

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.30340 of 2019
and
W.M.P.No.30334 of 2019

The Management of
Chettinad Hospital and Research Institute,
Rep.by its DEAN
Rajiv Gandhi Salai (OMR),
Kelambakkam, Kanchipuram District,
Chennai - 603 103. Petitioner

Vs.

1.K.Ravie Murugappan

2.The Management of
South India Corporation Limited,
Rani Seethai Hall, 5th Floor,
No.603, Anna Salai,
Chennai - 600 006. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of writ of
certiorari, calling for the records of the II Additional Labour
Court, Chennai in I.D.No.14 of 2018 and quash its Award dated
28.06.2019.

For Petitioner : Mr.S.Ravindran Senior Counsel
for Mr.P.Nehru

For Respondents: Mr.V.Sivalingam [for R1]
No Appearance [for R2]

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O R D E R

The present writ petition is directed against the award
passed by the Labour Court in ordering reinstatement of the 1st
respondent with full back wages and continuity of service and
other attendant benefits.

2. According to the 1st respondent, he was transferred
from the 2nd respondent company and posted in the writ petitioner

company and he was continuously working there. However, the case of the writ petitioner/management is that the 1st respondent resigned from the service of the 2nd respondent and was appointed as a fresh candidate under them.

3. The Labour Court has framed the following issues for determination:

(i) Whether petitioner has resigned the job under 1st respondent or transferred to 2nd respondent?

(ii) Whether 1st and 2nd respondent are same entity?

(iii) Whether petitioner is a workman or not?

(iv) Whether the claim of the petitioner for reinstatement with continuity of service, back wages and other benefits shall be granted?

4. In respect of first issue as to whether the 1st respondent resigned from the 2nd respondent institution or transferred to the writ petitioner institution is concerned, the Labour Court has given a finding that the transfer order marked as Ex.W.2 was not probable, in view of Ex.M.1 to Ex.M.3 the claim of provident fund settlement and the application form for employees pension scheme under Ex.M.8. It is further held that the fact has been substantiated by acknowledgment of receipt of monetary benefit through Ex.M.9. Therefore, a categorical finding was given that the 1st respondent would not have been transferred from the 2nd respondent institution to the writ petitioner institution. However, without recording any reasons for deviating from the above findings, had come to a conclusion for a flimsy reason the resignation letter was not produced.

5. In respect of the second issue is concerned, a categorical finding was given by the Labour Court that the writ petitioner and the 2nd respondent are two different entities. But, without any evidence has held that both the managements fall under one group called "Chettinad group".

6. Having observed that in the case of transfer, the provident fund account of the employee should have been transferred and Exs.M1 - M3 & M9 categorically prove that the 1st respondent had served his relationship by claiming PF dues, ought not to have held that resignation was not proved due to non-production of resignation letter. The finding of the Labour Court in respect of the first issue suffers from inconsistency, non-application of mind failure to appreciate the material evidence in proper perspective.

7. In respect of the second issue, based on unassailable legal evidence vide Ex.M7 & M12, a finding was given that the writ petitioner and the 2nd respondent are two separate legal

entities. In that event, to arrive at a finding that these concerns are group concerns and governed by one umbrella company and that the employees are transferable contra evidence is required. But without any iota evidence, it is held that the above companies are under one group called "Chettinad Group". The above finding is based on no evidence.

8. As such finding of the Labour Court on the one hand without considering the available evidence and on the other hand rendering a finding on no evidence amounts to perversity. Awards shall not be passed on the basis of personal knowledge, assumptions and presumptions on extraneous materials, but shall be based on the material evidence placed before it. In that view of the matter, the present award does not stand the scrutiny of Judicial review and accordingly it is open to both the parties to adduce further evidence.

9. Accordingly, the writ petition is disposed of with a direction to the Labour Court to dispose of the Industrial Dispute as expeditiously as possible in any event not later than 6 months. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Labour Court,
Chennai.

2. The Management of
South India Corporation Limited,
Rani Seethai Hall, 5th Floor,
No.603, Anna Salai,
Chennai - 600 006.

+1cc to Mr.V.Shivalingam, Advocate, S.R.No. 18299
+1cc to Mr.P.Nehru, Advocate, S.R.No. 18524

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UM(CO)
GN(28/06/2021)