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W.P.Nos.30470 & 30471 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2023

PRONOUNCED ON : 20.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos. 30470 & 30471 of 2005
and W.P.M.P.Nos.33344 & 33345 of 2005

W.P.No.30470 of 2005 :-

The Management of Hindustan
Petroleum Corporation Ltd.,
98-99, Elaya Mudali Street,
Tondiarpet,
Chennai – 600 021.

...Petitioner

-Vs-

1. The Presiding Officer,
1st Additional Labour Court,
Chennai.

2. R.Selvaraj

3. The Management,
Ramp Engineering Agencies,
25, Swandandapuram,
K.H.Road, Korrukupet,
Chennai - 21

...Respondents



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W.P.No.30471 of 2005 :-

The Management of Hindustan
Petroleum Corporation Ltd.,
98-99, Elaya Mudali Street,
Tondiarpet,
Chennai – 600 021.

...Petitioner

-Vs-

1. The Presiding Officer,
1st Additional Labour Court,
Chennai.

2. A.Sukumar

3. The Management,
Ramp Engineering Agencies,
25, Swandandapuram,
K.H.Road, Korrukupet,
Chennai - 21

...Respondents

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent relating to I.D.Nos.85 & 84 of 1998 respectively, and quash the impugned award dated 30.07.2004.

In both W.Ps.

For Petitioner	: Mr.Vijayan for M/s.King & Partridge
For Respondents	
R1	: Court
For R2	: Mr.S.Ravi
For R3	: No appearance



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COMMON ORDER

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The writ petitions have been filed challenging the award passed by the first respondent dated 30.07.2004 passed in I.D.Nos.85 & 84 of 1998 respectively, thereby directing the petitioner to reinstate the second respondent in both petitions, with continuity of service and all other attendant benefits.

2. The case of the second respondent in both petitions (hereinafter called as “the workmen) that they were working as load man since 1990 in the petitioner management, through the third respondent as daily wages. No allowances and benefits were given to the workmen, though they had worked as permanent employee. Therefore, the workmen and others had started union and fought for the same. Further, contented that even though they worked more than 240 days in a year, they were not confirmed. Thereafter, the petitioner as a measure of victimization, terminated the workmen from service on and from 11.08.1997, without assigning any reason. They were not served with any notice and no enquiry was conducted before the order of termination.



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3. Therefore, the workmen filed the petition under Section 2(A)(2) of the Industrial Disputes Act, 1947 (hereinafter called as “the ID Act”) before the Conciliation Officer against the petitioner and the third respondent herein alleging that their employment was terminated on 11.08.1997. Since the conciliation proceedings ended in failure, the workmen raised industrial dispute before the first respondent in I.D.Nos. 85 & 84 of 1998 respectively, and the first respondent allowed the industrial disputes and ordered to reinstate the workmen with continuity of service and other attendant benefits. Aggrieved by the same, the petitioner filed the present writ petitions with the above prayer.

4. The learned counsel appearing for the petitioner submitted that the prayer sought for by the workmen before the first respondent was to reinstate in service and not to direct the petitioner to reinstate into service. In fact, during the cross examination, the workmen clearly admitted that they were terminated by the third respondent and they were received salary from the third respondent. There should be pleading in the claim petition and it should be proved by adducing evidence. Without pleading, no evidence can be adduced.



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4.1. He further submitted that in the claim petition, there was absolutely no averments alleging employer/employee relationship between the petitioner and the workmen. The workmen also failed to adduce any evidence in order to prove that they were employed under the petitioner. When the workmen himself admitted that they were employed under the third respondent and they were received salary from the third respondent, the workmen ought to have raised dispute under Section 2(k) of the ID Act.

4.2. He also submitted that the petitioner and the third respondent had entered into a contract which was marked as Ex.M.1. The salary receipt produced by the workmen was marked as Ex.W.5. It proved that the salary was paid only by the third respondent. Therefore, the workmen as a contract labour and the question of reinstatement cannot be ordered as against the petitioner. Further, the second respondent is a contract labour and he ought to have raised dispute under Section 2(k) of the I.D. Act.



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4.3. If the dispute raised under Section 2(k) of the I.D. Act, the first respondent labour Court has no jurisdiction to entertain the industrial dispute, since the central government shall refer the issue. Further, as of now, the third respondent is not a contractor under the petitioner and he had abruptly left the contract in the month of January, 1998. Thereafter, the petitioner employed other contractors to carry out the jobs. In support of his contention, he relied upon the following judgments :-

- (i) (2001) 7 SCC 1 – Steel Authority of India Ltd., and ors. Vs. National Union Waterfront workers & ors**
- (ii) 2001(4)L.L.N.903 – P.M.Raju Vs. Presiding Officer, Labour Court, Madurai and anr.**
- (iii) (2007) 1 SCC 610 – Bharat Heavy Electricals Ltd., Vs. Anil and ors**
- (iv) (2006) 1 SCC 530 – Regional Manager, SBI Vs. Rakeshkumar Tewari.**

5. The learned counsel appearing for the second respondent/workmen submitted that the petitioner never raised the plea even before the Labour Court or before this Court with regard to the jurisdiction of the first respondent. Though the workmen were paid salary through the contractor, the petitioner contributed provident fund



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and it is proved by Ex.W.1 filed by the workmen in Form No.23 under the Employees Provident Funds Act. The workmen also issued with Employee State Insurance (E.S.I.) identity card by the petitioner which was marked as Ex.W.2.

