

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.180 of 2009
and M.P.Nos.1 & 2 of 2009

M/s.Indo Skins Garments Private Limited,
Represented by its Managing Director,
Mr.N.Thiagarajan,
S-3, Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 600 032. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Chennai - 600 104.

2.K.Venugopal ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari to call for the records from the 1st Additional Labour Court in the award dated 22.11.2006 passed in I.D.No.109 of 1999 on its file and quash the said award.

For Petitioner : Ms.Uma Vijayakumar

For R2 : Mr.M.Gnanasekar

सत्यमेव जयते
O R D E R

Writ Petition is filed for issuance of writ of Certiorari to call for the records from the 1st Additional Labour Court in the award dated 22.11.2006 passed in I.D.No.109 of 1999 on its file and quash the same.

2.The petitioner is challenging the award dated 22.11.2006 passed in I.D.No.109 of 1999 raised by the second respondent.

3.The learned counsel appearing for the petitioner contended that the petitioner is a Private Limited Company incorporated in the year 1990 under the Companies Act, 1956. The petitioner established factory to manufacture leather products and started

production in the year 1993. As the manufacturing activities progressed and orders started increasing, the petitioner increased its labour force. The petitioner is covered by the Employees State Insurance Act and Provident Fund Act. The petitioner maintains required registers and the same are periodically inspected by the concerned authorities. The second respondent is not an employee of the petitioner and there is no employer-employee relationship between the petitioner and the second respondent. The second respondent claimed to be the employee of the petitioner and contend that he was terminated by the petitioner from service. The second respondent initiated conciliation proceedings before the Labour Officer. When the conciliation proceedings ended in failure, he raised Industrial Dispute before the first respondent in I.D.No.109 of 1999. The first respondent without considering the materials on record, passed the impugned award.

4.The learned counsel appearing for the petitioner contended that except making bald averments in claim statement that the second respondent was employed by the petitioner for the last 8 years and was dismissed, he has not filed any document to prove the same. The first respondent failed to see that there is no basis for the claim of the second respondent. The first respondent blindly accepted the statement made by the second respondent. The first respondent failed to appreciate the documents filed by the petitioner which proved the falsity of the case of the second respondent. The petitioner has produced 16 documents before the first respondent and the same were marked as Exs.M1 to M16. Exs.M4 to M7 clearly shows the names of the workers employed by the petitioner and verified by the authorities. Exs.M11 to M13 shows that the second respondent was employed by Indo Tech Leathers, Leder Fashions during the year 1996-1997. The reason given by the first respondent for not accepting the said documents are invalid and it vitiates the award.

4(a).The learned counsel further contended that the petitioner factory was started only in the year 1993 and the second respondent could not have worked for 8 years when he raised Industrial Dispute. Due to recession in the leather industry, most of the leather factories were closed and reinstatement of persons who were not proved their employment is without any justification. When the petitioner received more orders and it could not be executed by the petitioner with its own employees, job work was given to various people. The second respondent was at no point of time given job work also. The first respondent did not consider the said contentions. The second respondent has raised industrial dispute. He ought to have let in evidence to prove his case only. The second respondent in W.P.No.176 of 2009 gave evidence on behalf of all

the parties and he did not file any authorization letter and did not know for how many years the second respondent has alleged to have worked in the petitioner company. After passing of the common award, before filing the Writ Petition, one D.Sekar and A.Chandar and after Writ Petition the second respondent in W.P.No.178 of 2009, Viz., E.Balu, all the three persons approached the petitioner for settlement and requested the petitioner to pay the amounts. Even though the petitioner is not liable to pay any amount to these persons, the petitioner paid a sum of Rs.50,000/- each to D.Sekar and E.Balu and a sum of Rs.48,000/- to A.Chandran and settled their claim.

