



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2021

CORAM:

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

W.P. (MD)Nos.209 and 210 of 2012

and

M.P (MD)Nos.1 and 2 of 2012

WEB COPY

Management

Raja Press, Rajeswari Bhavanam

Usilampatti,

Madurai District,

Rep., by its Partner

... Petitioner in both W.Ps

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.S.Pandian

... Respondents in both W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned award dated 30.08.2011 passed by the 1st respondent in C.P.No.11 of 2010 and I.D.No,38 of 2010 and quash the same as illegal.

For Petitioner : Mr.Jerin Mathew

in both W.Ps for Mr.M.E.Ilango

For R2 : Mr.S.M.Mohan Gandhi (in both W.Ps)

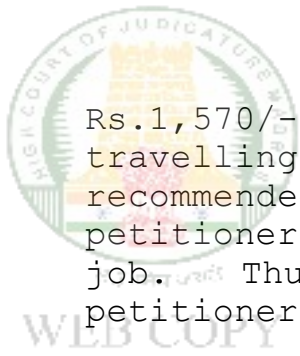
For R1 : Court (in both W.Ps)

COMMON ORDER

These Writ Petitions have been filed praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned Award, dated 30.08.2011, passed by the 1st respondent in C.P.No.11 of 2010 and I.D.No.38 of 2010 and quash the same as illegal.

2.Since the issue involved in both the writ petitions are one and the same, they are taken up together and disposed of by a common order.

3.The case of the petitioner/Management is that the petitioner is a Printing Press, which was established in the year 1968. The second respondent was employed in the press, as an office boy, for paying electricity charges, going to post office, fetching coffee, service, etc. The second respondent has received



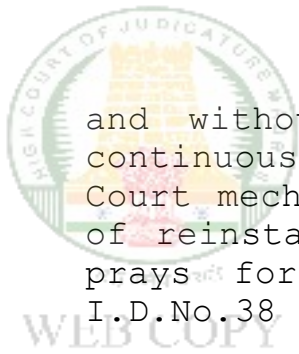
Rs.1,570/- per month, as consolidated salary, apart from daily travelling bata. As the second respondent was initially recommended for employment by a good friend of the partner, the petitioner/Management always shown leniency and would take him for job. Thus, the employment of the second respondent with the petitioner was not continuous, but it was only intermittent.

4. While such being the case, the second respondent approached the petitioner/Management on 28.01.2006 and requested the salary for the month of January in advance. Even though the monthly salary would be disbursed only on 5th of the every month, on sympathy, the petitioner/Management gave the entire month's salary to him. Thereafter, the second respondent did not report for duty. When the second respondent did not report for work continuously, the petitioner/ Management enquired his whereabouts and came to know that the second respondent had left to Tirupur and joined there, for higher remuneration. The second respondent had an outstanding advance of Rs.3,000/- to be repaid to the Management, when he left the employment.

5. After keeping silent for more than 3 years, the second respondent returned to his native in the year 2009. On coming to know of the same, the petitioner Management asked the second respondent for return of the advance of Rs.3,000/-, for which the second respondent has raised an industrial dispute before the Conciliation Officer and the Conciliation failed. Against the same the second respondent filed a claim petition before the Labour Court in C.P.No.11 of 2011 under Section 33(c)(2) of the Industrial Disputes Act.

6. The second respondent filed a petition I.D.No.38 of 2010 before the first respondent under Section 2(a)(2) of the Industrial Disputes Act, to cancel the oral termination of the second respondent. Both the petitions were clubbed together and the Labour Court had passed a common order and allowed the petition filed by the 2nd respondent under Section 33(c)(2) of the ID Act, directing the petitioner-Management to pay a sum of Rs.31,279/- to the second respondent and in I.D.No.38 of 2010, the petitioner Management was directed to pay a sum of Rs.20,000/- as compensation to the second respondent, in lieu of reinstatement. Challenging the same, the writ petitions have been filed.

7. The learned counsel appearing for the petitioner/Management submitted that in order to prove the employment in the petitioner/Management, no documents were marked, except Ex.P.2 - a letter given by the Partner and that will not give any right to raise the industrial dispute for non-employment. Further, the learned counsel submitted that the second respondent was working as an office boy on a temporary basis and frequently absented from duty



and without any document to show that the second respondent continuously employed in the petitioner/ Management, the Labour Court mechanically passed an award, awarding compensation in lieu of reinstatement, which is *non est* in the eye of law. Hence, he prays for dismissal of the writ petition filed against the I.D.No.38 of 2010.

8.The learned counsel appearing for the second respondent submitted that though the petitioner claimed that there were dues payable by the second respondent, in line with G.O.Ms.No.49 dated 23.07.2004, the Labour Court, after considering the evidence, which was marked by the second respondent as Ex.P.2 and Ex.P.3 - the letters with regard to the second respondent's employment and salary receipts, passed the Award in his favour, which cannot be interfered with.

9. Heard the learned counsel appearing for the petitioner-Management and the learned counsel appearing for the second respondent and perused the material available on record.

10.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.

11.Admittedly, the second respondent was working in the petitioner/Management in the year 1989. In order to prove the employment, the petitioner/Management marked Ex.P.2. On perusal of Ex.P.2 reveals that one of the partner viz., Venkatachalapathy, gave a letter, based on which the workman was employed from 01.02.1989 to 09.10.1989. Further, it is evident from the records that the second respondent is a temporary employee working as Office Boy and received a sum of Rs.1,570/-, as monthly salary. In the year 2006, the second respondent approached the petitioner Management and requested salary for the month of January in advance and thereafter, he did not report for duty. The above facts are not in dispute.



12. The main grievance of the petitioner management is only to the extent of passing award in a sum of Rs.20,000/- as compensation in lieu reinstatement and Rs.31,279/- u/s 33 (c) (2).

13. On a perusal of the materials on record with reference to the order passed by the Labour Court, it is not in dispute that based on the letter given by the partner, the workman was employed. Therefore, definitely there is an employer-employee relationship between the workman and the management. Without there being contra evidence to show that the workman has been terminated from service in a manner known to law, the order of the Labour Court ordering compensation in lieu of reinstatement cannot be interfered with. Accordingly, this Court is of the considered opinion that the compensation in a sum of Rs.20,000/- in lieu of reinstatement is totally justified and does not warrant any interference.

14. However, insofar as the award relating to the payment of wages u/s 33 (c) (2), it is to be pointed out that the whole of the gamut of the workman's argument lies on the basis of the dues, which are payable to the workman in view of G.O.Ms.No.49 dated 23.07.2004. Though such a claim is made by the workman, it is to be pointed out that the said Government Order, on which reliance is placed by the workman, has neither been placed before the Labour Court nor before this Court and in the absence of the same, appreciating the stand of the workman and passing an award in his favour is unsustainable. No doubt, the workman is entitled to raise a dispute u/s 33 (c) (2) of the Act, which is maintainable even in the present case. But it is for the workman to prove his case and mere assertion that he is entitled to certain benefits, which are statutory in nature, on the basis of a government order, cannot be sustained, if the said government order is not placed before the Court to substantiate his claim.

15. In view of the foregoing discussions, the writ petition filed by the petitioner/Management in W.P(MD)No.209 of 2012 is allowed and the Writ Petition filed by the second respondent/workman in W.P(MD)No.210 of 2012 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



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To

1.The Presiding Officer,
Labour Court,
Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-8479[F] dated 03/03/2021)

+1 CC to M/s.S.M.MOHAN GANDHI, Advocate (SR-8464[F] dated 03/03/2021)

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