

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.31364 of 2019
and
MP.No.1 of 2013

The Management of
Ashok Business Services Madras
148, Pandian Street,
Alwarthiru Nagar,
Chennai 600 087.
Rep. by its
Proprietrix Geetha Nagarajan

..Petitioner

Vs.

1.The Presiding Officer,
First Additional Labour Court,
Chennai.

2. Thiru. G.Gowthaman,
S/o. Gnanasekaran,
5/5, Kandasamy Nagar,
Poonamallee, Chennai - 600 056.

3. Tmt. B.Karpagam,
W/o. N.Baskar,
16/10, Kandasamy Nagar,
Poonamallee, Chennai - 600 056.

4. Tmt. B.Menaga,
D/o. N.Baskar,
16/10, Kandasamy Nagar,
Poonamallee, Chennai - 600 056.

5. Thiru. B.Rajesh,
S/o. N.Baskar,
16/10, Kandasamy Nagar,
Poonamallee, Chennai - 600 056.

6. Tmt. B.Shyamala
D/o. N.Baskar,
16/10, Kandasamy Nagar,
Poonamallee, Chennai - 600 056.

7. Thiru. P.Kannan,
S/o. Perumal,
17, Mariamman Koil Street,
Porur, Chennai - 600 116.

8. Thiru. R.Maheswaran,
S/o. Ramalingam,
Sri Ambal Nagar,
Ramapuram, Chennai 600 089.

9. Thiru. K.Sampathkumar,
S/o. Kannayan,
5/3, Kandasamy Bhavaniamman Koil Street,
Poonamallee, Chennai - 600 056.

10. Thiru. S.Raja,
S/o. S.Selvaraj,
12/11, Kantharuban Nagar,
Krishnamurthi Street,
Poonamallee, Chennai - 600 056.

11. Thiru. C.Dhanasingh,
S/o. Chinnappan,
44, Gangaikarapuram Singh Koil Street,
T.Nagar, Chennai - 600 017.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in ID No.20 to 26 of 2006, and quash its common award dated 30.08.2013.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co

For Respondents : Labour Court (for R1)
No Appearance (for R2 to R11)

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O R D E R

The common award dated 30.08.2013, passed in ID.Nos.20 to 26 of 2006, is under challenge in the present writ petition.

2. The writ petitioner is the management of Ashok Business Services Madras. The petitioner states that they are a reputed contractor for various companies in and around Chennai. The writ petitioner was acting as a contractor for the management of M/s.G.E.Power Controls India Pvt. Limited. The contract was for supply of man power for loading and unloading and packing in the godown of the said company situated at Vadapalani, Chennai 600

3. The respondent workmen were also engaged by the writ petitioner company. The learned counsel appearing on behalf of the writ petitioner management states that the contract with G.E.Power Controls India Pvt. Limited with the writ petitioner management was terminated from 31.03.2005. Since the writ petitioner management was having contract workmen in other companies also, they have provided alternate work as per the existing terms and conditions to the respondent workmen. However, two employees by name, Sashikumar and Prabhu opted for the alternate work provided and the respondent workmen refused to accept the alternate work given to them and thereafter, raised industrial disputes alleging non-employment. Accordingly, ID No.20 to 26 of 2006 was filed.

4. The learned counsel appearing on behalf of the management reiterated that even before the conciliation officer, the writ petitioner management in clear terms informed that they have not terminating the services of the respondent workmen. Contrarily, alternate employments were provided and the details of the alternate employment were also communicated to the respondent workmen. Thus, the question of non-employment would not arise at all.

5. The writ petitioner/management filed the counter statement in the industrial dispute before the first additional Labour Court. In para 4 and 5 of the counter affidavit, they have stated as follows:-

"4) It is submitted that there is no non-employment, even as on date, as the Respondent had not terminated the services of the petitioner. It is submitted that the present Industrial Dispute is purely vexatious. Even now the petitioner is free to report for work and the Respondent is prepared to utilize his services.

5) The petitioner is put to strict proof of the averments made by him in para 3 of the Claim Statement with regard to his joining date and his last drawn salary.

