

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Fifteenth day of October Two Thousand Twenty

PRESENT

THE HON'BLE MR JUSTICE R.SURESH KUMAR

WP.No.14811 of 2020

and WMP.No.18412 of 2020

THE MANAGEMENT OF CITIZEN WATCHES [PETITIONER IN BOTH
(INDIA) PRIVATE LIMITED, THE PETITION]
102/7,1ST FLOOR TIRUPATHI APARTMENTS,
MARSHALL ROAD,EGMORE,
CHENNAI - 600 008.
REP.BY ITS REGIONAL MANAGER (SOUTH)
MR.V.K.PRADEEP.

Vs

L.SAGAAYAM [RESPONDENT IN BOTH THE PETITION]

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate order writ or direction in the nature of writ, call for the records pertaining to the impugned Award dated 30.09.19 passed in I.D.No.72 of 2012 by the III Additional Labour Court, Chennai (IN WP.No.14811 of 2020) and

(ii) To grant an order of interim stay of all further proceedings pursuant to the Award dated 30.09.2019 passed in I.D. No.72 of 2012 by the III Additional Labour Court, Chennai (IN WMP.No.18412 of 2020) pending disposal of the above writ petition (WP.No.14811 of 2020).

Order : These petitions coming on this day for hearing upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of MR.G.SRIBAN for M/S.T.S.KANMANI, Advocate for the petitioner in both the petitions, the court made the following order:-

Notice of motion returnable in four weeks. Private Notice is also permitted.

2. The miscellaneous petition in W.M.P.No.18412 of 2020 has been filed seeking an order of interim stay of all further proceedings pursuant to the Award dated 30.09.2019 passed in I.D.No.72 of 2012 on the file of the III Additional Labour Court, Chennai.

3. Heard the learned counsel appearing for the petitioner who would submit that, the respondent employee was not the direct employee of the petitioner employer and he was only the contract employee, therefore there was no employer-employee relationship between the petitioner and the respondent, therefore the impugned award passed by the Labour Court directing the petitioner / employer to reinstate the respondent-employee with backwages and attendant benefits cannot be sustained.

4. However this Court finds at para 25, 26 and 27 of the impugned Award, where the Labour Court has held as follows :

"25. Now the petitioner would highlight the trump card exhibit, i.e., Ex.W.15. Accordingly the Ex.W15 taken for consideration. It is the order of termination issued by the respondents dated 31.10.2011 signed by their Managing Director. The contents are as follows :

"Dear Mr.Sagayam,

I regret to inform you that your employment with Citizen Watches (India) Pvt., Ltd., is terminated effective as of 1st November, 2011.

Within 30 days of the effective date, you must return all company documents and property to the company.

Please vacate the company premises with all your personal belongs immediately.

I take this opportunity to thank you for all your contributions to the company during your tenure with Citizen."

26. Considered. In this regard the MW1 has stated in his evidence that, they had not terminated the service of the petitioner, but it was done by the contractor. In support of their contention he would rely on the Ex.M8 email communications. As already seen, even these email communications dated November 15, 18, 19 and 22, 2011 were also beyond the period of termination dated 31.10.2011. Above all on the face of the Ex.W15 itself, no role of any contractor can be seen. When the order of termination has been issued to the petitioner directly by the respondent company, on that score also the role of any third party outsourcing agency can be ruled out, and the employment of the petitioner directly by the

respondents can be upheld. As already stated even without the involvement of any outsourcing agency the petitioner had commenced his service under the respondents from 1998, as per Exs.W1 and W2. The direct appointment of the petitioner by the respondents and the direct termination by them would itself convince this Court that, the petitioner is the direct employee of the respondents without the role of any outsourcing agency.

27. Based on the above discussions this court concludes that, the petitioner is the employee directly appointed by the respondents and not by any outsourcing agency and these points 1 and 2 were answered accordingly."

5. Despite this finding categorically given by the Labour Court through the impugned award, Mr.G.Sriban, learned counsel appearing for the petitioner trying to reiterate the stand of the petitioner employer that, the finding is wrong and there was no relationship as employer and employee between them and that would be established at the time of final hearing.

6. However this Court is not impressed with the said submission made by the learned counsel appearing for the petitioner in view of the categorical finding based on the evidence adduced before the Labour Court and the Labour Court has found that, the employee, i.e., the respondent was the direct employee of the petitioner company.

7. In that view of the prima facie case which this Court finds in favour of the respondent employee, this Court is not inclined to interfere with the impugned award by way of interim order of stay.

8. In that view of the matter, the present application seeking for the stay of the impugned award is liable to be rejected. Accordingly it is rejected. Hence, W.M.P.No.18412 of 2020 is dismissed.

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9. It is made clear that, pursuant to this, if the employer does not reinstate the respondent / employee during the pendency of the writ petition, if ultimately this Court found in the main writ petition that, the employee is entitled to get reinstatement as directed by the Labour Court through the impugned award, all consequences to be followed has to be borne only by the employer / petitioner.

-sd/-
15/10/2020

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE III ADDITIONAL JUDGE,
LABOUR COURT, CHENNAI.

C.C. to M/S.T.S.KANMANI Advocate SR.NO.5350

Order
in

WP.No.14811 of 2020
and WMP.No.18412 of 2020

Date :15/10/2020

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