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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.36659 of 2015

A. Chockalingam

...Petitioner

vs.

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

2. S.V.G. & Co., Pulivalam,
Contractor,
C/o. Turbo Energy Ltd.,
Sholingur,
Vellore District.

3. The Management,
M/s. Turbo Energy Ltd. (Astratel Dept)
Pulivalam Village & Post,
Vellore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ, order or orders in the nature of Writ of Certiorari or any other Writ, calling for the records pertaining to the order passed in I.D.No.197/2011 dated 29.01.2013 on the file of the first respondent and quash the same as null and void.

For Petitioner : Mr. P.R. Balasubramanian

For Respondents : R1- Labour Court
R2- No appearance
Mr. S. Ravindran, Senior Counsel
for Mr. S. Bazeer Ahamed for R3

O R D E R

The award dated 29.01.2013 passed in I.D.No.197 of 2011 is under challenge in the present Writ Petition.

2. The writ petitioner states that he was employed with the respondents 2 and 3 Company as a machine operator from
<https://hcservices.ecourts.gov.in/hcservices/>



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2004 to 2008. The third respondent management who employed the writ petitioner terminated his service in the year 2008 and the petitioner waited till the year 2011 on the basis of the promise made by the third respondent for providing re-employment.

3. Since the third respondent had not re-employed, the writ petitioner raised an industrial dispute in ID.No.197 of 2011 before the first respondent. The industrial dispute was dismissed on 29.01.2013 by the first respondent. Accordingly the present Writ Petition is filed.

4. The petitioner states that the first respondent Labour Court has failed to properly consider the Exs. W1 and W2, the wage slips (series) and B3, the workers list and the deposition of WW1, except by raising certain broad grounds. This Court is unable to find any specific ground for the purpose of assailing the award passed by the Labour Court. In view of the non clarity in respect of the grounds raised in the Writ Petition, this court had gone through the Award carefully.

5. The learned Senior Counsel appearing on behalf of the third respondent contended that the third respondent is the principle employer and the second respondent is the Contractor with whom the third respondent entered into an agreement to verify certain jobs. Under these circumstances, the Labour Court rightly considered the documents as well as evidence rejecting the dispute raised by the writ petitioner. The submissions are extracted hereunder:

" 1. The 3rd respondent is engaged in the manufacture of turbo charges used in automobiles. In respect of certain non-core activities/non value addition activities, contract workmen are engaged through licensed contractors. These contractors provide contract workmen based on the requirement of the 3rd respondent. The 2nd respondent is one such licensed contractor who provided contract labour in respect of jobs including transferring materials from place to place, miscellaneous work on the shop floor, sundry work in general layout of the factory, sorting, marketing etc.

2. Before the 1st respondent, the petitioner examined himself as a witness and marked exhibits W1 and W2. On behalf of 3rd respondent, its Divisional Manager (Personnel), R. Sivaraman was examined as MW1 and exhibits M1 to M4 were marked.

3. During the cross-examination the petitioner made following significant admissions:



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a) He received salary from the 2nd respondents

b) There was no reason for raising the industrial dispute 3 years after the alleged non-employment

c. He has studied up to +2 and he had no previous experience

d. He was not prepared to work under the contractors

e. He would work only in the services of the company

f. He had not made any complaint to Government officials alleging that he was involved in manufacturing activities.

4. The evidence of MW1 and exhibits M1 to M4 proved the following facts.

a) The 3rd respondent was registered as a principal employer in terms of the provisions of the Contract Labour (Regulation & Abolition Act, (exhibit M1 series)

b) The 3rd respondent and 2nd respondent have rendered into agreement in respect of jobs to be performed by the 2nd respondent in the 3rd respondent's establishment (exhibit M2)

c) The 2nd respondent was a licensed contractor in terms of the provisions of the Contract Labour (Regulation & Abolition) Act, (exhibit M3)

5. It is submitted that by award dated 29.01.2013, the 1st respondent rendered the following factual findings, namely,

a. The petitioner admitted in cross-examination that he received wages from the contractor S.V.G. & Co

b. He studied only upto +2 and he had no experience to work in the 3rd respondent company. He was given identity card by the 2nd respondent contractor.

c. In wage slip Exhibit W1 series it is mentioned that the petitioner was a helper.

d. Since identity card and statutory benefits were given to the petitioner only the 2nd respondent contractor it was clear that primary control was with the contractor and hence the petitioner was an employee of the said contractor.

e. The petitioner has given contradictory evidence in respect of nature of work performed by him in the 3rd respondent establishment.



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f. The petitioner had not sought for any relief against the 2nd respondent contractor.

g. The petitioner has not let in relevant evidence to establish that he was employed by the 3rd respondent management

h. The petitioner has not proved his case of appointment and termination by the 3rd respondent management.

i. Evidence of MW1 proved that the 3rd respondent management had not exercised administrative control over the contract workmen and that they worked only under the control and employment of 2nd respondent contractor who also extended EPF benefits to them.

j. Exhibits M2, M3 and W1 prove that the petitioner was a contract workman under R2 contractor.

k. Petitioner admitted in cross-examination that he knew supervisors Elumalai and Venkatesan of the 2nd respondent contractor.

l. The petitioner admitted in cross-examination that he was paid wages and statutory benefits by the 2nd respondent contractor.

m. It was not the case of the petitioner that the agreement bogus or that there was no valid contract licence.

n. In cross-examination, the petitioner was unable to answer the nature of

manufacturing activities in the 3rd respondent establishment though he worked for 4 years in the said establishment and that therefore it was obvious that he had not worked as machine operator as claimed by him.

o. Exhibit M1 Certificate of Registration of the 3rd respondent management, copy of the license of the 2nd respondent contractor in terms of Exhibit M3 read along with agreement between them under Exhibit M2 prove that there was valid principal employer, contractor relationship between the 3rd respondent and 2nd respondent.

6. Based on the above factual findings, the Labour Court dismissed the industrial dispute raised by the writ petitioner.



7. This Court is of the considered opinion that there is no perversity or infirmity in respect of the finding as well as the conclusion arrived. Accordingly the award dated 29.01.2013 passed in I.D.No.197 of 2011 is confirmed and the Writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrn

To

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

+1cc to Mr.S.Bazeer Ahamed , Advocate SR.No. 98157
W.P.No.36659 of 2015
A.SK(07/01/2020)