



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2020

WEB COPY

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A. (MD) No.777 of 2013

S.Suresh

.. Appellant / 2nd Respondent

Vs

1 The Management
Exide Industries Ltd.
1A, Vanamalai Nagar
Bye-pass Road
Madurai - 625 010.

... 1st Respondent / Petitioner

2 The Presiding Officer
Labour Court
Madurai.

... 2nd Respondent / 1st Respondent

3 The Proprietor
Sirpi Service Agency
29, Race Course Road
Coimbatore.

..3rd Respondent / 3rd Respondent

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 13.2.2013 passed in W.P. (MD) No.8410 of 2011 by the learned Single Judge.

Prayer in WP(MD). 8410/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari or any other writ or directions in the nature of writ under Article 226 of the Constitution of India, to call for the records connected with the Award dated 10.01.2011 passed by the 1st respondent in I.D.No.121 of 2005 and quash the same.



For Appellant

: Mr.A.Jayaramachandran

For respondents

: Mr.S.Ravindran
Senior Counsel
assisted by Mr.V.N.Sivanthy
for M/s.Fox Mandal and
Associates
for 1st respondent

3rd respondent
Given up.

R2 - Labour Court

JUDGMENT

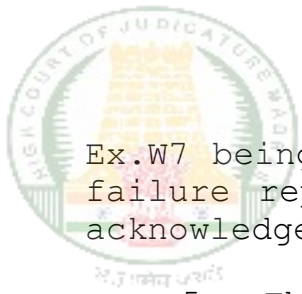
(Delivered by *SUBRAMONIUM PRASAD, J.*)

The workman has challenged the order of the learned Single Judge in W.P. (MD) No.8410 of 2011, by which the learned Single Judge has set aside and quashed the award dated 10.1.2011 directing reinstatement of the appellant with continuity of service and other benefits, but without backwages.

2. It is the case of the appellant that he joined the services of the first respondent/Management in the year 1996 and he worked for a period of eight years. He was orally terminated on 7.9.2004. The conciliation between the parties failed and the dispute was referred to the Labour Court, Madurai.

3. Before the Labour Court, the appellant contended that he had worked for 240 days in a year and that he is entitled to the benefits under Section 25F of the Industrial Disputes Act, and his termination is invalid because the mandatory requirement under the Industrial Disputes Act had not been followed and further, in any event, he was terminated by an oral order and, therefore, the principles of natural justice have not been followed.

4. The appellant/workman, before the Labour Court, produced nine documents to substantiate his case. Ex.W1 is the magazine published by the first respondent. Ex.W2 is the activity report of Exide Trade Sales. Ex.W3 being salary particulars of all employees, including the appellant. Ex.W4 being a copy of the certificate of posting. Ex.W5 being the legal notice sent by the appellant to the first respondent. Ex.W6 is the reply sent by the first respondent.



Ex.W7 being a series of photographs with negatives. Ex.W8 being the failure report submitted by the Labour Office and Ex.W9 being the acknowledgement.

5. The first respondent/Management took a stand that the appellant is not an employee of the first respondent and rather, he was an employee of the third respondent. The third respondent was arrayed as second respondent before the Labour Court. The first respondent/Management did not file any documents. However, the officers examined on behalf of the first respondent/Management and the third respondent took contrary stands disowning that they had employed the appellant.

6. The Labour Court accepted the case of the appellant herein and came to the conclusion that the documents as produced by the appellant herein brought out a case that he had been appointed by the first respondent/Management and since he had completed 240 days of service, he was entitled to the benefit of Section 25F of the Industrial Disputes Act. The Labour Court, therefore, held that the provisions of the Industrial Disputes Act had not been complied with and hence the termination is bad. The Labour Court also held that since the appellant herein had been terminated without giving any notice and by an oral order, the principles of natural justice had been violated.

