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W.A.Nos.1071 & 1320 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **12.07.2022**

DELIVERED ON: **15.12.2022**

CORAM:

**THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

W.A.Nos.1071 & 1320 of 2012

W.A.No.1320 of 2012

The General Secretary,
Madras Refineries Workers Union,
MRL Campus,
Manali,
Chennai – 600 068.

... Appellant

Vs.

1.M/s.Madras Refineries Limited INDCO
Serve Society Limited,
MRL Campus,
Manali,
Chennai – 600 068.
Rep. by its Special Officer

2.The Presiding Officer,
Central Government Industrial Tribunal
-cum-Labour Court,
Shastri Bhavan,
No.26, Haddows Road,
Chennai – 600 006.



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3.The Management of Chennai Petroleum
Corporation Limited
(Previously known as Madras Refineries Limited)
Represented by its Company Secretary,
MRL Campus,
Manali – 600 068.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, against the common order of this Court dated 26.04.2012 in W.P.Nos.4368 of 2009, 26724 of 2010 and 6371 of 2011 in so far as W.P.No.6371 of 2011 is concerned and allow the Writ Appeal.

For Appellant : Mr.V.Prakash, Senior Counsel
for Ms.Ramapriya Gopalakrishnan
For Respondents : Mr.S.Jayaraman for R1
R2 - Court
Mr.S.Shivathanu Mohan for R3
for M/s.Ramasubramanian Associates

W.A.No.1071 of 2012

Madras Refineries Workers Union,
Represented by its General Secretary,
MRL Campus, Manali,
Chennai – 600 068.

... Appellant

Vs.

- 1.The Management of Chennai Petroleum,
Corporation Limited,
(Previously known as Madras Refineries Limited),
Represented by its Company Secretary,
MRL Campus, Manali – 600 068.
- 2.The Presiding Officer,
Central Government Industrial Tribunal -cum – Labour Court,
Shastri Bhavan.
No.26, Haddows Road,
Chennai – 600 006.



W.A.Nos.1071 & 1320 of 2012

3.M/s.Madras Refineries Limited INDCO

Serve Society Limited,

MRL Campus, Manali,

Chennai – 600 068.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act, against the common order of this Court dated 26.04.2012 in W.P.Nos.4368 of 2009, 26724 of 2010 and 6371 of 2011 in so far as W.P.No.26724 of 2010 is concerned and allow the Writ Appeal.

For Appellant : Mr.V.Prakash, Senior Counsel
for Ms.Ramapriya Gopalakrishnan

For Respondents : Mr.S.Shivathanu Mohan for R1
for M/s.Ramasubramanian Associates
R2 - Court
Mr.S.Jayaraman for R3

COMMON JUDGMENT

(Judgment of the court was delivered by K.Kumaresh Babu)

Writ Appeals have been preferred by the General Secretary, Madras Refineries Workers Union being aggrieved against the common order dated 26.04.2012 made in W.P.Nos.4368 of 2009, 26724 of 2010 and 6371 of 2011, wherein the learned Single Judge has set aside the award made in I.D.No.128/2001 dated 30.03.2010 passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai.



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2.The issue involved in the appeals is as to whether the Members of the appellant Union have to be absorbed as permanent workers. The case of the appellant in W.A.No.1071/2012 is that the first respondent had entered into a Contract Labour Agreement with the third respondent Society. The said third respondent Society is the creation of the first respondent, with an object to deprive the rights of the workers for better service benefits. The appellant by their letter dated 30.06.1998 had issued a strike notice over a charter of demands, including their demand for regularization of the third respondent employees in the first respondent company. The same was referred for conciliation which failed and hence, the industrial dispute was referred to the Industrial Tribunal for adjudication by the Central Government, Ministry of Labour vide Order dated 28.05.1999. The reference for adjudication is as follows:

“Whether the demand of Madras Refineries Workers Union for absorption of workmen listed in Annexure-A as regular employees of Madras Refineries Limited is justified? If so, to what relief the workmen is entitled?”

The same was numbered as I.D.No.128/2001 and based on the statement of claim and counter, the following points for consideration were framed by the Tribunal:

“(1) Whether the demand of the petitioner Union for absorption of workmen listed in Annexure A as regular employees of Madras Refineries Ltd.



