

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.1491 of 2013 &
M.P.No.1 of 2013

The Management
M/s. Toll (India) Logistics (P) Ltd
(Formerly M/s. Sembcorp Logistics
(India) Pvt. Ltd., No.47, 2nd Floor,
Heavitree, Spur Tank Road,
Chetpet, Chennai - 600031. Petitioner

Vs.

Uma Shankar Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order passed on 29.11.2012 in I.A.No.238/2012 in I.D.No.105/2009 on the file of the learned III Additional Labour Court, Chennai.

For Petitioner ... Mr.L.Prabhakar

For Respondent ... Mr.Iyyadurai
for Mr.S.Ravi

ORDER

The instant revision has been filed under Article 227 of the Constitution of India challenging the Order dated 29.11.2012 in I.A.No.238 of 2012 in I.D.No.105 of 2009 on the file of the learned III Additional Labour Court, Chennai.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the respondent in I.D.No.105 of 2012 filed by the respondent seeking to declare the termination of the respondent dated 16.09.2008 by the petitioner is illegal and contrary to law and direct the petitioner management to reinstate the respondent in service with full back-wages continuity of service and all other attendant benefits.

3. During the pendency of I.D.No.105 of 2009, I.A.No.238 of 2012 was filed by the respondent workman seeking for a direction to direct the petitioner/management to produce salary vouchers, bonus vouchers and bank payment vouchers from 01.10.2003 to 16.09.2008. According to the respondent, he was initially appointed as a driver with the petitioner

management from 01.10.2003. According to him, at the time of initial appointment, the petitioner company was then known as M/s.Sembcorp Logistics (India) Pvt. Ltd., later during the year 2006, the name of the company was changed to M/s. Toll (India) Logistics (P) Ltd. and that all the employees including himself have been continuously working in the petitioner company without any alteration of service condition.

4. According to the respondent, he has worked continuously for more than 240 days in each year of his service from the date of his initial appointment. But according to him, the petitioner management all of a sudden terminated him from his service on 16.09.2008 without giving any opportunity. I.A.No.238 of 2012 was filed on the ground that documents showing details regarding the respondent's continuous service with the petitioner management are not available with him which are very much necessary for him to prove his continuous service with the petitioner management. The documents included the salary vouchers, bonus vouchers and bank payment vouchers maintained by the petitioner management from the date of respondent's appointment till the date of his termination.

5. A counter was also filed by the petitioner management in I.A.No.238 of 2012 filed by the respondent wherein they have stated that the respondent is not their employee and they do not have in their possession any of the documents sought for by the respondent in I.A.No.238 of 2012 filed by the respondent. In the counter, they have stated that the respondent was only an employee of the Managing Director of the petitioner company who employed the respondent in his personal capacity. Therefore, they have stated that they are not in a position to produce the documents sought for by the respondent in I.A.No.238 of 2012. The learned III Additional Labour Court, Chennai partly allowed I.A.No.238 of 2012 filed by the respondent by its order dated 29.11.2012 and directed the petitioner management to produce payment of bonus vouchers and bank payment voucher relating to the respondent workman.

6. Aggrieved by the order dated 29.11.2012 passed by the learned III Additional Labour Court, Chennai in I.A.No.238 of 2012 in I.D.No.105 of 2009, the instant revision has been filed by the petitioner under Article 227 of the Constitution of India.

7. Heard, MR.L.Prabhakar, learned counsel for the petitioner and Mr.Iyyadurai, learned counsel for the respondent.

Discussion:

8. As seen from the counter affidavit filed by the petitioner management in I.A.No.238 of 2012, it is their case that the respondent workman was never their employee with effect from 01.10.2003. It is also their case that the respondent workman was appointed on probation basis only with effect from 01.07.2008 and it is also their case that he was never made permanent, but was terminated from services before the expiry of the probation period i.e., on 16.09.2008 itself. Even in the chief examination of the petitioner management witness, it has been their case that the respondent workman was not their employee prior to 01.07.2008.

