



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.13511 of 2011

WEB COPY

The General Secretary,
Bharat Petroleum Workers Union
No.16, Masilamanipuram, 3rd Street,
Tuticorin.

... Petitioner

Vs.

1.The General Manager,
Bharat Petroleum Corporation Ltd.,
Madurai Bye-pass Road,
Tuticorin-628 008.

2.Sri.M.Ravichandran
Engineering Contractor,
Narayana Nadar Compound,
Varandiavel Post,
Via Karumbur,
Tuticorin.

3.The Partner,
St.Anthony's Agencies,
No.20/19, Roche Colony, 4th Street,
South Beach Road,
Tuticorin-628 001.

4.The General Government Industrial,
Tribunal cum Labour Court,
Shastri Bhavan,
Chennai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the award in I.D.No.6 of 2009 dated 18.07.2011 passed by the 4th respondent and quash the same that part of the award denying reinstatement in service under the 1st and 3rd respondent and consequently, direct the 1st and 3rd respondents to reinstate the workmen R.Duraiseelan, R.P.Vinoth Kumar, J.Thomas, S.Syed Kadar by the 1st and 3rd respondents.

For Petitioner : Mrs.D.Geetha

For R1 & R4 : Mr.Anand Gopalan

for M/s.T.S.Gopalan & Co.,

For R3 : Mr.S.Seenivasagam

For R2 : No appearance



ORDER

This writ petition has been filed challenging the award dated 18.07.2011, passed in I.D.No.6 of 2009, by the 4th respondent, and to quash the same that part of the award denying reinstatement in service under the 1st and 3rd respondent and consequently, directing the 1st and 3rd respondents to reinstate the workmen R.Duraiseelam, R.P.Vinoth Kumar, J.Thomas, S.Syed Kadar.

2.The case of the petitioner is that the petitioner Union raised an industrial dispute with regard to the termination of four workmen viz., R.Duraiseelan, R.P.Vinoth Kumar, J.Thomas and S.Syed Kadar by the second and third respondents. Further, the first respondent is the principal employer and the second and third respondents are the contractors under the first respondent. Out of 29 workers, 17 workers are employed in loading and unloading operation, 9 workers employed in cylinder handling, 2 workers employed in house keeping and cleaning and one person employed in Cylinder Stay plate bend. The workers are covered under the Employees Provident Fund Act. The workers have been employed through several contractors since 1993. The contractors are usually changed from time to time, but the workers remain constant and discharge their duties.

3. The petitioner Union raised an industrial dispute seeking regularization of the workmen employed through the contractor as regular workmen of the first respondent. The Central Government refused to refer the dispute for adjudication. The petitioner Union has challenged the order in W.PNo.6928 of 2008 and the same is pending. The members of the petitioner Union are working under the first respondent from 1992 through various contractors. Though they have been continuously employed, they are given only meager wages. When the second respondent entered into an agreement with the first respondent for the year 2004-2005 as contractor, the said four workers were illegally terminated on the false grounds that they were threatened him and his supervisor.

4.It was submitted that before the order of termination was passed, they were not issued with any notice and without any reason, the service of these four workmen were terminated. All the contract labourers, who were working under the 2nd respondent, became the contract labourers of the third respondent, who took contract from 01.11.2005. It is the usual procedure and the same was one of the term of the agreement entered between the 1st and 3rd respondents that the workers employed by the 2nd respondent should be employed by the 3rd respondent. But the 3rd respondent refused to take back the aforesaid contract workers on the ground that as on 30.10.2005, the names of the four workers were removed by the 2nd respondent from the muster roll.



5. Against the termination of the said four workers, the petitioner Union raised industrial dispute before the conciliation officer. During the course of conciliation, the conciliation officer issued an advice to the third respondent to reinstate the terminated workman, however, the third respondent has not to do so. The petitioner Union raised an industrial dispute with regard to the absorption of all the workman employed under the contractor by the first respondent. The said industrial dispute was failure. The Union had also raised an industrial dispute before the conciliation officer for revision of wages to contract workers and the same was also pending.

6. Therefore, the Union raised the industrial dispute before the fourth respondent, wherein, the second respondent remained ex-parte. The fourth respondent, on adjudication, passed an award holding that the termination of the four workmen by the second respondent is not a fair, legal or justified and also held that there is no termination of service of the workmen by the 1st and 3rd respondents. Aggrieved by the same, the present writ petition is filed.