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now known as Chennai Petroleum Corporation Limited is justified?

(2)To what relief the concerned workmen is entitled to?”

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3.The Tribunal after consideration of various documents and evidences on both sides, by its Award dated 30.08.2010 had held that the members of the petitioner Union are entitled to be absorbed into the service of the first respondent with retrospective effect from the date of their initial entry into service of the Society/third respondent with all resultant back-wages and attendant benefits. The said Award was challenged by the first respondent and by Order dated 26.04.2012, the said Award was set aside by the learned Judge, which is being assailed by the appellant in the present appeals.

4.Heard Mr.V.Prakash, learned Senior Counsel for the Appellant/Union, Mr.S.Jayaraman, learned counsel for the respondent/Management and Mr.S.Shivathanu Mohan, learned counsel for the respondent/Society and perused the materials available on record.

5.The learned Senior Counsel appearing on behalf of the appellant would at the outset submit that the contract labour agreement between the first and the



third respondent is sham and nominal. The members of the appellant union who were employed in the first respondent company through the third respondent society were carrying on permanent and perennial work. To support his contention, he submitted that the third respondent society was created in the year 1983 by the first respondent. Key posts of the society were held by the managerial personnel of the first respondent and the first respondent had control over the functioning of the third respondent society. It is the first respondent company, which exercises disciplinary control over the employees engaged through the third respondent society. To drive home his point, the learned senior counsel relied upon Exs. W1 & 3 to substantiate that the third respondent society was a creation of the first respondent company. He had also relied upon exhibits W 44, 11, 112, 121, 122 and similar documents to substantiate that the first respondent company was exercising persuasive control over the third respondent society.

6.The learned Senior Counsel contended that the learned judge wholly erred in setting aside the well considered Award of the Industrial Tribunal, raising the following grounds:-



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a)The High Court while exercising jurisdiction under Art.226 of the Constitution of India, and while interfering with the findings of the Award on factual aspects has to first hold that the findings of the tribunal are perverse. It cannot interfere with the findings of fact as a First Appellate Court.

b)The learned Judge failed to appreciate the various materials upon which the Tribunal has held that the contractual arrangement between the first respondent company and the third respondent society was only a sham and nominal arrangement.

c)The learned Judge erred in holding that when the earlier settlement was in subsistence, the reference itself was not maintainable. The learned Judge failed to acknowledge that the settlement was time bound and inconclusive. Further, when a notice of intention to strike was issued including the demand for absorption, it is deemed to be a notice of termination of settlement.

d)The learned Judge was in error to seek for an abolition of contract. The appellant ought to have invoked Contract Labour (Regulation and Abolition) Act, 1971.



The learned Senior Counsel thus concluded his argument by seeking to set aside the order passed by the learned single judge and restore the award made by the Industrial Tribunal.

7.Per contra, the learned counsel for the respondent/Management submitted that the reference itself was not maintainable, in view of the subsisting settlement dated 15.12.1997. He further submitted that the Industrial Tribunal exceeded the terms of reference. What was referred to the Tribunal was whether the demand of the union for absorption of the employees of the third respondent society was justified. On the contrary, the Industrial Tribunal went into the issue of whether the contractual agreement between the Management and the Society was sham and nominal. The contention by the appellant that it was incidental is of no consequence, as the issue could not be decided under the Industrial Disputes Act, 1947. Hence, the finding of the learned Judge that it could be only raised under different enactment is fully justified. It is his further case that even though the learned Judge has not specifically found that the order of the Industrial Tribunal is perverse, his findings and reasoning would point out that the award which was impugned in the writ petitions is perverse.



8.Continuing his argument, he had relied upon various exhibits filed both by the workmen and the management and also the deposition of both parties.

According to him, the respondent Society is a distinctive and an independent legal person from that of the respondent Company. Even the evidences relied upon by the appellant in respect of various proceedings against the members of the appellant Union/employees of the Society have been only initiated by the respondent Society. The employees of the Society were also members of the Society and they have been regularly paid dividends by the Society. The society only disburses the salary and all other attendant benefits to its employees. There is no relationship of any sort between the respondent company and the employees engaged through the respondent Society. In the above context of his submissions, the learned counsel for the respondent Management submitted that no interference is called for and the order passed in the writ petition be sustained.

