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W.P.No.23881 and 23882 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.07.2023

CORAM

HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.23881 and 23882 of 2010

and

MP.No.1 of 2010

The Management,
M/s. Sri Lakshmi Oil Mills & Co.,
No.99, Vellore Road,
Katpadi, Vellore,
represented by it's Partner,
V.Balasubramani

...Petitioner in both W.P.Nos.

VS

1.Presiding Officer,
Labour Court, Vellore.

2.Anjali
3.Amaresan
4.Nathiya
5.Kumerasan
6.Selvakumar
7.Dolasi Udayyar
8.Lakshmi

...Respondents in both W.P.Nos.

Prayer in W.P.No.23881 of 2010 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st Respondent in ID.No.81 of 2007 and quash its Award dated 20.10.2010.

Prayer in W.P.No.23882 of 2010 : Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of



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Certiorarified Mandamus calling for the records of the 1st Respondent in I.A.No.53 of 2010 in ID.No.81 of 2007.

For Petitioner in both W.P.Nos. : Mr.S.Haroon Rasheed
for M/s.T.S.Gopalan and
Co.

For Respondents in both W.P.Nos.: No appearance

ORDER

The Writ Petition No. 23881 of 2010 is filed challenging the Award dated 20.10.2010 passed in I.D.No.81 of 2007 and Writ Petition No. 23882 of 2010 is filed challenging I.A.No.53/2010 in ID.No.81 of 2007.

W.P.No.23881/2010

2. I.D.No.81/2007 was filed by the deceased workman seeking relief of reinstatement with continuity of service, backwages and other reliefs. According to the workman, he joined the oil mill in 1978 as a Machine operator and he was also directed to do outdoor works. According to the workman he was paid salary of Rs.3,700/- per month and also daily batta of Rs.60/-. In may 2006, he had taken medical leave and when he reported for duty on



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01.06.2007, he was denied employment. He therefore raised a dispute regarding his non-employment. On failure of conciliation, the dispute was referred to Labour Court and was taken up in I.D.No.81 of 2007.

3. Before the Labour court, the management remained ex-parte and the Presiding Officer on the basis of materials on records allowed the I.D. vide order dated 20.10.2009 directing the management to reinstate the petitioner with continuity of service, backwages and all attendant benefits.

4. The management thereafter filed I.A.No.53 of 2010 in I.D.No.81 of 2007 to condone the delay of 125 days to set aside the ex-parte Award dated 20.10.2009. The said I.A was dismissed by the Labour Court and against the dismissal order, the writ petition in W.P.No.23882 of 2010 is filed.



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5. The learned counsel for the writ petitioner submits that the Labour Court failed to note that even in the reply statement made in the I.D., a specific stand was taken by the management that workman was employed with the Vadamathumangalam Panchayat Municipality. The learned counsel submitted that a letter dated 28.02.2007 was also issued by the president of municipality admitting that the workman was appointed as OHT operator and discharging his duties from 27.09.1999 and continued to discharge his duties under the said panchayat, even on the date of issuance of letter. The counsel therefore submitted that the Labour court ought to have seen that there was no relationship of employer/employee and hence the Labour Court ought to have dismissed the I.D.

6. After the award of the Labour Court, the workman died and the writ petition was filed impleading his legal heirs. Though notices have been served on the respondents 2 to 8, none appears for them.



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7. The Labour Court found favour with the workman on the basis of Ex-W2 series. W2 series are certain letters written by the management from 03.10.2001 to 17.05.2006. It is seen from the said letters, that the Management referred to the workman as its representative and hence the Labour court held that the workman was employed by the management. The labour Court failed to note the statement of the management that the workman was not employed by the management. In the counter it was clearly stated the workman was working as OHT operator in Vadamathumangalam panchayat, Mathura Othiyanthangal village. The Management produced a copy of the certificate dated 28.02.2007 issued by the president of the panchayat, wherein it was clearly stated that the workman was under the employment of the panchayat from 27.09.1999 and continued to work even as on the date of the certificate. One important aspect which the Labour Court failed to note is that the workman claimed to have joined the management in the year 1978, but according to the management, the mill was not in existence in that year, as it was started only in



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the year 1983-84. The business of the Management mill commenced on 25.07.1983. The Labour court even without referring to these aspects, allowed the I.D. The certificate issued by the Municipality clearly supports the contention of the Management that the workman was not its employee but was an employee of the Municipality from 1978 onwards. I am therefore of the view that the award of the Labour Court cannot be sustained and the same is set aside and the Writ Petition filed in W.P.No.23881 of 2010 is allowed.

As W.P.No.23881 of 2010 challenging the award in I.D.No.81 of 2007 is allowed, no orders are necessary in W.P.No.23882 of 2010. Consequently connected Miscellaneous Petition is closed. No costs in both the writ petitions.

13.07.2023

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Index:Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To
The Presiding Officer,
Principal Labour Court,
Vellore.



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N.MALA.J.,

dsn

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