9. In the additional typed set of papers filed by the petitioner management before this Court on 12.12.2018, they have filed an application form submitted by the respondent workman seeking employment with the petitioner management as a driver. According to

the petitioner, the said application was submitted by the respondent workman in the year 2008 and only based upon that application, the respondent workman was employed with the petitioner on probation basis with effect from 01.07.2008. The said application for employment submitted by the respondent workman has also been marked as Ex.M1 before the Labour Court. The appointment order dated 01.07.2008 issued by the petitioner management to the respondent has also been marked as Ex.M2 before the Labour Court which is also filed in the additional typed set of papers.

10. As seen from the above records and the pleadings, the petitioner management has taken a consistent stand throughout the proceedings on the file of the labour court in I.D.No.105 of 2009 that the respondent workman was not their employee prior to 01.07.2008.

11. It is the case of the respondent as per the submissions of the learned counsel for the respondent that the respondent was the employee of the petitioner management with effect from 01.10.2003 and that, he has put in more than 240 days of service every year and

therefore, the petitioner management is in possession of the documents sought for by the petitioner in I.A.No.238 of 2012 in I.D.No.105 of 2009. According to the learned counsel for the respondent, the III Additional Labour Court, Chennai by its order dated 29.11.2012 has rightly allowed I.A.No.238 of 2012 in favour of the respondent.

12. The learned counsel for the respondent further submitted that revision under Article 227 of the Constitution of India is not maintainable before this Court, since the labour court has not committed any jurisdictional error in the impugned order. He drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Mfg. and Calico Ptg. Co. Ltd., vs. Ramtahel Ramanand reported in 1972 AIR (SC) 1598. He referred to paragraph 12 of the said Judgment which reads as follows:

“12. Article 227 of the Constitution no doubt, does not confer on the High Court power similar to that of an ordinary court of appeal. The material part of this Article substantially reproduces the provisions of Section 107 of the

Government of India Act, 1915 except that the power of superintendence has been extended by this Article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothe the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors : see **Waryam Singh v. Amarnath, 1954 SCR 565**. At this stage we consider it proper to refer to some of the judicial pronouncements by this Court with regard to the right of appeal under Article 133 from interlocutory orders. In **Tarapur and Co. Madras v. M/s. V/O. Tractors Export Moscow, (1969) 2 SCR 699**. It was

observed that an order of the High Court in appeal which does not dispose of the suit but merely refuses to grant an interim injunction is not a final order within the meaning of Article 133 even though as a result thereof the pending suit as framed may become infructuous requiring amendment of the plaint. On the other hand, an order dismissing a writ petition challenging industrial award which disposes of only one of the items of a charter of demands by the workmen, leaving the rest of the items to be adjudicated by a subsequent award was hold in **Asbestos Cement Ltd. v. P.D.Savarkar**, AIR 1971 SC 100 to be a final order is a civil proceeding and, therefore, appealable under Article 133. Under Act 226 of the Constitution it may in this connection be pointed out that the High Court does not hear an appeal or a revision : that court is moved to interfere after bringing before itself the record of a case decided

by or pending before a court a, tribunal or an authority, within its jurisdiction. A decision in the exercise of this extraordinary jurisdiction which finally disposes of the proceedings is a final order, in an original proceeding. An appeal or a revision on the other hand is generally considered to be a continuation of the original suit or proceeding and in a case, where the High Court deals with an appeal or a revision, finality for the purpose of Article 133 must attach to the whole of the matter so that after the decision of the High Court the matter is not a live one. (see *Ramesh v. Gandlal*, AIR 1996 SC 1445 at p.1449).”

