



W.P.No.27414 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2023

PRONOUNCED ON : 10.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.27414 of 2010

and

M.P.Nos.1 of 2010, 1 and 2 of 2012

The Management
M/s. Eastern Chrome Tanning
Corporation Pvt. Ltd.,
M.C.Road, Sular,
Vaniyambadi, Vellore District,
Rep. By S.Syed Saleem
Deputy General Manager

: Petitioner

-VS-

1.The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

2.R.Venkatesan

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records and quash the Award, dated 08.09.2010 passed in I.D.51 of 2009 by the first respondent, Presiding Officer, Principal Labour Court, Vellore.

For Petitioner : M/s.R.S.Lakshimi Priya



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for M/s.Gupta and Ravi

For R1 : Court

For R2 : Mr.S.T.Varadarajulu

ORDER

The Management is the writ petitioner herein. The Management has filed the above writ petition seeking to set aside the award passed by the Labour Court in I.D.51 of 2009, dated 08.09.2010, whereby, the Labour Court has directed the respondent Management/petitioner to reinstate the contesting second respondent with 50% of backwages.

2. The brief facts that are necessary for determination of this petition are as under:

(a).The petitioner is a company engaged in the business of processing of leather in their tannery. There are times when due to business reasons and certain other administrative exigencies, the petitioner is bound to engage the services of contract employees deputed by reputed registered contractors. In such fashion, in 2005, the petitioner, among others, engaged the services of Three Star Industrial Services, Vellore for providing contract labour for doing certain non-core production activities. For the said purpose,



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the petitioner and the said Three Star Industrial Services, Vellore entered into a written contract dated 30.06.2005 whereby the rights and obligations of both parties were set out. In terms of the agreement, dated 30.06.2005, the said Three Star Industrial Services, Vellore was obligated to provide contract labour to the petitioner for carrying out certain jobs as mentioned in the agreement.

(b).The petitioner has also registered and obtained registration under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contractor, namely, Three Star Industrial Services, Vellore, had also obtained a license as per Section 12 of the Act.

(c).The said Three Star Industrial Services, Vellore provided contract labour in terms of the agreement dated 30.06.2005 and the said arrangement between the petitioner and Three Star Industrial Services, Vellore continued till 01.07.2007, when the petitioner terminated the contract entered into with Three Star Industrial Services, Vellore.

(d).According to the petitioner, the second respondent raised a



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dispute in conciliation alleging that he was engaged in the company from 1994 and that from January 2006, he was not provided employment by the petitioner company and on that basis, the case was filed. The petitioner upon receipt of notice, appeared before the Conciliation Officer and filed a counter statement pointing out that there is no master and servant relationship between the petitioner and the second respondent as the second respondent was not engaged by the petitioner at any point of time.

(e). Since the Conciliation Officer could not bring about any settlement between the parties, he forwarded his failure report. Based on the failure report, the second respondent (labour) filed a case before the first respondent/Labour Court and the same was taken on file as I.D.No.51 of 2009 and both the parties filed their pleadings. The second respondent in his claim statement filed before the first respondent in I.D.No.51 of 2009.

(f).In the said Industrial Dispute before the Labour Court, the second respondent claimed that he joined the services of the petitioner company on 03.01.1994 and that he was paid a sum of Rs.40/- per day as wages and that the second respondent worked as a Helper in Padding



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Section. The second respondent further alleged that since he demanded increment, the same was not given and the petitioner obtained his signature in white papers and terminated the services of the second respondent in 2006 during Pongal holidays. The second respondent further averred that before the Labour Officer, the respondent management stated in the counter statement that the second respondent was employed as a contract worker from 01.07.2005 to 18.01.2006 and this fact is not correct. He further stated that the management played a drama by producing the name of Three Star Industrial Services, Vellore.

(g). The petitioner filed their counter statement in I.D.No.51 of 2009 and reiterated the stand that there is no master and servant relationship between the petitioner and the second respondent. The petitioner pointed out that the second respondent was an employee of Three Star Industrial Services, Vellore with whom the petitioner entered into an agreement for the purpose of providing contract labour.

(h).The petitioner raised a specific plea in the Industrial Dispute that when there is no master and servant relationship between the petitioner



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and the second respondent, the question of the petitioner terminating the services of the second respondent does not arise. The further case is that the petitioner had registered under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the contractor viz., Three Star Industrial Services, Vellore also obtained a license under the provisions of the said Act. The petitioner also pointed out that the contractor had a separate ESI and PF code numbers and that the second respondent was engaged by Three Star Industrial Services, Vellore from 01.07.2005 till 18.01.2006. The second respondent was also given an identity card by Three Star Industrial Services, Vellore. Apart from the above, the petitioner also mentioned about the order dated 03.10.2006 passed by the Deputy Chief Inspector of Factories, Vellore, dismissing the case filed by the second respondent seeking permanency with the petitioner company on the ground that the second respondent was engaged by Three Star Industrial Services, Vellore and hence, not entitled to permanency with the petitioner.

