

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.731 of 2011

The Management,
A.L.P.Exports Tannery,
C.V.Pattarai,
Udhayaendhiram,
Vaniyambadi,
Vellore District.
Represented by its Managing Director.

.. Petitioner

Vs.

1.I.Joseph

2.The Presiding Officer,
The Additional Labour Court,
Vellore District, Vellore.

.. Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari to call for the records relating to the award made in I.D.No.245 of 2003 dated 15.09.2010, on the file of the Additional Labour Court, Vellore District, Vellore, quash the same.

For Petitioner : Mr.R.Neethe Perumal

For R1 : No Appearance

O R D E R

The present Writ Petition is filed for issuance of writ of Certiorari to call for the records relating to the award made in I.D.No.245 of 2003 dated 15.09.2010, on the file of the Additional Labour Court, Vellore District, Vellore, quash the same.

2.The first respondent claimed that he was an employee of the petitioner company and was working as Staking Operator from 18.07.1999 and he was drawing a sum of Rs.2,400/- per month as salary. During the year 2002, the petitioner without any notice

stopped the first respondent from the employment, as the first respondent was requesting the benefits as per the Rules. The conciliation proceedings initiated by the first respondent ended in failure. The first respondent raised Industrial Dispute in I.D.No.245 of 2003 on the file of the second respondent. Before the second respondent, the petitioner denied that the first respondent was his employee working from 18.07.1999 to 28.02.2002. There is no company by the name A.L.P. Exports & Tannery. The name of the petitioner company is A.L.P. Exports Ltd. The company was closed in the year 2000. The first respondent was working as Daily Casual Labour under one Noor-Ul-Huq & Co., the Labour Contractor and agent having office at No.85, Post Office Street, New Town, Vaniyampadi. The first respondent was receiving his salary under the said contractor. The first respondent left the services of the said contractor and all the amounts due to the first respondent was paid by the said contractor on 07.10.2000 as per the agreement under Section 18 (1) of the Industrial Disputes Act, 1947, for the work done by the first respondent and prayed for dismissal of the Industrial Dispute.

3.Before the second respondent, the first respondent examined himself as W.W.1 and one S.Rathinam was examined as W.W.2 and marked 4 documents and Exs.W1 to W4. The petitioner examined one Sowrirajan as M.W.1 and marked 7 documents as Exs.M1 to M7. The information given by the Additional Superintendent of Police under Right to Information Act, 2005, dated 09.02.2009 was marked as Ex.X1 as Court document. The second respondent considering the pleadings, oral and documentary evidence and materials on record, held that the petitioner failed to prove that the first respondent was not his employee and he was employed only by Noor-Ul-Huq & Co., the Labour Contractor and agent and ordered reinstatement of the first respondent with continuity of service and 50% of back wages. Against the said award, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner contended that the second respondent erroneously held that the petitioner has failed to prove his contention that first respondent was not his employee and the first respondent was an employee of Noor-Ul-Huq & Co., the Labour Contractor and agent. The second respondent failed to appreciate the documents filed by the first respondent to show that first respondent was employed only by Noor-Ul-Huq & Co., the Labour Contractor and agent. The second respondent rejected the said document on erroneous ground that the proprietor of Noor-Ul-Huq & Co., the Labour Contractor and agent Mr.Shafi, was not examined to prove that first respondent was working only under the labour contractor. The petitioner company was closed in the year 2000 itself and the first

respondent would not have worked till 2002 and prayed for setting aside the award passed by the second respondent.

5. Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

6. Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

7. From the materials available on record it is seen that the petitioner has denied the employer-employee relationship between the petitioner and the first respondent and contended that petitioner was working only under Noor-Ul-Huq & Co., the Labour Contractor and agent. According to learned counsel appearing for the petitioner, the construction of factory premises was completed in the year 1988 and electricity connection was obtained only in the year 1999. The Pollution Control Board granted permission to open the factory only on 29.10.1998. The petitioner could not run the factory due to financial problem of the Bank from which the petitioner has taken loan, had filed petition before the Debt Recovery Tribunal in the year 2000. To prove the contention of the petitioner, the petitioner has not examined the proprietor of Noor-Ul-Huq & Co., the Labour Contractor and agent Mr. Shafi, to substantiate their contention. The petitioner has marked Ex.M2 dated 27.02.1997, the deed of labour contract entered into by the petitioner with Noor-Ul-Huq & Co., the Labour Contractor and agent. When the petitioner has come out with the case that construction of the factory premises was completed in the year 1988, the permission from Pollution Control Board was obtained on 29.10.1998 and electricity connection was obtained in the 1999, the petitioner has not explained as to how they entered into deed of labour contract with the proprietor Mr. Shafi, Noor-Ul-Huq & Co., the Labour Contractor and agent on 27.02.1997.

