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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM:

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

W.P.NO.8016 OF 2015
AND WMP.NO.10851 OF 2017

The Managing Director,
The K.C.P. Ltd.,
Ramakrishna Buildings,
No.2, Dr.P.V.Churian Crescent,
Egmore, Chennai-600 008.

...Petitioner

vs.

1.The Presiding Officer,
1st Additional Labour Court,
Chennai.

2.K.N.Dasarathan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records connected with I.D.No.13 of 2007 on the file of the 1st respondent and to quash the order dated 10.09.2014 insofar Reinstatement of the Respondent/Workman with 50% backwages made therein.

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

For Respondents : R1 - Labour Court
Mr.S.T.Varadarajulu for R2

O R D E R

The second respondent was originally employed as Senior Engineer (Maintenance) at the Mechanical Maintenance Service Department of the petitioner company and his last drawn salary



was Rs.10,225/- per month. When the second respondent/workman was disengaged on 30.04.2003, he had filed a Claim Statement in I.D.No.13 of 2007 before the I Additional Labour Court, Chennai on 07.12.2007. The Labour Court, vide impugned Award dated 10.09.2014, had directed for reinstatement together with 50% backwages. The said award is put under challenge before this Court by the petitioner/Management.

2. The learned counsel for the petitioner predominantly raised two grounds. Firstly, the second respondent, who was employed as Senior Engineer, is not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 [in short 'I.D. Act'] and secondly that the second respondent/workman had belatedly filed the Claim Statement after a lapse of more than 4 years and though these grounds were raised in the counter statement, the Labour Court had not properly appreciated such grounds. Apart from these two grounds, the learned counsel for the petitioner would also submit that the second respondent/workman has not come to the Court with clean hands as he was gainfully employed for the period between July 1982 and November, 2015.

3. The learned counsel for the second respondent/workman submitted that the second respondent designation was only in a fiduciary capacity and the petitioner/Management had been



extracting the work of a workman and therefore, the second respondent would squarely fall under the definition of "workman" under Section 2(s) of the ID Act. It is also his submission that the delay in approaching the Labour Court is not a bar under any Labour Law and therefore, the findings of the Labour Court cannot be found fault with.

4. Before appraising the grounds raised by the petitioner, it would be appropriate to mention that the scope of interference by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, to an award passed by the Labour Court is very limited. However, exceptions to this general rule would include interference into such awards, which suffer from perversity, no evidence, etc.

5. In this background, it is seen that in the impugned Award dated 10.09.2014 in I.D.No.13 of 2007, the Labour Court had observed that the evidence of the MW1 reveals that the second respondent does not possess the power to sign cheques or enter into settlement or has the power to take any decision independently. On these observations, the Labour Court had come to the conclusion that the second respondent is deemed to be a workman. Apart from such an observation, the Labour Court has not substantiated as to how the evidence of MW1 would constitute or bring the second respondent within the purview of the



6. Section 2(s) of the ID Act defines "workman" as any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be expresses or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute. The said definition also includes a person who is employed in a supervisory capacity and drawing wages, which is less than Rs.10,000/-. The Labour Court has not gone into the definition of "workman" under the ID Act and thereby came to the conclusion that second respondent was engaged in supervisory capacity. Rather, the Court had chosen to rely on certain responsibilities that had not been extended to the second respondent and had come to such a conclusion, which is unacceptable in view of the scope of the definition of "workman" under the ID Act. In the absence of such a reasoning that the second respondent was engaged as workman by the petitioner Company, the finding that he is entitled to maintain the Claim Statement, cannot be sustained.



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7. The second contention raised by the learned counsel for the petitioner is that, though the petitioner's services were disengaged on 30.04.2003, he had filed the Claim Statement only on 07.12.2007, which is nearly after four years and therefore, the Labour Court ought to have rejected the same on the ground of delay and laches. This ground, though has been raised in the counter statement filed by the petitioner, has not been specifically addressed by the Labour Court but, rather the Labour Court has decided on the premise that the Law of Limitation would not be applicable to such cases, prior to amendment of Section 2A2 of the I.D. Act. This Court is unable to correlate this reason adduced by the Labour Court with that of the grounds of delay and laches raised by the petitioner. What the petitioner intended to object before the Labour Court was that the delay of 4 ½ years on the part of the second respondent in approaching the Labour Court and not pertaining to the amendment of Section 2A2 of the I.D. Act and hence, the reason for rejection on this ground also, cannot be sustained.

8. Apart from these two grounds, the learned counsel for the petitioner has filed an affidavit before this Court dated 21.03.2017 stating that the second respondent was predominantly gainfully employed for the period between July 1982 and November, 2015. The second respondent has not chosen to file a



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reply to such an affidavit denying these averments. Incidentally, the affidavit filed by the petitioner claims that the second respondent was engaged in various organizations during the aforesaid period, including his employment out of the country between September, 2005 and June 2008. Incidentally, by taking note of the aforesaid averments, this Court, in its interim order passed on 16.06.2017, had observed that there was suppression of material facts by the second respondent herein, insofar as his intermittent employments were concerned. The interim order of this Court has also not been challenged by the second respondent/workman. When the second respondent has neither countered the claim made by the petitioner with regard to his gainful employment, nor has challenged the findings in the interim order passed, this Court has no reason to consider the submission of the learned counsel for the second respondent that the second respondent was not gainfully employed.

9. It has been emphasized by the Hon'ble Supreme Court in various decisions including the case in *R.Vijayakumar and Others v. The Commissioner of Excise and Others* reported in 1994 Suppl. (2) SCC 47, that the averments in the affidavit should be clear and specific. Thus, the petitioner is required to disclose of the material facts pertaining to his case, the absence of which, would amount to misleading the Court and the writ petition could be dismissed for such non-disclosure at the threshold.



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10. The Hon'ble Supreme Court in the case of *Dalip Singh v. State of Uttar Pradesh and Others* reported in 2010(2) SCC 114, has reiterated this principle in the following manner:

"10. In *K.D. Sharma v. SAIL* [(2008) 12 SCC 481] the Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayashree v. Bhagwandas S. Patel* [(2009) 3 SCC 141]."

By applying the aforesaid ratio and considering the fact that the petitioner had not disclosed his gainful employment, the writ petition is liable to be rejected on this ground also.

11. On a conjoint reading of the findings rendered by the Labour Court, this Court is of the firm view that the final decision of ordering reinstatement is not substantiated by material or relevant evidence and as such, the impugned award cannot be sustained.



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12. In the result, this Writ Petition is allowed and the Award dated 10.09.2014 in I.D.No.13 of 2007 on the file of the I Additional Labour Court, Chennai is quashed. In view of the same, the petitioner/Management is entitled to withdraw the amount claimed to have been deposited by them before the Labour Court, pursuant to the interim orders passed by this Court. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

Jvm

To
The Presiding Officer,
1st Additional Labour Court,
Chennai.

+1cc to M/S.S.Ramasubramaniam, Advocate, SR.No.38963
+1cc to M/S.T.Varadarajulu, Advocate, SR.No.39013

W.P.No.8016 of 2015

EV(CO)
PM(07/09/2021)