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WP.No.11816 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.10.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.11816 of 2010

S.Selvam

...Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
High Court Compound,
Chennai- 600 104.

2.The Management,
M/s. Electro Steel Castings ltd.,
No.98/99, Luz Church Road,
Mylapore, Chennai-600 004.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records from the files of the 1st Respondent in I.D.No.214 of 2004 and quash the impugned Award dated 18.04.2009 passed therein insofar as the 1st Respondent has rejected the claim of the petitioner for reinstatement in service, with continuity of

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service, with back wages and with all other attendant and consequential benefits.

For Petitioner : Mr.V.Sivaraman
for Mr.K.G.Vipra Narayanan

For Respondents : R-1 - Court
R-2 - M/s. D.Veda
for M/s. Meenakshi Sundaram.

ORDER

Writ Petition is filed challenging the Award dated 18.04.2009 in I.D.No.214 of 2004. The I.D was raised by the petitioner under Section 2A(2) of the I.D. Act to set aside the order of dismissal by the respondent Management to reinstate him in service, with continuity of service, with back wages and with all other attendant and consequential benefits.

2. The gist of the facts are as follows:

The petitioner is a car driver under the respondent company from 18.01.1996 to 01.06.2003. The petitioner demanded enhanced salary and over time wages, which was not heeded by the management. The petitioner was asked by the General Manager of the management on



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01.06.2003 to work in the office but when the petitioner went to the office on 02.06.2003, he was denied entry. Later, when the petitioner reported for duty, he found that another driver was engaged in his place. The petitioner sent notice to the respondent on 24.12.2003 requesting work, but the respondent did not employ him. As the termination of the respondent was illegal, arbitrary and against principles of natural justice, the petitioner raised industrial dispute. The respondent contested the industrial dispute by stating that the I.D was not maintainable as there was no employer employee relationship between the petitioner and the respondent and that the petitioner was employed by the General Manager in his personal capacity.

3. According to the respondent, as the petitioner was employed by the General Manager in his personal capacity, the management had no control or supervision over the petitioner and as such was not its employee.

4. Before the Labour court, the petitioner examined himself as W.W1



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and Ex.W1 to Ex.W28 were marked in support of his claim. The respondent did not examine any witness but marked Ex.M1 and Ex.M2.

5. The Labour Court on an appreciation of the entire evidence on record, dismissed the industrial dispute on the grounds *inter alia*, that the petitioner had failed to prove that he served for more than 240 days in a year and further failed to establish the employer/ employee relationship between the petitioner and the respondent.

6. Aggrieved by the order passed by the Labour Court the petitioner has filed the above writ petition for the aforesaid relief.

7. The learned counsel for the petitioner submitted that the findings of the Labour Court that there was no employer-employee relationship between the petitioner and the respondent was perverse in as much as the Labour court failed to appreciate in proper perspective the documents relied on by the petitioner, particularly Ex.W6, Ex.W12 to Ex.W21, Ex.W23



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and Ex.W25 to Ex.W27 (i.e.) the gate passes and Ex.W22. The learned counsel relying on the Judgment of the Hon'ble Supreme Court in the case of *R.M.Yellatti vs. Asstt. Executive Engineer* reported in 2006 (1) SCC 106 submitted that the Award of the Labour Court was erroneous and the same deserved to be set aside.

8. The learned counsel for the respondent on the other hand submitted that the Labour Court appreciated the evidence in proper perspective and hence there was no perversity in the Award passed by the Labour Court. The learned counsel further submitted that this court exercising jurisdiction under Article 226 of the Constitution of India should not interfere with the factual findings rendered by the Labour court.

9. I have heard both the learned counsels and have perused the materials placed on record.

10. According to the petitioner, he was employed by the respondent



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and therefore the illegal termination of the petitioner by the respondent was liable to be set aside. It is the respondent's case on the other hand that the petitioner was not its employee but that the petitioner was engaged by the General Manager in his personal capacity. In order to prove the employer-employee relationship between the petitioner and the respondent, the petitioner relied on Ex.W6, Ex.W12, Ex.W21, Ex.W23 and Ex.W25 to Ex.W27 and Ex.W32. It is seen that the said document are gate passes and cash vouchers.

11. In my view, the Labour Court was justified in rejecting the said documents stating that the same cannot support the petitioner's contention that he was employed by the respondent. As rightly pointed out by the Labour Court, the best evidence to establish the employer employee relationship would have been the appointment order, the wage slips and the PF card etc. In the absence of such material documents, it cannot be said that the petitioner had made out a case that he was directly employed by the respondent. It is further pertinent to note here that the petitioner



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when examined as WW1 in his cross examination admitted that he was not issued any appointment order and further he was not issued with the ESI card, EPF card etc. The learned counsel for the petitioner further referred to the Judgment of the Hon'ble Supreme Court in the case of *The Employers in relation to Punjab National Bank vs. Ghulam Dastagir* reported in 1978 AIR SC 481 : 1978 (2) SCC 358, in support of his contention that the petitioner was employed by the respondent and not by the General Manager in his personal capacity. The learned counsel referring to paragraphs 3 and 4, of the said Judgment contended that the question whether the workman was employed by the management or by the General Manager in his personal capacity depended on several factors stated therein and if those factors are considered, then it would be clear that the petitioner was direct employee of the respondent. There is no quarrel on the legal principles, but on the facts of the case, it is to be seen whether the petitioner had established that he was employed by the respondent directly. There is absolutely no iota of evidence in this regard. The documentary evidences like gate passes, credit bills and vouchers etc. cannot be relied on to conclude the employer-



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employee relationship between the petitioner and the respondent. In the light of the documentary evidence and the admission of the petitioner, I am of the view that the finding of the Labour Court does not call for any interference.

12. The learned counsel for the petitioner next contended that, as the petitioner worked for more than 240 days, he could not be terminated without prior notice. It is to be seen whether the petitioner discharged the burden cast on him to prove that he had worked for more than 240 days in the year preceding his termination.

13. The learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of *R.M.Yellatti vs. Asstt. Executive Engineer* reported in 2006 (1) SCC 106 in support of his contention that, though the burden lies on the workman to show that he had worked for more than 240 days, to draw an adverse inference against the petitioner for non-production of muster rolls there should be a plea of suppression



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against the petitioner. The counsel further submitted that drawing of adverse inference depends on the facts of each case. The learned counsel submitted that on the facts of the present case, the Labour Court ought to have held that the petitioner had worked for more than 240 days. It is seen that in the present case, there is absolutely no iota of evidence on the side of the petitioner to show that he had worked for more than 240 days. In the case before the Hon'ble Supreme Court, the workman had entered the box and had asked the management to produce the nominal muster rolls, which the management failed to do. On such facts the Hon'ble Supreme Court held that the workman had discharged the burden cast on him of proving that he had worked for more than 240 days. Though the petitioner was examined as WW1 he did not state anything about his employment for more than 240 days, nor did he call for the production of the muster roll by the respondent.

14. The Labour Court rightly relied on the Judgment of the Hon'ble



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Supreme Court in the case of *Rajasthan State Ganganagar S.Mills Ltd. Vs.*

State of Rajasthan and another reported in 2004 (3) LLJ 832 for the proposition that mere non production of the muster roll by the employer was not sufficient to infer that the workman worked for more than 240 days.

15. I am therefore of the view that the petitioner has failed to establish that he worked for more than 240 days in the year preceding his termination.

In view of all the above discussions, I find no merit in the writ petition and same stands dismissed. There shall be no order as to costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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Principal Labour Court,
Vellore.



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N.MALA, J.

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