8. The first respondent contended that due to dismissal of the worker by the petitioner, there was agitation before the factory premises and on the complaint given by one Murali, an employee of the petitioner, the labour leaders were arrested and subsequently they were released. The first respondent proved the same by examining himself as W.W.1 and one S.Rathinam as W.W.2 and marked 4 documents as Exs.W1 to W4. The information given by the Additional Superintendent of Police under Right to Information Act, 2005, which was marked as Ex.X1 as Court document, supports the contention of the first respondent. The petitioner examined one Sowrirajan as M.W.1, who is the consultant of the petitioner company and he did not know the facts of the case and he admitted the same in his cross examination. The second respondent has considered all the above

materials in proper perspective and has passed the impugned award by giving cogent and valid reason and there is no error in the said award passed by the second respondent warranting interference by this Court.

9.In the result, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

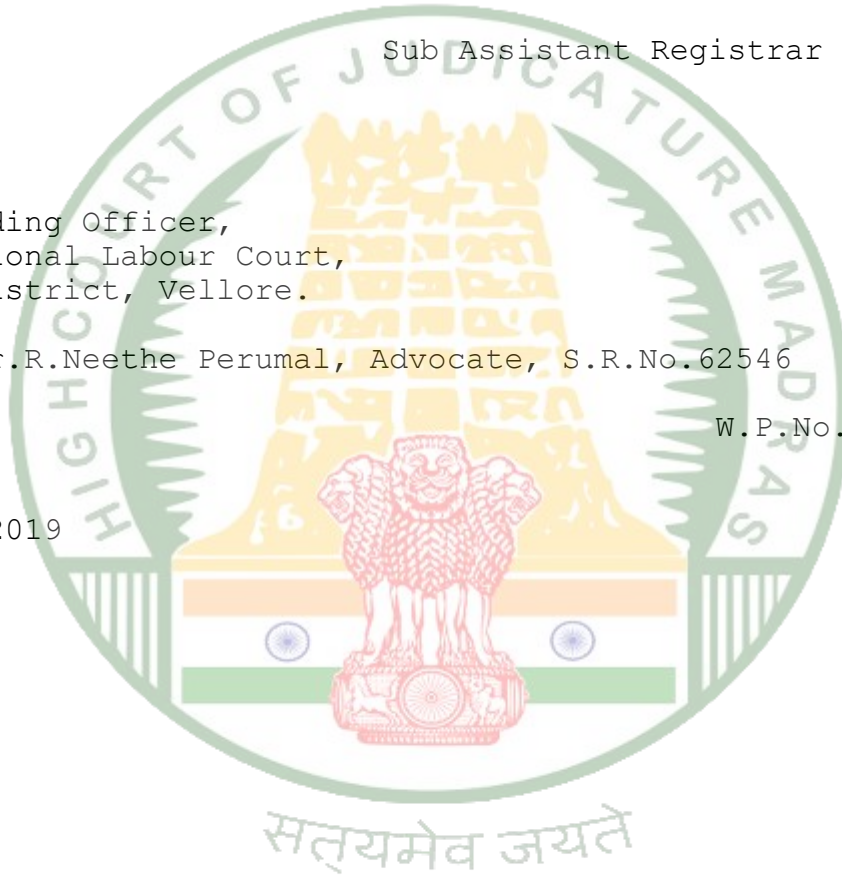
To

The Presiding Officer,
The Additional Labour Court,
Vellore District, Vellore.

+1cc to Mr.R.Neethe Perumal, Advocate, S.R.No.62546

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SPD(CO)
CS/18/09/2019



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