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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM

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

W.P. No. 20900 of 2018
and
W.M.P. No. 24536 of 2018

The Banyan,
6th Main Road, Mogappair Eri Scheme,
Mogappair West,
Chennai-600 037.

... Petitioner

-vs-

Danya Ravikumar

... Respondent

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by Learned III Additional Labour Court, Chennai dated 23.04.2018 in I.A. No. 139 of 2017 in I.D. No. 138 of 2016 passed by the First Respondent and quash the same as being illegal, perverse, arbitrary and unjust and direct the Learned III Additional Labour Court, Chennai to consider the question merits in I.A. No. 139 of 2017 in I.D. No. 138 of 2016 on its file allowing the parties to let the evidence.

For Petitioner : Mr. D.Abdullah

For Respondent : Ms. Vdhayaselvi for Mr. P.C.Thiagu

O R D E R

Heard Mr. D.Abdullah, Learned Counsel for the Petitioner and Ms. Vdhayaselvi, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent has raised an industrial dispute in I.D. No. 138 of 2016 before the III Additional Labour Court, Chennai (hereinafter referred to as 'the Labour Court' for short) invoking Section 2-A(2) of the Industrial Dispute Act, 1947 (hereinafter referred to as 'the Act' for short) challenging her



dismissal from service in the establishment of the Petitioner on charges of misconduct and the Petitioner has filed Counter for the same. After commencement of recording of evidence, when the cross examination of the witness of the Respondent was taking place, the Petitioner filed the miscellaneous petition in I.A. No. 139 of 2017 to receive additional Counter Statement in I.D. No. 138 of 2016 in which an additional contention was intended to be raised to the effect that the Respondent is not a 'workman' within the meaning of Section 2(s) of the Act, so as to be entitled to maintain the industrial dispute in this case. The Labour Court after taking into account the evidence on record, rejected that miscellaneous petition by order dated 23.04.2018 stating as follows:-

"8. Considered. As per the Ex. W1 letter of appointment, the respondent has been appointed as a Junior Coordinator only. In Ex. W4 experience certificate also, the same has been reiterated. In Ex. W6 warning letter reiterated as Junior Coordinator only. In Ex.W3, the nature of the service as expected by the Petitioner/Management from the Respondent/Petitioner has been mentioned as follows:

Complete follow-through on given tasks till fulfillment

Giving regular written and oral reports on work status

Operation on a high level of integrity and confidentiality

Pro-active search for solutions on all issues arising

Timelines and complete attendance at work

Neither of the above works prima facie goes to show that the nature of the service of the Petitioner is supervisory.

9. Further, the present stand taken by the Petitioner/Respondent that the Respondent/Petitioner is not a workman, has not been taken in any of the prior proceedings. Even in the conciliation proceedings, the Petitioner/Respondent has not raised this plea. Further in the earlier counter also, the Petitioner/Respondent has failed to place this fact. It is to be seen that, the Petitioner/Respondent has not cross examined the WW1 on this aspect and there is no single record before this Court to substantiate the fact that, the nature of the service of the Respondent/Petitioner is supervisory in nature.

10. Based on the above facts, this court is of



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the considered view that as rightly pointed out by the Respondent/Petitioner, this is a new plea taken by the Petitioner/Respondent at the later stage of the proceedings which cannot be permitted. On that score, this Petition fails in its merits and is liable to be dismissed.

In the result, this Petition is dismissed."

The said order is challenged by the Petitioner in this Writ Petition.

3. The miscellaneous petition in I.A. No. 139 of 2017 had been filed by the Petitioner for raising a jurisdictional issue that the Respondent is not a 'workman' entitled to claim the benefits of the Act. When it is not in dispute that such contention has not been raised by the Petitioner at any earlier stage of the matter, there was no necessity to refer to the evidence recorded till then in order to determine as to whether the same could be permitted. However, the Petitioner is bound to compensate the Respondent for the inordinate delay in raising the new ground and Learned Counsel for the Respondent on receipt of Rs. 30,000/- by demand draft no. 014680 dated 08.04.2022 drawn on IDBI Banck, Kilpauk Branch, Chennai in favour of the Respondent towards costs has expressed no objection for allowing the miscellaneous petition in I.A. No. 139 of 2017 without prejudice to the rights of the Petitioner on the correctness of the factual aspects of that controversy involved in the matter and has made an endorsement to that effect in the court record.

4. In such circumstances, the following order is passed:-

- (i) the impugned order dated 23.04.2018 in I.A. No. 139 of 2017 in I.D. No. 138 of 2016 passed by the Labour Court is set aside;
- (ii) the miscellaneous petition in I.A. No. 139 of 2017 filed by the Petitioner to receive additional Counter Statement in I.D. No. 138 of 2016 is ordered;
- (iii) the Respondent is not precluded from producing further documents and examine the witnesses regarding the contentions raised by the Petitioner in the additional Counter statement filed in I.D. No. 138 of 2016 and the Petitioner may cross examine the said witnesses in that regard;
- (iii) the Petitioner shall produce documents and examine witnesses in respect of all aspects of the matter and the witnesses shall be cross-examined by the Respondent;
- (iv) the parties or their counsels shall make submissions on all the questions raised in I.D. No. 138 of 2016;
- (v) the Labour Court shall deal with each of the contentions raised by the parties following prescribed procedure and



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shall pass reasoned orders on merits in accordance with law;
and
(vi) it shall be ensured that there is atleast one effective hearing every week showing progress of the case and monthly reports by the Labour Court shall be sent to the Registrar (Judicial) of this Court till the matter is finally disposed.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gd/Maya

To

The Presiding Officer,
The III Additional Labour Court,
City Civil Court Buildings,
Chennai-600 104.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104. [For Information]

+1cc to Mr.S.Kathiravan, Advocate, S.R.No.25908

W.P. No. 20900 of 2018

AD(CO)
SU(19/05/2022)