

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.15168 of 2011
and M.P.No.1 of 2011

Piramal Health Care Ltd.,
Represented by its Vice President,
(Formerly known as)
The Management of Nicholas Piramal India Ltd.,
Ernavur, Chennai - 600 057. ... Petitioner

Vs.

1. The Presiding Officer,
First Additional Labour Court,
Chennai.
2. P.Dorai
3. The Management,
I.C.I.India Ltd.,
Ernavur, Chennai - 600 057. ... Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Award passed by the first respondent herein made in I.D.No.590 of 2006 dated 02.03.2011 and quash the same.

For Petitioner : Mr.R.Parthiban

For Respondent

Nos.2 and 3 : No appearance

O R D E R

Challenging the Award passed by the Labour Court in I.D.No.590 of 2006 dated 02.03.2011 ordering reinstatement of the second respondent with 25% of the backwages, the Management has preferred the present Writ Petition.

2. In spite of service to the second respondent on 19.07.2011 and 11.08.2011, he has not chosen to appear before this Court and therefore, this Court proceeds to dispose of the Writ Petition on merits.

3. Originally, the second respondent raised an industrial dispute on the ground that he was terminated illegally, contrary to Section 25F of the Industrial Disputes

Act, 1947. According to him, the contract between the employer and the contractor viz., M/s. Arul Enterprises, is sham and nominal and that he was directly working under the supervision and control of the previous Management from 07.04.1992 and continued to work under the present Management and thus, he had completed 13 years of continuous service till the marching orders given on 29.08.2005 orally.

4. Retrenchment, without one month notice in writing and without giving compensation equivalent to 15 days average pay for every completed year of continuous service of 13 years, according to him, was illegal and also violative of Section 10 of the Contract Labour Regulation and Abolition Act, 1970, as well as Statutory Rule No.25(2)(V)A of Contract Labour Central Rules, 1971.

5. The Management has taken a stand that the second respondent was not a workman under them and he was employed by the Contractor and worked as a contract labourer. There is no employer and employee relationship between the Management and the second respondent. He has not marked even a single document to show that he was employed under the Writ Petitioner nor any proof to show that he was on the pay rolls of the Management. The contractor, through whom he was employed, has not been made as a party. Even though he submitted that the contract is sham and nominal, the Management in order to prove the legality of the contract, has marked a contract agreement as well as licence granted to the Contractor vide Ex.M2 and Ex.M3.

6. The Labour Court, without considering the fact that the workman has failed to prove his employment and his continuous service with the writ petitioner, has erroneously rendered a finding on the ground that the engagement of the contractor through the agreement, Ex.M2, was not proved by the Management and therefore, the workman is entitled to reinstatement with 25% of the backwages.

7. The learned counsel for the petitioner would rely on the judgment of the Hon'ble Supreme Court in the case of R.M.Yellatti Vs. The Asst. Executive Engineer reported in 2005 (9) SCALE 139.

8. At the outset, a workman claiming that he served for more than 240 days and claims that he was employee of an organisation, has to prove the same. It shall be proved by producing the documents with regard to his appointment, wages or other communications, which he had had with the Management.

9. In R.M.Yellatti's case cited supra, the Hon'ble Supreme Court observed that the initial burden of proving employment lies on the worker. The relevant portion of the

judgment is extracted below:-

Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case. Now applying the above decision to the facts of the present case, we find that the workman herein had stepped in the witness box. He had called upon the management to produce the nominal muster rolls for the period commencing from 22.11.1988 to 20.6.1994. This period is the period borne out by the certificate (Ex.W1) issued by the former Asstt. Executive Engineer. The evidence in rebuttal from the side of the management needs to be noticed. The management produced five nominal muster rolls (NMRs), out of which 3 NMRs, Ex.M1, Ex.M2 and Ex.M3, did not even relate to the concerned period. The

relevant NMRs produced by the management were Ex.M4 and Ex.M5, which indicated that the workmen had worked for 43 days during the period 21.1.1994 to 20.2.1994 and 21.3.1994 to 20.4.1994 respectively. There is no explanation from the side of the management as to why for the remaining period the nominal muster rolls were not produced. The labour court has rightly held that there is nothing to disbelieve the certificate (Ex.W1). The High Court in its impugned judgment has not given reasons for discarding the said certificate. In the circumstances, we are of the view that the division bench of the High Court ought not to have interfered with the concurrent findings of fact recorded by the labour court and confirmed by the learned single judge vide order dated 7.6.2000 in writ petition no.17636 of 2000. This is not, therefore, a case where the allegations of the workman are founded merely on an affidavit. He has produced cogent evidence in support of his case. The workman was working in SD-1, Athani and Ex.W1 was issued by the former Asstt. Executive Engineer, Hipparagi Dam Construction Division No.1, Athani-591304. In the present case, the defence of the management was that although Ex.W1 refers to the period 22.11.1988 to 20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.W1). In the circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact.

10. As per the above judgment, the preliminary burden is on the worker to prove his employment and that he has put in 240 days of continuous employment. In case, it is not available, he can call the Management to produce the attendance Register, Nominal Muster Roll, Wage Register, etc. But filing only affidavit or self serving document will not be sufficient to discharge the burden of the employee.

11. But, in the instant case, it is categorically admitted that he was engaged through a Contractor, but claimed that the contract is sham and nominal. In that event, it is

clear that the appointment order should have been issued by the contractor and not by the Writ Petitioner. To elicit the status of workman, the presence of the Contractor is necessary in this litigation. However, the workman had omitted to implead him. Even assuming that he was a direct employee of the Management, the burden is on him to prove that he had worked more than 240 days. Mere statement that he was engaged by the Management and that he was continuously working, by way of an affidavit, would not be sufficient and would not serve the purpose. In the absence of any oral and documentary evidence to prove the same, the Labour Court, ought to have held that the employment was not proved and prima facie case is not established and the question of oral termination could not arise without the proof of engagement. The second respondent, workman, had not even taken steps to prove his case by examining some of his co-workers. In the absence of oral and documentary evidence to prove his employment, prima facie, the claim can not be entertained. The question of proving the contract as held by the Labour Court will arise only after proof of employment claimed by the second respondent. Therefore, the Award passed by the Labour Court is based on no evidence. Any award passed on the basis no evidence shall be construed as perverse. In view of the above finding, the above Award is liable to be set aside.

12. Accordingly, the Award passed by the Labour Court in I.D.No.590 of 2006 dated 02.03.2011 is set aside and the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
First Additional Labour Court, Chennai.
2. The Management,
I.C.I.India Ltd., Ernavur, Chennai - 600 057.

+1cc to Mr.R.Parthiban, Advocate, S.R.No. 14090

W.P.No.15168 of 2011
and M.P.No.1 of 2011

SKY(CO)
GN(26/03/2021)