13. Even in the said Hon'ble Supreme Court Judgment referred to supra, the civil revision petition filed under Article 227 of the Constitution of India was allowed, as seen from the paragraph 17 of the said judgment. The Hon'ble Supreme Court has observed that the decisions of the Labour Court and Industrial Court were based on

misconception and therefore, revision under Article 227 of the Constitution of India is maintainable. In the instant case also, the labour court has wrongly presumed that the petitioner is in possession of the bonus vouchers and bank statement vouchers which is contrary to the pleadings and evidence let in by the petitioner before the labour court. The instant case is fit one to exercise the power of this Court under Article 227 of the Constitution of India as the labour court has passed a non-executable order which is a nullity.

14. In the light of the above observation, this Court is of the considered view that the III Additional Labour Court, Chennai ought not to have partly allowed I.A.No.238 of 2012 filed by the respondent, but ought to have dismissed it.

15. In the result, the impugned order dated 29.11.2012 passed in I.A.No.238 of 2012 in I.D.No.105 of 2009 on the file of the learned III Additional Labour Court, Chennai is hereby set aside. Accordingly, the instant Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16. However, the order passed in this revision will not impair the respondent's rights if and when any other appropriate application is filed against the petitioner in accordance with law, before the III Additional Labour Court, Chennai in I.D.No.105 of 2009.

09.01.2019

Index : Yes / No

Internet : Yes/No

Speaking/Non-Speaking orders

nl

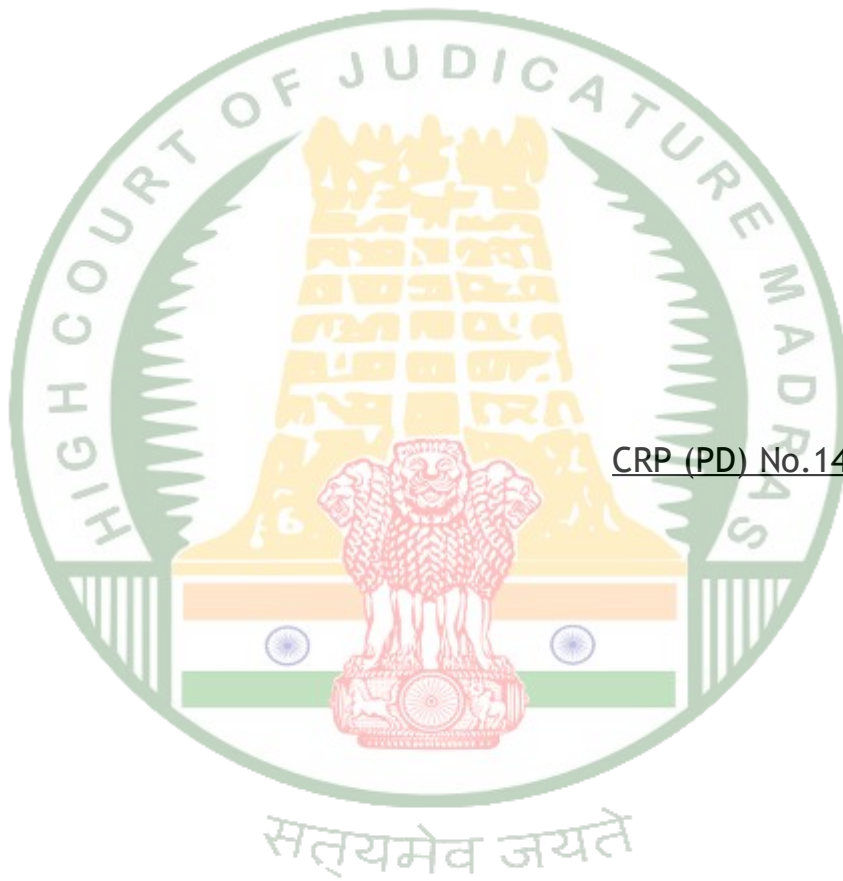
To

The III Additional Labour Court,
Chennai

WEB COPY

ABDUL QUDDHOSE. J,

nl



CRP (PD) No.1491 of 2013

WEB COPY

09.01.2019