4(b).The learned counsel further submitted that the second respondent after 9 years of filing Writ Petition, filed petition under Section 17(B) of the Industrial Disputes Act, 1947. This Court by the orders dated 12.09.2017 made in M.P.Nos.2 to 2 of 2015, directed the petitioner to pay the last drawn wages of the employees. Against the common order made in M.P.Nos.2 to 2 of 2015, the petitioner have filed W.A.Nos.1014, 1020, 1056 and 1062 of 2019 and the Division Bench of this Court modified the order by partly allowing the Writ Appeals, directing the petitioner to deposit a sum of Rs.65,000/- each to the credit of W.P.Nos.176, 177 and 179 of 2009 and not permitted the second respondents in the said Writ Petitions to withdraw the amounts deposited by the petitioner. The learned counsel in support of his contention relied on the following judgments and prayed for allowing the Writ Petition.

(i) (2005) 10 SCC 792, [Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari], wherein at paragraph nos.7 and 8, the Hon'ble Apex Court held as follows:

"....7.Dr.Rajeev Dhawan, learned senior counsel appearing for the respondent-workman, supported the findings of the tribunal as well as the labour court and contended that the workman to the extent possible had produced the material that was available with him and even that material has not been rebutted in any manner by the appellant-bank. He further contended that it has even failed to establish that there was a scheme by which the concerned Executive was to employ his own driver. He submitted that in the instant case the vouchers Exhibits 14 to 16 clearly showed that the payment made to the workman was by the bank, hence, these findings being findings of fact, this Court should not interfere with the conclusions arrived at

by the labour court and the High Court.

8.While there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the Executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the Register maintained by the bank. In this factual background, the question of workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank."

(ii) (2009), 1 SCC 20, [Kanpur Electricity Supply Company Limited Vs. Shamim Mirza], wherein at paragraph nos.20 to 22 and 27, the Hon'ble Apex Court held as follows:

"...20.It is trite that the burden to prove that a claimant was in the

employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management.

21.It is true that in the instant case, the workmen did not produce the letters of appointment as also their salary slips but they have been successful in adducing some contemporaneous documentary evidence, including ECR sheets bearing the signatures of the workmen and that of another senior officer of the appellant company (Ex.W-7, W- 10 to W-15), which shows that they were collecting cash on behalf of the appellant; depositing it in the van or central office of the appellant and were answerable to the officials of the appellant. In this regard, Clause 5 of the terms and conditions of the contract awarded to Vivek and Associates is also relevant, which provides as under:

"You will be responsible for the operation of machines only. The cash handling is to be done by K.E.S.A., Cashier or a representative of K.E.S.A. duly authorised by Dy. C.A.O./Head Cashier."

22.It has come in evidence of the witnesses examined on behalf of the workmen that it was only the respondents who were collecting the cash and no other employee of the appellant. No evidence was led by the appellant in rebuttal. Furthermore, the appellant was called

upon to produce the official records but they failed to do so, with the result the adjudicatory authority drew adverse inference against the appellant. In the light of the factual scenario as emerging from the evidence on record, we are convinced that the workmen had discharged the burden which lay on them to prove the employer-employee relationship with the appellant.

27. In the light of the aforementioned factual matrix and the evidence on record, we are of the opinion that the courts below were justified in holding that both the workmen have established their claim of having worked with the appellant for more than 240 days as their employees. We find no reason whatsoever to interfere with the impugned judgments to that extent."

5. Per contra, the learned counsel appearing for the second respondent contended that the second respondent was employed as tailor in the petitioner company and was paid a sum of Rs.3,000/- per month as salary. He was not given benefits under the provisions of Employees State Insurance Act and Provident Fund Act. When he insisted the said benefits, the petitioner denied employment from 17.05.1998. Before the Conciliation Officer, the petitioner filed counter statement and falsely alleged that the second respondent was working under contractor. The said false statement is made only with a view to escape from their liability. The first respondent appreciated all the materials placed before him in proper perspective and ordered reinstatement with back wages, continuity of service and all other attendant benefits. The award of the Labour Court is in order. The first respondent has given two finding with regard to employment. While interfering in the award, this Court has to look into the fact whether the finding of the Labour Court is perverse. The finding of the first respondent is finding of fact and the same cannot be called for interference. The petitioner settled the claim of some of the employees those who are willing to take over their money. In view of the same, the petitioner is not entitled for the relief sought for in the Writ Petition and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent and perused the entire materials on record.