7. The learned counsel appearing for the petitioner submitted that the findings of the labour Court that there was no termination of service of four workers by the first and third respondents is arbitrary and illegal. The workers, who were working under the second respondent, became the contract labourers of the third respondent. The said procedure was established through documentary evidence and the workmen, who were continuously worked under various contractor and the findings of the Tribunal that there was no termination of service of the workmen by the first and third respondents, is liable to be set aside. Further, Ex.W.3 clearly prove the fact that the conciliation officer recommended for reinstatement of the second respondent. However, without considering Ex.W.3, the labour Court passed an award in favour of the first and third respondents, which is illegal and arbitrary one. Further, the Tribunal failed to direct the third respondent to reinstate the workers by the second respondent is not fair and illegal. Hence, he prays for allowing the present Writ Petition.

8. The learned counsel appearing for the first and fourth respondents submitted that it is a dispute between the private contractors and the Union. The first respondent has no role to say that no document was produced before the Tribunal for proving employer and employee relationship. Further, the four workers, who are the members of the petitioner Union were worked under the second respondent contractor. The second respondent contractor passed a termination order and the said termination order was



challenged before the Labour Court. In the absence of any material implicating the first respondent in the present writ petition is unsustainable one. Accordingly, he prays for dismissal of the present writ petition.

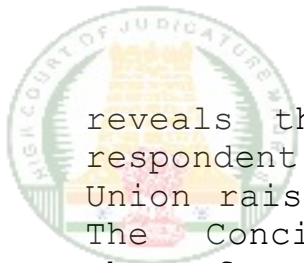
9.The learned counsel appearing for the first respondent brought to the notice of this Court that during the pendency of the writ petition, out of four members, two members were reemployed in the third respondent contractor vide under 12(3) settlement. In view of the subsequent development, there was no relationship between the petitioner members and the first respondent. Accordingly, he prays for dismissal of the present writ petition.

10.The learned counsel appearing the for the third respondent submitted that admittedly, the members of the petitioner were engaged by the second respondent and the second respondent passed termination order against the members of the petitioner Union and the said termination order was challenged before the Tribunal. The Tribunal rendered his findings that there is no document to show that the third respondent engaged the members of the petitioner Union. In the absence of any document, implicating the third respondent is not sustainable one. Accordingly, he prays for dismissal of the present writ petition.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court, in a catena of decisions, has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

13.The facts in the present case are not in dispute. Pursuant to the order of termination passed, an industrial dispute was raised in which an exparte award was passed against the second respondent. On a perusal of the materials which were submitted by the petitioner before the Labour Court, more especially Ex.W.20



reveals that the termination order was issued by the second respondent. Challenging the termination order, the petitioner Union raised industrial dispute, before the Conciliation Officer. The Conciliation Officer submitted a failure report and thereafter, the matter was referred to the fourth respondent for adjudication under Section 2K of the Industrial Disputes Act. A perusal of Ex.W.20, would make it clear that the termination order was passed by the second respondent and the same clearly proves that the members of the petitioner Union were employed only under the second respondent. No other documents have been produced with regard to the employment of the workmen with the first and third respondents. Further, on perusal of the evidence and the documents marked before the Tribunal as Ex.W.1 to Ex.W.45 would show that except for the representation, no other documents are available to show that the workmen were employed under the first respondent and mere making a representation to the first respondent, it cannot be presumed that the members of the Petitioner Union were working under the first respondent. A perusal of Ex.W.24 to Ex.W.34 shows that the contribution was paid only by the second respondent and further all those materials clearly prove that there was a relationship only between the workmen/members of the petitioner Union and the second respondent and there exists no relationship with the first and the third respondent. That being the factual position, the Tribunal has appreciated all the materials placed before it in proper perspective and has passed the award, which in no way could be said to be bad in law and in violation of Section 25(f) and 25(g) of the Industrial Disputes Act.

14.For the reasons aforesaid and in view of the legal position that the appellate Courts shall not reappreciate the evidence, but for its perversity, this Court is of the considered view that the order passed by the Tribunal is just and reasonable and does not required any interference at the hands of this Court. Hence, the prayer sought for by the petitioner in the writ petition cannot be granted. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

1.The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.S.SEENIVASAGAM, Advocate (SR-12679[F] dated
22/03/2021)

+1 CC to M/s.T.S.GOPALAN, Advocate (SR-12902[F] dated
23/03/2021)

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