

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11970 of 2014

M.Sankar

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Vellore.

2.V.P.Kathirvel

... 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 of the first respondent order dated 04.11.2009 made in C.P. No.13 of 2008 and quash the same and directing the second respondent to pay the computation of monetary benefits amount to Rs.2,45,000/-.

For Petitioner : Mr.M.R.Chellappan

For Respondent-1 : Labour Court

For Respondent-2 : Mr.M.R.Raghavan

O R D E R

The order of the Labour Court dated 04.11.2009 passed in C.P. No.13 of 2008, is under challenge in the present writ petition. Further, a direction is sought for to direct the second respondent to pay the computation of monetary benefits amount of Rs.2,45,000/-.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner was employed as a Salesman and Collection Boy under the second respondent's company, namely Balaji and Co., (Electronic Goods Sales). The writ petitioner states that he was employed from the year 1993 onwards, no order of appointment was issued to the writ petitioner by the second respondent and the salary was paid based on the oral promise.

3. The learned counsel for the writ petitioner further states that the writ petitioner was serving with the second respondent for more than 8 years from 10.03.1993 to 31.06.2001. The second respondent promised to pay Rs.2,000/- per month for the period from 10.03.1994 to 09.03.1996. Thereafter, the second respondent promised to pay Rs.3,000/- per month for the period from 10.03.1996 to 09.03.1999. Further promise was given to pay Rs.4,000/- per month from 10.03.1999 to 31.06.2001. However, the promises given by the second respondent were not honoured, which resulted filing of the claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947, before the Labour Court, Vellore.

4. The learned counsel for the writ petitioner states that despite the fact that the writ petitioner was serving with the second respondent for more than 8 years and the second respondent also promised to pay salary to the writ petitioner, nothing was paid as such and therefore, the writ petitioner was constrained to approach the Labour Court.

5. The Labour Court rejected the claim petition mainly on the ground that the writ petitioner has not produced any evidence to establish that he was in employment with the second respondent from 1993 to 2001. This apart, the Labour Court arrived a finding that there was no pre-adjudication or pre-existing right, so as to entertain a claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947. On this ground, the claim petition filed by the writ petitioner was dismissed.

6. The learned counsel, appearing on behalf of the second respondent, citing the findings of the Labour Court, contended that there was no employer-employee relationship existed between the second respondent and the writ petitioner and further, the writ petitioner as well as the second respondent were close relatives. Therefore, in the absence of establishing the employer-employee relationship between the second respondent and the writ petitioner, the findings of the Labour Court is in consonance with the established principles. This apart, the writ petitioner has not established any pre-existing right, so as to entertain the claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947.

7. Considering the arguments, this Court is of an opinion that all the allegations made by the writ petitioner against the second respondent are only on the basis of oral statements and there is no record to establish that the writ petitioner was appointed by the second respondent and further, the promises given are also of no relevance with

reference to the appointment, if any, made. Even in such case, the writ petitioner is at liberty to raise an industrial dispute for the purpose of adjudication of the disputed issues, this Court cannot come to a conclusion that the writ petitioner is entitled for the monetary benefits or not. Such a conclusion can be arrived only after an adjudication by the Competent Court with reference to the documents as well as the evidences produced.

8. Thus, the correctness of the statements made by the writ petitioner in the claim petition, cannot be relied upon for the purpose of allowing the claim petition. Only in the event of establishing a pre-existing right, the claim petition can be entertained by the Labour Court. Thus, the writ petitioner, in the absence of any adjudication, cannot file a claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947, as he has failed to establish any pre-existing right, so as to consider the claim petition on merits.

9. This being the factum, there is no infirmity or perversity in respect of the findings of the Labour Court and the writ petitioner is at liberty to approach the Competent Forum for adjudication of the disputed issues in the manner known to law.

10. Accordingly, the order of the first respondent dated 04.11.2009 passed in C.P. No.13 of 2008 is confirmed and consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,Vellore.

+1cc to Mr.M.R.Chellappan, Advocate Sr.90482

+1cc to Mr.M.R.Raghavan, Advocate Sr.90610

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srg 29/11/2019