7.From the materials available on record it is seen that it is the contention of the second respondent that he was working for 8 years from 17.05.1998 and when he insisted for benefits under Employees State Insurance Act and Provident Fund Act, he was denied employment from 17.05.1998. The second respondent has not filed any document to show that he was employed by the petitioner permanently and continued to work till 17.05.1998. The second respondent in connected W.P.No.176 of 2009 was the only witness examined before the first respondent on behalf of the second respondent. The second respondent in W.P.No.176 of 2009, B.Venkatesh has not filed any authorization letter given by the second respondent in other connected Writ Petitions to give evidence on their behalf. From the evidence of second respondent in W.P.No.176 of 2009, it is seen that he did not know the details from when others worked in the petitioner company. No document was filed in the Industrial Dispute before the first respondent.

7(a).The contention of the learned counsel appearing for the petitioner is that the petitioner company was incorporated only in the year 1990 and commenced production only from the year 1993. To substantiate this contention, the petitioner filed Ex.M1 - copy of certificate of incorporation, Ex.M2 - copy of certificate of commencement. In addition to that the petitioner has filed Ex.M4 - copy of wages register, Ex.M5 - copy of attendance register, Ex.M6 - copy of E.S.I. contribution payment records and Ex.M7 - copy of P.F. contribution payment records before the first respondent. The first respondent rejected Exs.M6 and M7 on the ground that the seal of the authority who alleged to have inspected the said registers was not found. The first respondent also rejected Exs.M4 and M5 on the ground that petitioner refused to give work only when the second respondent insisted for benefit of E.S.I. and P.F. The petitioner filed Exs.M8 to M16 as well as copy of the letters which they have written to various companies, requesting them to furnish details as to whether the second respondent was employed in their company. Ex.M8 is the copy of the letter dated 09.07.2002 sent to M/s.Dhandapani Exports Ltd., Chennai - 1, Ex.M9 is the copy of the reply dated 03.08.2002 from M/s.Dhandapani Exports Ltd., Chennai - 1, Ex.M10 is the copy of the letter dated 09.07.2002 sent to M/s.Indo Tech Leaders, Chennai - 60, Ex.M11 is the copy of the reply dated 12.08.2002 from M/s.Indo Tech Leaders, Chennai - 60, Ex.M12 is the copy of the letter dated 09.07.2002 sent to M/s.Leder Fashion, Kancheepuram, Ex.M13 is the copy of reply dated 20.08.2002 from M/s.Leder Fashion, Kancheepuram, Ex.M14 is the copy of the letter dated 09.07.2002 sent to M/s.R.R.Leather Products (P) Ltd., Chennai - 600 098, Ex.M15 is the copy of the letter dated 09.07.2002 sent to M/s.Choudhary International Ltd., Chennai - 16 and Ex.M16 is the

copy of the letter dated 09.07.2002 sent by M/s.Ram Leather Apparels, Chennai - 102, has given details of the second respondents in W.P.No.176, 178 and 179 of 2009, who worked in their company for a certain period. The first respondent rejected these exhibits on the ground that the petitioner has not examined anybody from the said company to prove the said exhibits. The said reason is erroneous in view of the other exhibits marked by the petitioner. Further the first respondent has not properly appreciated the evidence of W.W.1. In his chief examination, the said witness has stated that it is not correct to state that they were working for only one year or one and half years. In the cross examination, when a question was put to in this regard, the witness answered that because of his advocate asked the said question, he answered like that. The first respondent wrongly incorporated that only the petitioner put such a suggestion/interpretation in the cross examination of W.W.1. This shows the non-application of mind by the first respondent. The first respondent failed to appreciate the materials on record in proper perspective. The second respondent failed to discharge his initial burden that he was employed by the petitioner by letting in some evidence. Having failed to do so, the second respondent is not entitled to relief sought for in the claim petition. Considering all the materials on record and evidence let in by the second respondent and petitioner, I hold that the second respondent failed to prove that he was employed by the petitioner for 8 years till 17.05.1998 and petitioner has proved that the second respondent was not his employee. The judgments cited supra, relied on by the learned counsel appearing for the petitioner are squarely applicable to the facts of the present case.