9.The learned counsel for the respondent Society has adopted the arguments made by the learned counsel for the respondent Management.

10.We have carefully considered the submission made by the counsels on either side.



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11.The fulcrum of submission made by the learned senior counsel assailing the impugned order is that the learned judge while exercising the power vested under Article 226 of the Constitution of India, cannot sit over as an appellate authority in examining an Award passed by the Industrial Tribunal. The further attack on the impugned order is that the learned Single Judge without holding that the findings arrived at by the Industrial Tribunal are perverse, cannot substitute the same with his own findings. In this context, he had also heavily placed reliance on the judgment of the Hon'ble Apex Court in the case of ***General Manager, Oil and Natural Gas Commission, Silchar vs. Oil and Natural Gas Commission Contractual Workers Union*** reported in ***(2008)12 SCC 275***. On the other hand, the learned counsel for the respondent/Management submitted that interference on finding of facts is permissible, if such findings are perverse or if no reasonable person could reach such a conclusion or if salient facts have not been considered.

12.A through reading of the impugned order clearly indicates that the learned Judge had not given any finding on the facts of the case. The learned



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Judge has only marshalled the facts as arrived by the Industrial Tribunal. The learned Judge had only analysed the conclusions reached by the Industrial Tribunal on the basis of facts. This is well within the scope of the principles of judicial review, as envisaged under Article 226 of the Constitution of India, by applying the well-founded and sound Wednesbury Principles of Reasonableness. To strengthen his reasons, the learned Judge has relied upon a judgment of the Apex Court in the case of *Workmen of Nilgiri Coop. Mkt. Society Ltd. vs. State of T.N. And Others* reported in (2004) 3 SCC 514. In view of the same, we are not inclined to interfere with the impugned order on the ground raised by learned Senior Counsel that the learned Single Judge was not right in interfering with the Award.

13.It is also pertinent to note that the Industrial Tribunal while holding that the reference would not be hit by the reason of a subsisting settlement dated 15.12.1997 under section 12(3) of the Industrial Disputes Act, 1947, has given a finding of fact as to the reference made to it. According to the Industrial Tribunal, what was referred to it was whether the members of the union are direct workmen of the company and that the settlement is only for absorption of workmen and not on the basis of claim pressed into service before it. It would be useful to extract



the reference made to the Industrial Tribunal which is as follows:-

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***“whether the demand of Madras refineries workers union for absorption of workmen listed in Annexure A as regular employees of Madras Refineries Ltd is justified? If so, to what relief the workmen is entitled?
(Annexure A – omitted)”***

14.A plain reading of the terms of reference would implicitly establish that the Industrial Tribunal has clearly misunderstood the terms of “reference”. Hence, the reasoning arrived at by the Industrial Tribunal to the given set of facts is wholly perverse. Hence, we are of the view that the reasoning arrived at by the learned Judge in reversing the Award does not suffer from any perversity to be interfered with by us.

15.We are also in disagreement with the submissions of the learned Senior Counsel for the appellant that when a strike notice was issued on the same line with the earlier settlement, it amounts to a deemed notice of termination of settlement. This is strengthened by the deposition of WW-1, who is none other than the General Secretary of the appellant Union. In his deposition, he has clearly and categorically stated that the settlement dated 15.12.1997 is still in



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force and not terminated. Hence, we are in agreement with the finding of the learned Judge that 12(3) settlement dated 15.12.1997 is binding on the parties, as it has not been terminated in the manner known to law. Hence, we are of the view that the reference itself is not maintainable.

16.For the above mentioned conclusions arrived at by us, we are of the view that the order impugned in this appeal is not perverse and is wholly sustainable and does not call for any interference. Hence, the writ appeals fail and the same are dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed, if any.

(T.R., J.) (K.B., J.)
15.12.2022

Index: Yes/no
Speaking order /non-speaking order
gba/pam
Issue order copy by tomorrow (22.02.2023)
To
The Presiding Officer,
Central Government Industrial Tribunal
-cum-Labour Court,
Shastri Bhavan,
No.26, Haddows Road,
Chennai – 600 006.



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T.RAJA, J.
AND
K. KUMARESH BABU, J.

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Pre-delivery common judgment in
W.A.Nos.1071 & 1320 of 2012

15.12.2022