

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13-09-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32937 of 2013

M.Rajendran

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Petitioner

vs.

1.Management of Ranipet SIDCO  
Finished Leather Effluent  
Treatment Company Limited,  
Plot No.199, SIDCO Industrial Estate,  
Ranipet,  
Vellore District.

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

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Award in I.D.No.71 of 2008 dated 08.02.2011 on the file of the second respondent quash the same and direct the first respondent to reinstate the petitioner in service with all backwages and terminal benefits.

For Petitioner : Ms.V.S.Manimekalai

For Respondent-1 : Mr.Balan Haridas

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O R D E R

The award of the Labour Court passed in I.D. No.71 of 2008 dated 08.02.2011 is sought to be quashed in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner-workman made a submission that the writ petitioner-workman was employed as an Operator by the first

respondent and he joined duty with effect from 15.04.1996. The writ petitioner was allowed to work upto 03.10.2007. The writ petitioner himself states that no appointment order was issued in his favour nor any termination order was issued. Under those circumstances, the writ petitioner raised an Industrial Dispute before the Labour Officer, Vellore in letter dated 03.10.2007 under Section 2-A of the Industrial Disputes Act, 1947. Conciliation failed and consequently, I.D. No.71 of 2008 was filed. The learned counsel for the writ petitioner states that the writ petitioner joined a Trade Union, which resulted in denial of employment to him.

3. The contention of the first respondent-management that the writ petitioner was a contract labourer under a Contractor by name 'Setran Group' is false and in fact, the first respondent-Management all along extracted work from the writ petitioner-workman and therefore, he was working under the control of the first respondent-Management and there was no such sub-contractor namely 'Setran Group'.

4. At the outset, it is contended that the first respondent-Management had also admitted the Payment Register is maintained by the first respondent-Management, Attendance Register and all other relevant records are maintained by the first respondent-Management and therefore, the sub-contractor namely Setran Group is an imaginary one and no such Contractor was operating during the relevant point of time and the writ petitioner was directly engaged by the first respondent-Management.

5. Learned counsel appearing on behalf of the first respondent-Management disputed the contentions of the learned counsel for the writ petitioner by stating that there was no employer and employee relationship between the writ petitioner-workman and the first respondent-Management. The existence of the Setran Group was admitted in the cross-examination by the writ petitioner-workman and the first respondent-Management filed all the relevant documents before the Labour Court establishing that the writ petitioner was engaged as a contract labourer by the Setran Group and the Setran Group executed certain works for the first respondent-Management. Thus, the writ petitioner-workman at no point of time was a contract labourer under the first respondent-Management and there was no employer-employee relationship subsisting during the relevant point of time.

6. Considering the findings of the Labour Court, this Court is of an opinion that the documents were marked and the first respondent-Management filed 38 documents, namely, Exs.M-1 to M-38, more specifically, the Attendance Register, Wage Register and the Attendance Register of Setran Group wage

slip of Setran Group, Wager Register of Setran Group, ESI Half Returns and other related documents.

7. The Management marked Exs.M-1 to M-35. Form 6 for the respondent-Factory was marked as Exs.M-36 to M-38. The Labour Court made a finding that as per Ex.M-36 contribution for the workmen under the first respondent-Management for the period from April 2005 to September 2005 was paid in Form 6 to the ESI Corporation. In the said documents, 8 persons were stated as workmen and 15 persons were stated as contract labourers and the name of the writ petitioner-workman and his insurance number were also found.

8. The other particulars as necessary under the ESI Act were also stated in the petition. The contribution paid by the first respondent-management to the ESI Corporation for the period from April 2007 to September 2007 was also marked as Ex.M-37. In Exs.M-36 and Ex.M-37, the name of the writ petitioner was found in the list of employees only as contract labourer.

9. Thus, it is proved that the writ petitioner was worked as a contract labourer and he was not worked as an employee under the first respondent-Management. Ex.M-38 is the return of contribution in Form No.5 to the Corporation. The contribution period was from 01.10.2007 to 31.03.2008 and the name of the writ petitioner was not found in the said document. Since the writ petitioner had not worked as a contract labourer after October 2007, his name was deleted.

10. Under these circumstances, the writ petitioner-workman claims that he was terminated from service on 03.10.2007 onwards. Thus, the writ petitioner was not a contract employee of the first respondent-Management and he was employed by Setran Group and that is the reason why his name was found in the column contract employees.

11. In paragraph-21 of the Award, the Labour Court observed as follows:-

"21. Admittedly, the agreement of contract between the Setrend Group and the respondent was not filed before this Court. However, it is seen from the abovesaid documents and also an admission of the workman the WW1 that there was a contract and they got terminated. Therefore there is no requirements are produced the contract which was admittedly in existence. The Counsel for the respondent argued that whenever the respondent requires some work to be done, Setrend Group will execute the

work with aid of contract labour on its roll. The number of contract labour who does the work will be always "between" 10 to 15. Therefore the contract labour (Abolition and Regulation) Act had no application to the respondent as well to the contractor (since the act applies only when the total number of contract labour is 20 or above). The contract with the Setrand Group was terminated. As a consequence of the same, if the employment of the petitioner was terminated, then the petitioner can seek relief only with his employer viz., Setrand Group. Therefore there is no substance in the allegation that the respondent terminated the services of the petitioner on 3.10.2007."

12. In view of the fact that the writ petitioner had failed to establish that there was an employer and employee relationship existed between the writ petitioner-workman and the first respondent-Management, the relief as such sought for in the present writ petition cannot be granted. This apart, the first respondent-Management could not establish through documentary evidences that the writ petitioner-workman was engaged as a contract labourer by one Setrand Group and the writ petitioner was not an employee of the first respondent-Management.

13. In view of the facts and circumstances, this Court is of the considered opinion that there is no perversity or illegality in respect of the findings of the Labour Court made in the Award. Consequently, the Award of the Labour Court dated 08.02.2011 passed in I.D.No.71 of 2008 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.Balan Haridas, Advocate SR.78845

W.P.No.32937 of 2013

RR (CO)  
CB (23/10/2019)



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