8.For the above reasons, the Writ Petition is allowed. The learned counsel appearing for the petitioner submitted that as per the order of Division Bench of this Court, they have deposited the amounts in the Indian Bank, High Court branch, Chennai to the credit of W.P.No.180 of 2009 and seeks permission of this Court to withdraw the said amount. The Branch Manager, Indian Bank, High Court Branch, Chennai is directed to disburse the amount to the petitioner as per the procedures. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

gsa

To

1.The Presiding Officer,
Labour Court,
Chennai - 600 104.

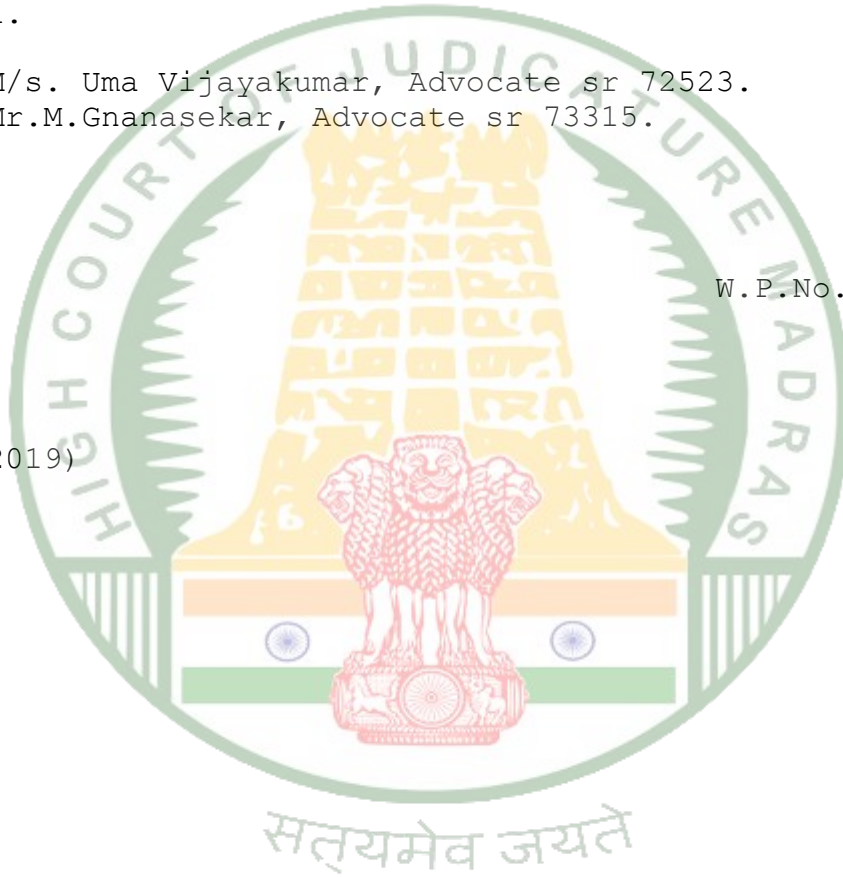
2.The Branch Manager,
Indian Bank,
High Court Branch,
High Court of Madras,
Chennai.

+1 CC to M/s. Uma Vijayakumar, Advocate sr 72523.

+1 CC to Mr.M.Gnanasekar, Advocate sr 73315.

W.P.No.180 of 2009

CP(CO)
SP(25/10/2019)



WEB COPY