7. Assailing the award, the first respondent/Management approached this Court by filing W.P.(MD) No.8410 of 2011.

8. The learned Single Judge considered the impact of all the documents produced by the appellant and the oral evidence which had been let in, namely the cross-examination of the representatives of the first and third respondents. The learned Single Judge after elaborately looking into the evidence came to the conclusion that the order of the Labour Court was perverse, inasmuch as the appellant herein had not discharged the initial burden of proving that he was an employee of the first respondent/ management. The learned Single Judge further held that the appellant having failed to discharge the initial burden, it cannot be presumed that there was an employee-employer relationship between the appellant and the first respondent/Management and, therefore, allowed the writ petition.

9. The workman has assailed the judgment of the learned Single Judge before us.

10. We have heard the learned counsel for the appellant and the learned Senior Counsel for the first respondent/Management. The third respondent has been given up by the appellant in these proceedings.



11. The learned counsel for the appellant would state that the learned Single Judge could not have gone into any excruciating details on facts and should not have substituted his conclusion to the one arrived at by the Labour Court. It is submitted that if the view arrived at by the Labour Court is a plausible one, then the High Court while exercising jurisdiction under Article 226 of the Constitution of India should not normally interfere with such findings arrived at by the Labour Court.

12. He would further contend that Ex.W3, which is the wage register produced before the Labour Officer, shows the details of the employees and includes the name of the appellant and the said fact, prima facie, establishes that the appellant was an employee of first respondent and that was sufficient to establish the employer-employee relationship and, therefore, the onus was on the first respondent/Management to prove that the appellant was not an employee.

13. Per contra, learned Senior Counsel for the first respondent/Management would support the judgment of the learned Single Judge by placing reliance on the judgment of the Supreme Court in **Workmen of Nilgiri Cooperative Market Society Ltd. v. State of Tamil Nadu and others, reported in (2004) 3 SCC 514**, wherein the Supreme Court has held that the initial burden to prove that the employee is a workman of the employer lies on the workman. Paragraphs (47) to (50) of the said judgment read as under:

"47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Ors. (1973) 1 LLJ 366 Ker, the Kerala High Court held:

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In Swapan das Gupta and Ors. v. The First Labour Court of West Bengal and Ors. 1975 Lab. I.C. 202 it has been held:

"Where a person asserts that he was a workmen of the Company, and it is denied by the Company, it



is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

14. It is trite law that normally a High Court while exercising judicial review does not interfere with the findings of the Labour Court unless the finding is arbitrary or obviously erroneous or perverse. The learned Single Judge has held that even if Ex.W3 is taken as a valid piece of evidence, it will work against the case of the workman because Ex.W3 mentions that demand draft has been sent for arrears of amount to the staff of the third respondent herein. It is, only, a communication sent by the first respondent/Management to the third respondent, regarding the workmen of the third respondent. The learned Single Judge also held that even though the appellant/Management has not adduced documents, an adverse inference cannot be drawn against the first respondent/Management, in as much as the initial burden lies on the workman to establish employer-employee relationship and only after the initial burden is established does the onus shift to the management to rebut the presumption. All other documents adduced by the workman do not establish any employer-employee relationship. We are in agreement with the findings of the learned Single Judge and that the judgment of the Labour Court is perverse.

15. In view of the above, it cannot be said that the learned Single Judge had erred in coming to the conclusion that in the absence of discharge of the initial burden, the Labour Court could not have passed an order reinstating the appellant in service and therefore the order of the Labour Court was perverse and based on nil evidence.

Resultantly, the appeal is dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

The Presiding Officer
Labour Court
Madurai.

+1 CC to M/s.A.JEYARAMACHANDRAN, Advocate (SR-7849[F] dated
24/02/2020)

+1 CC to M/s.A.ARUL JENIFER, Advocate (SR-8259[F] dated
25/02/2020)

W.A. (MD) No. 777 of 2013
24.2.2020

(sasi/rsb)
SDS (05.03.2020) 6P-4C