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W.P.(MD)Nos.3679 and 3680 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.3679 and 3680 of 2014

and

M.P.(MD)Nos.1 and 1 of 2014

W.P.(MD)No.3679 of 2014:

The Superintendent Engineer,
Tamil Nadu Electricity Board,
Trichy.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Trichirappalli.

2.N.Nallusamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award passed by the 1st respondent in C.P.No.14 of 2007, dated 26.07.2012 and to quash the same as illegal.



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W.P.(MD)No.3680 of 2014:

The Superintendent Engineer,
Tamil Nadu Electricity Board,
Trichy.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Trichirappalli.

2.R.Ponnusamy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award passed by the 1st respondent in C.P.No.15 of 2007, dated 26.07.2012 and to quash the same as illegal.

In both cases:

For Petitioner	: M/s.P.Malini for M/s.T.S.Gopalan and Co.
For R1	: Labour Court
For R2	: Mr.T.M.Madasamy



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COMMON ORDER

This writ petition in W.P.(MD)No.3679 of 2014, is filed for issuance of a writ of Certiorari, to quash the order of the 1st respondent in C.P.No.14 of 2007, dated 26.07.2012.

2. The contention of the petitioner Corporation is that the Labour Court has exercised its jurisdiction beyond Section 33(c)(2). The 2nd respondent never worked as contract labourer from the 1995. Further, it is the 2nd respondent's burden to prove the existence of employer-employee relation. When the same is not proved, granting exgratia is beyond the purview of the 1st respondent. The contention of the petitioner is that if the second respondent has worked as contract labourer during the period of 1995, he would have found his name in the list of 18,006 contract labours as per the report of the Hon'ble Justice Khalid Commission and he would have been absorbed. But in the present case, the second respondent failed to prove the same through any evidence and the 1st respondent without going through the evidence passed the order granting



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exgratia, is erroneous. Moreover, the petitioner is not aware of the particulars of the 2nd respondent, such as date of joining, nature of work performed, under which contractor the 2nd respondent was working and whether the 2nd respondent has worked for 3 years, or whether the 2nd respondent had worked for 480 days within a continuous period of 24 calendar months. The 2nd respondent has not filed any evidence to support his continuous work with the Board. Without going into details of such evidences, the 1st respondent has come to the conclusion that the 2nd respondent had worked for a continuous period of 480 days. The 1st respondent failed to note that the Junior Engineers has issued certificates, but the Junior Engineers are not competent authority to issue such certificate. There is no record in the possession of the petitioner to show the second respondent has worked with the petitioner.

3. The petitioner further submitted that the Board had performed some works through Chit Agreements with the Contractors and the amounts are paid to the Contractors only and the wages are not paid directly to his workers. The 2nd



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5. Heard M/s.P.Malini, learned Counsel appearing for the petitioner and Mr.T.M.Madasamy, learned Counsel appearing for the 2nd respondent and perused the records.

6. After hearing the rival contentions and after perusal of the records, this Court has given its anxious consideration. The petitioner Corporation denies that the 2nd respondent had worked in their Corporation. The petitioner submitted that the 2nd respondent never ever worked as contract labour in the petitioner's corporation. Moreover, the 2nd respondent's name is not in the list of 18,006 identified as contract labour in the Hon'ble Justice Khalid Commission's report. Atleast the 2nd respondent ought to have produced any 12(3) settlement or wage payment slip in favour of them. On perusal of the claim petition filed before the authority, it is a printed copy and it has been filled up wherever there are blanks. When the employer-employee relationship itself is not established, petition under Section 33(c)(2) is not maintainable. The employee is entitled to file a petition under Section 33(c)(2), but there should be some pre-existing right or pre-existing



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entitlement. The respondents have not filed any claim or any settlement to prove there is pre-existing right. Therefore, this Court is of the considered opinion that the impugned order is perverse.

7. The contention of the petitioner Corporation is that they raised preliminary issue stating that there is no pre-existing right before the authority and prayed to reject the petition, but the authority has not considered the preliminary issue whether there is any pre-existing right between the petitioners and the 2nd respondent. The authority has simply stated the fact that the 2nd respondent working with the TNEB was not disputed. But in the counter affidavit filed before the authority, TNEB has specifically denied that the 2nd respondent was engaged by the TNEB in TNEB service. The authority has simply accepted the case of the 2nd respondent and proceed further. The 2nd respondent submitted a conduct certificate and certificate issued under petti cash book. The petti cash book, the nomenclature itself would indicate that it is a payment granted for the work that has been executed and it is not “wages” payable to an employee. It is



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evident that there is no employment between the petitioner and the 2nd respondent. The 2nd respondent was engaged whenever need arises, that too based on the contract between the parties. As such there is no employment and there is no employer employee relationship. Moreover, the 2nd respondent has claimed that he was serving as contract labour from March 1995 onwards. But the petition was filed before the authority in the year 2007. The documents that were produced does not cover the period from 1995 to 2007. Therefore, the case of the 2nd respondent is unbelievable.

8. The learned Counsel appearing for the petitioner submitted that the issue of granting exgratia was considered by this Court in W.P.(MD)No.20376 of 2011 and this Court, vide order, dated 07.11.2019. The Hon'ble Court has dismissed the claim of the contract labours by holding that the award is perverse on account of the fact that it is passed without verification of the service particulars and the details or records of the contract labours not produced to establish that they had worked to the particular period and received any wages.



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9. This Court is of the considered opinion that in the present case also the 2nd respondent has not substantiated the claim through any evidence. This Court independently had considered the facts of the case, wherein the 2nd respondent had not produced any evidence that they had worked from 1995 to 2007. Hence, the claim of the 2nd respondent ought to have been rejected. Hence, the impugned orders are quashed and the writ petitions are allowed.

10. For the reasons stated above, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed,

Index : Yes / No
Internet : Yes

01.12.2022

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To

The Presiding Officer,
Labour Court,
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S.SRIMATHY, J

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