

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18158 of 2014

and

W.M.P.Nos.1 of 2014 & 1 of 2015

The Management of Titan Watches Ltd.,
Plot No.3, SIPCOT Industrial Complex,
Hosur - 635 126,
Krishnagiri (District),
Rep by its General Manager.

...Petitioner

...Vs...

1.The Presiding Officer,
Labour Court, Salem.

2.K.Nagarajan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected to I.D.No.151 of 2006 on the file of the first respondent i.e., Labour Court, Salem and to quash the Award dated 12.02.2014 made therein.

For Petitioner : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.R.Lawrence
(for second respondent)
Labour Court

ORDER

The award dated 12.02.2014 passed in I.D.No.151 of 2006 is sought to be quashed in the present writ petition.

2.The writ petitioner is the Management of Titan Industries Limited (Watches Production). The learned counsel appearing on behalf of the writ petitioner states that the petitioner is a company registered under the Companies Act, 1956 and it is in the business of manufacturing watches, Jewellery, Bracelets and Precision Components. As per Section 46 of the Factories Act, 1948, in any specified factory, wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of the workers.

Accordingly, the petitioner entrusted canteen service to Contractors, who were changed from time to time. As and when contractors are changed, new contractors bring in their own employees (Contract Labour) to carry out their contractual obligations. The second respondent was engaged as a Contractor workman through M/s.Acharya Associates, who was the catering contractor in Bangalore, and he was not engaged by the petitioner. At no point of time, the second respondent was appointed or engaged by the writ petitioner/Company. There was no employer/employee relationship between the writ petitioner and the second respondent. No specific appointment order was given in favour of the second respondent. The second respondent was not taken as a trainee or otherwise.

3.At the outset, it is contended that the second respondent was engaged by the catering contractor namely M/s.Acharya Associates for the purpose of running the canteen on daily wages and he was not an employee of the writ petitioner/Company. The second respondent/ workman was appointed by the contractor on 10.11.2003 and he was paid daily wage of Rs.106/-. Therefore, the engagement of the second respondent by the canteen contractor has nothing to do with the petitioner/Company. The second respondent had also agreed with the terms and conditions of engagement made by the canteen contractor and accepted the same. The ESI and PF contributions were remitted by the contractor. Thus, the non-employment of the second respondent from 10.02.2005 has nothing to do with the petitioner.

4.The learned counsel appearing on behalf of the petitioner/ Company solicited the attention of this Court regarding the findings of the Labour Court, wherein it is recorded that the second respondent was working as a contract labourer, and there is no document to establish that the second respondent was appointed or engaged by the writ petitioner/company. Therefore, there is no reason to pass an award in favour of the workman granting reinstatement. The award of the labour Court is contrary to the documents filed by the Management. The management filed the documents to establish that at no point of time, the second respondent was engaged by the writ petitioner/company. Contrarily, the management established the fact that the second respondent was appointed by the canteen contractor M/s.Acharya Associates and he was a daily wage employee of the contractor. When such being the case, the labour Court without considering the facts and circumstances, ordered for reinstatement of the second respondent based on the statement that the management has admitted the fact that the second respondent was engaged as a Contract Labourer. The labour Court has misinterpreted the statement of the management that

the second respondent was engaged as a Contract employee by the canteen contractor namely M/s.Acharya Associates and not by the writ petitioner/management. This being the factum, the award of the Labour Court is liable to be scrapped.

5.The learned counsel appearing on behalf of the second respondent/workman disputed the said contentions of the writ petitioner by stating that the second respondent was engaged as a trainee by the writ petitioner/management and he was working as such for about 3 years and the management itself admitted before the Labour Court that he was working as a Contract Labourer. Thus, it is not as if the second respondent was engaged by a private contractor. Therefore, there is no perversity or infirmity in respect of the award passed by the Labour Court. The learned counsel appearing on behalf of the second respondent further stated that from the year 2002 onwards, the second respondent was working as a contract labourer in the second respondent/management and the said fact was admitted. Before the termination, the second respondent was working as a Trainee with the writ petitioner/management. Therefore, the writ petition is liable to be rejected.

6.Considering the facts and circumstances of the case, this Court is of the considered opinion that running a canteen by the writ petitioner/ management is a statutory obligation under the provisions of the Factories Act. Admittedly, the second respondent/workman was working in the canteen as a daily wage employee. The only question which is to be considered is whether the second respondent was appointed by the writ petitioner/management or by the canteen contractor engaged by the writ petitioner/management. The documents considered by the Labour Court reveals that there is no proof to establish that writ petitioner/management had issued an order of appointment in favour of the second respondent. There is no document to establish that the salary was paid by the management to the second respondent/workman. Contrarily, documents produced before the Labour Court reveals that the second respondent was appointed by the canteen contractor namely M/s.Acharya Associates on daily wage basis and at no point of time, the writ petitioner/management had issued an order of appointment or paid salary to the second respondent.

