



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2021

CORAM

WEB COPY

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 12092 of 2014

and

M.P. (MD) No. 1 of 2014

The Management,
Dermarex Health Care (India) Ltd.,
No.109, 1st Cross Street,
Krishna Colony,
Coimbatore.

... Petitioner

-vs-

1. P.Shanmuga Raju

2. The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorari, to call for records relating to the impugned order of the Second Respondent made in C.P. No. 33 of 2011 dated 28.04.2014 and quash the same.

For Petitioner : Mr. S.Karthik

For First Respondent : Mr.A.KARTHICK for
Mr. J.John Rajadurai

For Second Respondent : Court

O R D E R
(through video conference)

Heard Mr. S.Karthik, Learned Counsel for the Petitioner and Mr. J.John Rajadurai, Learned Counsel for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order dated 28.04.2014 in C.P. No. 33 of 2011 passed by the Second Respondent under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred



to as 'the Act' for short), determining that a sum of Rs. 9,831/- was payable by the Petitioner to the First Respondent.

3. The only contention raised by the Petitioner in this Writ Petition is that the nature of functions carried out by the First Respondent is that of 'sales executive' and he cannot be treated as a 'workman' within the meaning of Section 2(s) of the Act so as to be entitled to make claim under Section 33-C(2) of the Act. In response to the specific query raised by this Court, Learned Counsel for the Petitioner submits that such contention has not been raised by the Petitioner in the impugned proceedings before the Second Respondent. It is settled position of law that the nature of functions carried out by a person in the post is a question of fact which has to be decided on the basis of evidence adduced by the contesting parties and this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution would be loath to entertain such claims for the first time in the Writ Petition. In any event, it has not been explained by the Petitioner as to how the nature of work performed by the First Respondent as sales executive can be said to be of managerial in nature so as to be excluded from the purview of the definition of 'workman' under the Act. In that view of the matter, the impugned order of the First Respondent does not warrant any interference by this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

4. It is brought to notice by Learned Counsel for the Petitioner that in the interim order dated 24.07.2014 in M.P. (MD) No. 1 of 2014, the Petitioner has been required to deposit the sum of Rs. 9,831/- before the First Respondent as a condition for grant of interim order. If that amount has already been deposited, the First Respondent shall be entitled to make necessary application to the Second Respondent for withdrawal of that amount. If the said amount had not been deposited by the Petitioner before the Second Respondent, the First Respondent is entitled to seek execution of the impugned order before the proper forum in the manner recognized by law.

The Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Index: Yes/No

Sd/-

Assistant Registrar (w)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: (i) Issue order copy by 15.09.2021.

(ii) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

THE PRESIDING OFFICER,
LABOUR COURT, MADURAI.

+1 CC TO Mr.S.KARTHIK, ADVOCATE SRNO.22228

+1 CC TO Mr.M.S.JEYAKARTHICK, ADVOCATE SRNO.22059

W.P. (MD) No. 12092 of 2014

SRN

SS/15.09.2021 : 3P/4C