



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**
W.P. (MD) No.1424 of 2012

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R.Arumugam

... Petitioner

Vs.

1.The Labour Court,
Madurai.

2.The Proprietor,
Thiru.K.Mugunthan
Ishwarya Motors,
No.252, Tenkasi Road,
Kadambankulam
Rajapalayam-626 117.

3.Ishwarya Automobiles
G.M.Nagar,
Madurai Road,
Srivilliputhur Post,
Virudhunagar District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records to the impugned order of the 1st respondent dated 28.07.2011 made in I.D.No.84 of 2006 on the file of the Labour Court, Madurai and quash the same and consequently, direct the respondents herein to disburse the claim amount of Rs.4,93,530/- with reasonable rate of interest.

For Petitioner	: Mr.S.Ramakrishnan for Mr.G.K.R.Pandian
For R2	: Mr.S.Karthik
For R3	: No appearance

O R D E R

This writ petition is filed challenging the impugned order of the 1st respondent, dated 28.07.2011 made in I.D.No.84 of 2006 on the file of the Labour Court, Madurai and to quash the same and consequently, to direct the respondents to disburse the claim amount of Rs.4,93,530/- with reasonable rate of interest.



2.The case of the petitioner is that he was employed as a Mechanic for two wheeler from 16.05.1993 to 06.01.2006 in the respondent firm and his salary was Rs.5000/- per month. The petitioner was engaged to work during holidays and the respondents are liable to pay bonus payment on those holidays. Further, the petitioner was engaged to work for over time and the respondents are also liable to pay such dues, as per the entries and records. As per the regular records maintained by the respondents, they are liable to pay a sum of Rs.4,98,530/- on the basis of the petitioner's pay of Rs.5,000/- per month. When the petitioner has demanded the same, the respondents had refused to pay the same. Hence, the petitioner has raised an industrial dispute in I.D.No.84 of 2006 before the first respondent.

3.As per Ex.P.5, the petitioner has received his salary of Rs.5,000/- per month and hence, he is entitled for the benefits. However, during the trial, the petitioner also filed an application in I.A.No.311 of 2010 in I.D.No.84 of 2006 before the first respondent, seeking to produce the Attendance Register, Salary Register, Bonus Register, National Festival Register Weekly Holiday Register, Medical leave Register, ESI Register, PF Register and Over Time Work Register etc. Since those documents have not been produced by the respondents, the petitioner has filed the said I.A. However, the said I.A was allowed and an ex-parte order was passed on 05.04.2011 against the respondents. In the meanwhile, the respondents also filed an application to set aside the order of the first respondent and the said application was heard along with the main claim petition and after adjudication, the petitioner's claim petition was dismissed. Challenging the same, the present writ petition is filed.

4.During the trial, on the side of the petitioner, one witness was examined as P.W.1 and documents Ex.P.1 to Ex.P.15 were marked and on behalf of the respondents, no witness was examined and no document was marked.

5.The learned counsel appearing for the petitioner submitted that before the Labour Court, the first respondent filed a counter affidavit stating that the petitioner was working as a Mechanic from 16.04.1994 to 04.05.1996 and again he joined duty on 18.04.1997 and resigned his job on 06.01.2006. Thereafter, the petitioner absented duty from 01.01.2006 and his last drawn salary was Rs.2,500/- per month. Further stating that the petitioner has filed a claim petition under Section 33C(2) of the Industrial Disputes Act, 1947 and there is no existing right or the statutory right for claiming the amount as per Section 33C(2) of the Industrial Disputes Act and as such, the said petition is not maintainable. Further, the petitioner has not received Rs.5,000/- as monthly salary and also the other benefits which were claimed in the petition cannot be sought for by the petitioner as he is not a regular employee.

<https://hcservices.mca.gov.in/hcservices/> the submission of the learned counsel for the



petitioner that there is employer-employee relationship between the petitioner and the second respondent no evidence has been placed by the 2nd respondent to dispute the same and the above aspects have not been appreciated by the Labour Court in proper perspective and, therefore, he prays for allowing the present writ petition.

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6.The learned counsel appearing for the second respondent submitted that it is for the petitioner to establish the employer-employee relationship and he cannot put the ball on the side of the 2nd respondent to establish the same, when it is the case of the 2nd respondent that there existed no relationship between the petitioner and the 2nd respondent. Further, it is the submission of the learned counsel for the 2nd respondent that the petitioner was not paid Rs.5,000/- as salary and further the claim made by the petitioner based on the pre-existing right is not sustainable. Accordingly, he prays for dismissal of the present writ petition.

7.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

8. Before this Court venture 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 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.

9. It is the admitted case of the parties that the petitioner was working under the 2nd respondent as Mechanic from 16.05.1993 to 06.01.2006. However, the payment received by the petitioner as salary is disputed. It is the case of the petitioner that he resigned his job on 06.01.2006, however, no material evidencing his resignation has been placed before the court below. The petitioner has placed certain materials to prove the salary received from the 2nd respondent. However, the point in dispute is that the salary at Rs.5,000/- claimed by the petitioner was not paid to him. However, only salary to the tune of Rs.2,500/- was paid. In this regard, a perusal of Ex.P.5 shows that a sum of Rs.2,000/- and Rs.3,000/- were mentioned, but nowhere there is a categorical document, which reveals that the petitioner was in receipt of Rs.5,000/- as salary. The Labour Court has also rendered a finding that the



petitioner has not made any claim for overtime wages, bonus, etc., before the appropriate authority. The Labour Court has rendered a finding that though certain documents have been marked by the petitioner, however, no document clinchingly establish that the petitioner was an employee under the 2nd respondent and that he was in receipt of a salary of Rs.5000/- per month. Mere assertions and certain documents, which have been filed before certain authorities claiming certain statutory amounts, would not suffice to hold that the petitioner was an employee under the 2nd respondent and that he was in receipt of the salary to the tune of Rs.5000/-. Further, it is to be pointed out that it is for the petitioner to establish that he was an employee under the 2nd respondent and that there was an employer-employee relationship between the petitioner and the 2nd respondent. It is not necessary for the 2nd respondent to establish that the petitioner was not an employee under the 2nd respondent, as it is the very case of the 2nd respondent that the petitioner was not an employee under the 2nd respondent.

10. The Labour Court, on a careful consideration of all the materials placed before it by the parties, has come to a just and reasonable conclusion that the petitioner has not established his claim that he was an employee under the 2nd respondent and he was in receipt of a salary of Rs.5,000/- per month and, rightly negated the claim of the petitioner, which is on the basis of proper findings and reasonings and this Court is of the considered opinion that no interference is warranted with the impugned order passed by the Labour Court.

11. For the reasons aforesaid, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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To

The Labour Court,
Madurai.

W.P. (MD)No.1424 of 2012
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RC(14.07.2021) 4P-2C