for wages under Section 17B of the Act. The said provisions states that where in any case a Labour Court or a Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in the High Court or the Supreme Court, the employer shall be liable to pay such workman, during the pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit of such workman had been filed to that effect in such Court. It further states that provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under Section 17B of the Act for such period or part, as the case may be. In the instant case, there is an award in favour of the first respondent directing reinstatement. The appellant Management has filed a writ petition challenging the award and the matter is pending before this Court. Thus the first limb of Section 17B of the Act stands attracted.

9. The obligation cast upon the workman is to state on affidavit that he has not been employed in any establishment during the said period. If an affidavit is filed to the said effect the section provides for a remedy to the Management to prove to the satisfaction of the Court that such workman has been employed and has been receiving adequate remuneration during any such period or part thereof. If the Management is able to prove to the satisfaction of the Court that the workman had been employed and had been receiving adequate remuneration no wages need be paid to the workmen. Therefore, it is incorrect to state that there are no conditions attached to a claim for wages under Section 17B of the Act. The first respondent had filed an affidavit in support of W.M.P.No.36458 of 2017 stating that he is not gainfully employed anywhere. The Management has filed a counter affidavit and relied upon six documents to support their case that the first respondent is running his own Construction Company. The documents so relied on have been listed in the preceding paragraphs and they have been filed in the typed set of papers along with this appeal. Those documents are all screen shots of the images which are available in the websites. The screen shots contains photographs of the first respondent, his full residential

address, nature of business carried on and all other relevant details. The first respondent while filing the affidavit has merely stated that he is not gainfully employed. The term gainful employment has been the subject matter of interpretation by various Courts and self employment is also one among the employment which has been recognized but a self employment for sustenance of the workmen during the period when he was denied employment despite an award of reinstatement was not considered as a bar. Therefore what is relevant would be that the workmen should be gainfully employed. The first respondent has nowhere denied that the information available in the public domain, i.e. in the websites are not the information pertaining to him, rather the first respondent would state that it is the appellant who has to prove the same.

10. In our considered view the burden of proof has been discharged by the appellant by producing these documents. Having done so, the burden now shifts on the first respondent to prove that he has nothing to do with those information available online. Therefore, we do not agree with the finding rendered by the learned Single Bench that there is a possibility of hacking the Facebook pages and the Facebook evidence can be looked into upon a proper foundation and no such proper foundation has been laid in the case on hand. However, this appears to be not a stand taken by the first respondent before the learned Single Bench. The first respondent in the reply affidavit which was filed to the counter affidavit filed by the appellant Management before the learned Single Bench has not disowned the information but has made a vague allegation that they are false and fabricated documents. If that is so, then the first respondent ought to have set the criminal law in motion to bring to books the alleged perpetrator of such false and fabricated documents. The reply affidavit filed before the learned Single Bench by the first respondent has been filed as a counter affidavit before us in this appeal. There need not be any necessity for this Court to refer to the long line of decisions relied on by the learned counsel for the first respondent as there is no dispute raised as regards as the legal proposition that personal avocation of workmen does not disentitle him to claim wages under Section 17B of the Act. The first respondent having not been able to disprove the allegation made against him, not having been able to produce any material to show that the information available in the public domain was false and fabricated, is deemed to be gainfully employed and therefore, not entitled for wages under Section 17B of the Act.

11. For all the above reasons, the writ appeal is allowed and the order passed by the learned Single Bench in

W.M.P.No.36458 of 2017 in W.P.No.31673 of 2017 dated 24.09.2018 is set aside and consequently W.M.P.No.36458 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To

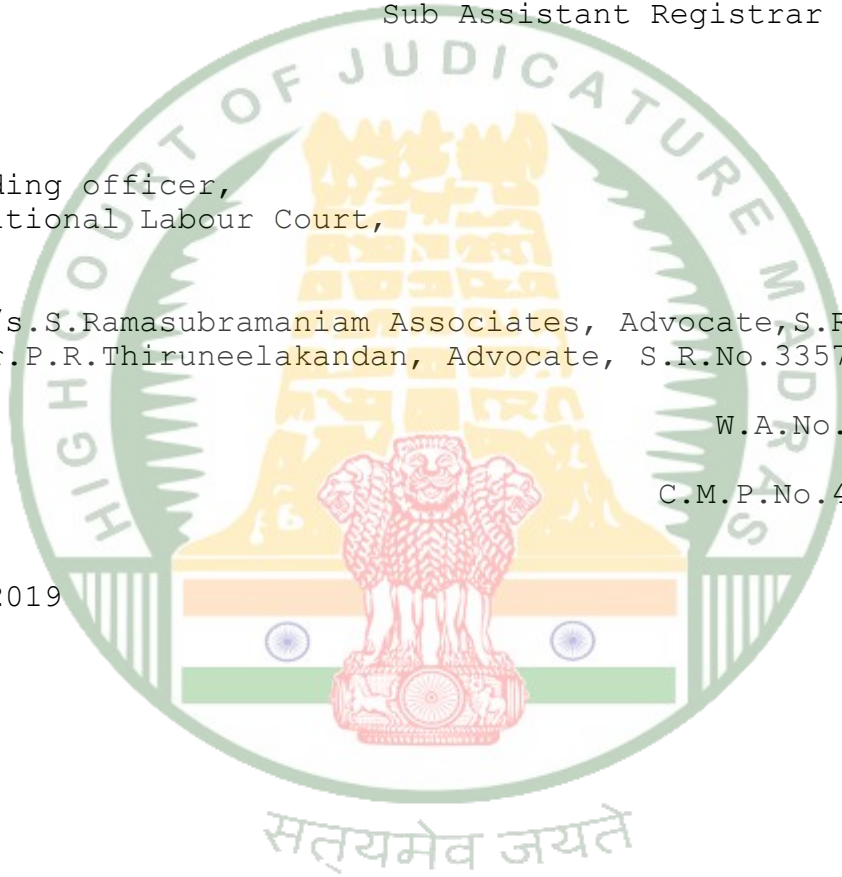
The Presiding officer,
Third Additional Labour Court,
Chennai.

+1cc to M/s.S.Ramasubramaniam Associates, Advocate, S.R.No.33215

+1cc to Mr.P.R.Thiruneelakandan, Advocate, S.R.No.33577

W.A.No.440 of 2019
and
C.M.P.No.4006 of 2019

VGII (CO)
CS/26/04/2019



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