7.Thus, there is no proof to establish that the second respondent was engaged by the writ petitioner/management at any point of time. The admission of the writ petitioner before the labour Court was misinterpreted by the second respondent. The admission made before the Labour Court by the management was that the second respondent was working as Contract Labourer in

the factory's premises. Undoubtedly, the canteen is situated within the factory premises, as it is a statutory obligation. The canteen was being run by a private contractor engaged by the writ petitioner/management. During the relevant point of time, the private contractor M/s.Acharya Associates was running the canteen.

8.The second respondent was appointed by M/s.Acharya Associates, which is a catering contractor. On those aspects, the writ petitioner made submission before the labour Court that the second respondent was working as Contract labourer in the writ petitioner/management. Such a submission cannot be misinterpreted to the advantage of the workman or an inference can be drawn that the second respondent was appointed by the writ petitioner/management by way of an order or appointment. No such order of appointment was marked before the Labour Court. There is no document to establish that the salary was paid by the writ petitioner/ management to the second respondent. In the absence of any one of those documents, it can be safely concluded that the second respondent was not directly engaged by the writ petitioner. There is no reason for the Labour Court to arrive at a conclusion that the second respondent is entitled for reinstatement. The labour Court though considered all these documents and arrived at a finding that there is no order of appointment issued by the second respondent/management still passed an award in favour of the workman mainly on the ground that he was working in the premises of the writ petitioner/Company and he was a contract labourer and therefore he was entitled for reinstatement.

9.The judgements referred in the award has no relevance, as the facts in the present writ petition are not comparable with the judgement cited in the Labour Court award. This Court is of the considered opinion that the labour Court has proceeded on erroneous principles, and the Labour Court ordered reinstatement without any proof to establish that the second respondent/workman was appointed by the writ petitioner/management or salary was paid by the writ petitioner/management to the second respondent. Contrarily, the documents reveals that the second respondent was engaged by the catering contractor as a daily wager and at no point of time, the second respondent was engaged or appointed by the writ petitioner / management.

10.The learned counsel appearing on behalf of the writ petitioner, in support of his contentions cited the judgement of the Hon'ble Supreme Court of India in the case of Balwant Rai Saluja & another Vs. Air India Limited and others reported in

(2014) 9 SCC 407. The relevant paragraphs of the said order are extracted hereunder;

"30. The question before us is "when the company is admittedly required to run the canteen in compliance of the statutory obligation under [Section 46](#) of the Act, 1948, whether the canteen employees employed by the contractor are to be treated as the employees of the company only for the purpose of Act 1948 or for all the other purposes.

31. 75.,

76. It has been noticed above that workmen hired by a contractor to work in a statutory canteen established under the provisions of the Act, 1948 would be the said workmen of the given factory or corporation, but for the purpose of the Act, 1948 only and not for all other purposes. Therefore, the appellants-workmen, in the present case, in light of the settled principle of law, would be workmen of the Air India, but only for the purposes of the Act, 1948. Solely by virtue of this deemed status under the Act, 1948, the said workers would not be able to claim regularization in their employment from the Air India. As has been observed in the Indian Petrochemicals case (supra), the Act, 1948 does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statutes, rules, contracts or policies.

77. 89.,

90. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers."

In paragraph 76 of the above order, the Hon'ble Apex Court observed that the workmen hired by a contractor to work in a statutory canteen established under the provisions of the 1948 Act would be the workmen of the given factory or Corporation, but for the purpose of the 1948 Act only and not for all other purposes. It is made clear that 1948 Act does not govern the rights of the employees with reference to recruitment,

seniority, promotion, retirement benefits etc. These are governed by other statutes, rules or policies.

11.The Hon'ble Supreme Court of India reiterated that the terms and conditions of the appointment are in no way connected with the statutory obligation of the Management to establish canteen within the factory premises. Thus, the terms and conditions of appointment are to be taken into consideration to formulate an opinion whether an employee was directly appointed by the management of the factory or by a catering contractor for the purpose of running the canteen. In the present case, the second respondent was appointed by the canteen contractor M/s.Acharya Associates and therefore, is not an employee of the writ petitioner/management.

12.This being the factum of the case, the award of the labour Court is perverse and contrary to the documents filed by the management before the labour Court. Accordingly, the award dated 12.02.2014 in I.D.No.151/2006 is quashed and the writ petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Salem.

+1 cc to M/s.R.Lawrance, Advocate Sr.No. 90806
+1 cc to M/s.S.Ramasubramaniam Associates, SR.No.90901

AKM/17.12.19/6P-4C /

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