With regard to para 4 of the claim statement, it is denied that the petitioner was not allowed to attend to his work. The Respondent informed the petitioner that since the Management of G.E.Power Controls India Private Limited had terminated its contract, it was prepared to provide work to him in other areas where it had contract work. However, the petitioner adamantly refused to accept the offer of the

Respondent and the present dispute has been raised as if the petitioner has a right to work only as a contract workman under G.E.Power Controls India Private Limited. Such a stand of the petitioner is uncalled for and unwarranted. The Respondent has also made it clear before the Conciliation Officer that it had not terminated the services of the petitioner and that he should take up work in other areas where the Respondent is having contract. However the petitioner is persisting that his pseudo non-employment which is liable to be dismissed by this Hon'ble Tribunal."

6. The counsel for the management filed a memo before the Additional Labour Court stating that the management is willing to provide employment to the workmen and they have not terminated the service of the workmen. Despite the fact that, an alternate employment was provided, the respondent workmen have not reported for duty. In order to show their bonafides, once again they informed the Labour Court that they are ready and willing to provide alternate employment to the workmen in other companies. The details of the alternate employment was submitted before the Labour Court and the documents were marked as Ex.M7& M8, Ex.W10, W14, W18 and W22. All the above documents would reveal that an alternate employment was provided to the respondent workmen. For example, Ex.M8 document dated 24.12.2007 reveals that, the writ petitioner management offered an employment and requested to report for work in M/s.UCAL Fuel Systems Limited at E9-E12, Industrial Complex, Maraimalai Nagar on 02.01.2008 and it is stated that the workmen should contact Mr.Muthu, Site Supervisor at 06.30 AM, without fail. Despite the communication providing alternate employment along with the details, the respondent workmen have failed to report for duty. The proof affidavit filed by the writ petitioner management also reveals that the writ petitioner management was having contract with other companies namely:-

1. Audco India Ltd - MM Nagar - House Keeping Contracts
2. UCAL Fuel Systems - MM Nagar - House keeping Contracts
3. TAFE - MM Nagar- House keeping Contracts
4. Anna University Alumni Club-Bearers & Gardeners

7. The learned counsel for the writ petitioner reiterated that the writ petitioner management was willing to provide alternate employment even in other companies, provided the respondent workmen are ready to report for duty. In spite of all these efforts taken by the writ petitioner management and by providing alternate employment, the respondent workmen did not

join duty and raised a dispute.

8. The Labour Court though considered the documents filed by the management as well as the workmen, made an erroneous finding that, "the management has not specified the name of the company whether the petitioners were deputed to work and from which date they had to report for duty were not mentioned. It is further recorded that the management had offered alternate employment to the petitioners. The management has not specified the working place to the petitioners and failed to provide employment to them. Therefore, it amounts to denial of employment by the respondent management."

9. The above findings are made in para 14 of the award. In para 16 of the award, the Labour Court made finding that "the respondent did not issue a charge memo or followed the provisions of Section 25F of the I.D.Act, 1947 on this aspect" and thereafter in para 17 of the award, the Labour Court made a finding that "if the petitioners are ordered to be reinstated in service, the management will victimize them or the petitioners will be embarrassed to work in the respondent company."

10. All these findings are directly in contradiction with the documents filed before the Labour Court as well as the facts placed by the respective parties. Even in case of non-employment as alleged by the workmen, if the management has produced the document to establish that they have provided alternate employment and further filed a memo and an affidavit to the extent that they are willing to provide alternate employment even at the stage when the issue was pending before the Labour Court, there is no other reason to arrive a conclusion that the management was not willing to provide an alternate employment or the workmen has established non-employment. The facts placed before the Labour Court reveals that the alternate employment was not only provided, the documents were marked wherein, it is unambiguously stated that the workmen is directed to report for duty in a particular company and the name of the supervisor also mentioned and the time and date of joining also mentioned, more specifically, in document M8. When the particulars place of work and other details are provided in the order, the Labour Court has erroneously recorded that, no such details are provided by the management regarding the alternate employment. It is not the case of non-employment at all. When the management right from the conciliation, represented that they are willing to provide an alternate employment and further provided the same, the Labour Court has committed an error in arriving a conclusion that the non-employment is in violation of the principles of

natural justice.

11. Thus the findings of the Labour Court is not only perverse but in contradiction with the facts as well as the documents filed before the Labour Court. Under these circumstances, this Court has no hesitation in coming to the conclusion that the award impugned is perverse.

12. Accordingly, the award dated 30.08.2013, passed in I.D.No.20 to 26 of 2006 is quashed. Writ Petition stands allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

pkn

To

The Presiding Officer,
First Additional Labour Court,
Chennai.

+1 cc to M/s.T.S.Gopalan & Co Advocate sr96887

W.P.No.31364 of 2013

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