(I).In the above said I.D.No.51 of 2009, during the trial before the Labour Court, the second respondent examined himself as a witness and reiterated the allegations made in the claim petition. After consideration of



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the both oral and documentary evidence adduced before the Court, the Management was examined as M.W.1 and exhibited Ex.M.1 to Ex.M.7 and on the behalf of the worker, he was examined as W.W.1 and marked Ex.W.1 to Ex.W.8. On consideration of both oral and documentary evidence, the Labour Court has held that the termination of the non-employment of the second respondent is bad in law and ordered for reinstatement with 50% of the back wages. Hence, the writ petition.

3.The learned counsel for the petitioner/Management would contend that there is no master and servant relationship between the petitioner and the second respondent and as per Ex.M.3, dated 03.03.2006, the very same second respondent herein, has moved the Chief Inspector of Factories, Vellore for conferment of permanent status and the said application was dismissed with specific finding that there exists no master and servant relationship between the parties and the same was not challenged by way of appeal and attained finality and also relied upon Ex.M.4, Service Agreement with Three Star Industrial Service, dated 30.06.2005 and Ex.M.7, letter submitted by the Contractor, Three Star Industrial Service to the Deputy Chief Inspector of Factories as Ex.M.6.



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4.Per contra, the learned counsel for the second respondent would contend that between the second respondent and the petitioner, there is a relationship of master and servant and relied upon Ex.W.1 to Ex.W.5, copy of the Gate Pass.

5.During the arguments, it is represented by the learned counsel for the petitioner that the petitioner company has been closed long back and it underwent liquidation and there is no scope for reinstatement and relied upon the Judgment of the Hon'ble Supreme Court in ***Rajkumar Dixit Vs. Vijay Kumar Gauri Shanker*** reported in ***(2015) 9 SCC 345*** and the Hon'ble Supreme Court held that “*Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured*



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better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down". The learned counsel also further relied upon the Judgment of this Court in ***Sundarrajan and others Vs. The Management of Madras Aluminium Co. Ltd., Metur Dam and another*** reported in **2012 (4) LLN 418(Mad.)** and this Court held that "*obligation of Principal Employer under ESI and PF Scheme is to cover even contract worker and that by itself would not create any relationship between Principal Employer and Contract Worker as master and servant*".

6. After going through the Labour Court records and also Ex.M.3, order dated 03.10.2006 passed by the Deputy Chief Inspector of Factories, Vellore, it is seen that the dispute raised by the second respondent has been clearly mentioned as not maintainable and the second respondent is not entitled for the relief claimed by him, since there is no relation of master and servant between the second respondent under the petitioner herein. Such order conclusively established that the second respondent was not an



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employee of the petitioner and absolutely, there is no evidence to show that there is no master and servant relationship between the parties. Furthermore, it is to be seen that in the above said Ex.M.3, it is categorically held that they are the employees, employed by the contractor not by the factory. On a close perusal of Ex.M.3, it is seen that the second respondent filed Industrial Dispute claiming permanency with the petitioner under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The Deputy Chief Inspector of Factories after elaborate trial and after hearing both parties vide order dated 03.10.2006 came to the conclusion that the second respondent is not entitled to the relief of permanency with the petitioner since the second respondent was engaged as a contract employee and deputed by Three Star Industrial Services, Vellore. Admittedly, the second respondent did not challenge the order dated 03.10.2006 passed by the Deputy Chief Inspector of Factories and hence, the same became final.

7. Hence, I find that the said contentions raised by the learned counsel for the petitioner are totally supported by the factual position. Unfortunately, the Labour Court appears to have overlooked Ex.M.3 series.



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Furthermore, there is no discussion by the Labour Court in connection with Ex.M.1 to Ex.M.7 which also assumes significance. Hence, I find that the findings rendered by the Labour Court that there exists a relationship of master and servant between the petitioner and the second respondent, cannot be sustainable.

8. From the Labour Court order, I find that the Labour Court has misled himself in treating Ex.W.1 to Ex.W.5-copy of Gate Pass to show and establish the relationship of master and servant between the petitioner and the second respondent and also relied upon the ESI Identity Card of the petitioner. In the decision reported in **2012 (4) LLN 418(Mad.)** in ***Sundarrajan's case*** as stated *supra*, the learned Judge of this Court has held that “*obligation of Principal Employer under ESI and PF Scheme is to cover even contract worker and that by itself would not create any relationship between Principal Employer and Contract Worker as master and servant*”. Hence, the finding of the Labour Court, in this regard, totally runs contrary to the law laid down by this Court. Furthermore, the Labour Court has misdirected himself and rendered a finding that the second respondent/workman of the petitioner Management and failed to note that as



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per Ex.M.3, a clear finding has been rendered that he is only the employee of the contractor and not that of the petitioner herein and further, there was no appeal and hence, following the decisions stated *supra* in ***Sundarrajan's case***, I find that the findings rendered by the Tribunal is unsustainable in law and liable to be set aside.

9. Accordingly, the findings of the Labour Court that there exists master and employer relationship between the petitioner and the second respondent is hereby set aside and further held that there is no master and servant relationship between the parties, following the above decisions in ***Rajkumar Dixit's case*** and consequently, the award passed by the Labour court is hereby set aside.

10. Accordingly, the Writ Petition is allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

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Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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To
The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

RMT. TEEKAA RAMAN, J.

sjl

Pre-Delivery Order made in
W.P.No.27414 of 2010
and
M.P.Nos.1 of 2010, 1 and 2 of 2012



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