5.1. He further submitted that the petitioner failed to produce any licence to prove that the petitioner and the third respondent herein had entered into the contract. Therefore, there was no valid contract between the petitioner and the third respondent. Even assuming that there was a contract, it is nothing but sham and nominal. The first respondent passed the award based on the evidence. Therefore, this Court cannot interfere with the findings of the first respondent under Article 226 or 227 of the Constitution of India. He further submitted that the second respondent had worked like a permanent worker and not a seasonal worker. Therefore, the contract entered between the petitioner and the third respondent is nothing but camouflage to cheat and prevent the workman to get statutory benefits as a regular employee. In order to substantiate his contention, he relied upon the following judgments:-

(i) (2010) 3 SCC 192 – Harjinder Sing Vs. Punjab State Warehousing Corporation.



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***(ii) Judgement of the High Court of Gujarat in
C.A.No.4667 of 1987 dated 05.12.1989 in the case of
Food Corporation of India Worker's Union Vs. Food
Corporation of India & ors.***

6. Heard Mr.Vijayan, learned Senior Counsel appearing for the petitioner, Mr.S.Ravi, learned counsel appearing for the second respondent/workmen and perused the materials placed before this Court.

7. The petitioner is handling lube activities in addition to bulk fuel oils which includes receipt, blending, production, storage, dispatch in both bulk and packed categories. The petitioner engaged the third respondent as contractor for loading and unloading operation and house keeping etc. In turn, the third respondent engaged the workmen as their employee. It is an admitted fact that the workmen was engaged by the third respondent on daily wages and accordingly they were paid monthly salary. The workmen also admitted that they were receiving salary only from the third respondent. Therefore, the third respondent only refused to give any employment to the workmen.



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8. As per Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, (hereinafter called as “the CLRA Act”), appropriate government means in relation to an establishment in respect of which the appropriate government under the Industrial Dispute Act, 1974 is the Central Government. Therefore, the petitioner is a corporation established by the Government of India viz., the Central Government. Thus, it is clear that the Central Government will be appropriate government in relation to an industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or any such controlled industry as may be specified in this behalf by the Central Government or the enumerated industries, as per the amended provision of Section 2(a) of the I.D. Act.

9. It is relevant to extract the provision of the Caltex (Acquisition of shares of Caltex Oil Refining (India) Limited and of the undertakings in India of Caltex (India) Limited) Act, 1977 as follows :-

“ 3(1) On the appointed day, all the shares in the capital of Caltex Oil Refining shall, by virtue of this Act, stand transferred to, and vested in, the Central



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Government.

(2) All the shares which have vested in the Central Government under sub-section (1) shall, by force of such vesting, be freed and discharged of all trusts, liabilities, obligations, mortgages, charges, liens and other encumbrances affecting them.

(3) Any dividend payable by Caltex Oil Refining in respect of any period beginning from the 1st day of January, 1976, shall be payable to the Central Government.

4. For the purpose of enabling Caltex Oil Refining to function as a Government Company, the Central Government may, by notification, make such amendments in the memorandum and articles of association of that company and such other provisions as it may consider necessary.”

10. Therefore, the Central Government will be the appropriate government under the CLRA Act and the ID Act, provided the industry in question is carried on by a central government company/any undertaking under the authority of the Central Government. Such an authority may be conferred, either by a statute or by virtue of the relationship of principal and agent or delegation of power. Where the



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authority to carry on any industry for or on behalf of the Central Government, is conferred on the government company/any undertaking by the statute under which it is created, no further question arises. Therefore, the industrial dispute should be referred before the Industrial Tribunal instead of the first respondent herein for adjudication.

11. On perusal of the claim petition as well as the proof affidavit of the workmen revealed that the third respondent failed to give employment to them. The workmen never raised any plea that the contract between the petitioner and the third respondent is sham and nominal and the petitioner failed to obtain any license under the CLRA Act as contemplated under the CLRA Act.

12. However, the first respondent viz., the Labour Court concluded that though it is proved that the workmen was employed in the petitioner management through the third respondent as contract employee from 1990, it is not the definite case of the petitioner that the petitioner had obtained permission from the Statutory Authority under the CLRA Act, to engage the third respondent as a contractor to do



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handling and house keeping jobs and third respondent is a licensed contractor. Further concluded that the work done by the workmen is the job of permanent employee and not a seasonal work and thus it is proved that the action of the petitioner engaging contract employee through contractor under agreement executed between the petitioner and the third respondent is nothing but a camouflage to cheat the workmen and prevent them to get statutory benefits as a regular employee.

13. In this regard the learned counsel appearing for the petitioner relied upon the judgment reported in **2001(4)L.L.N.903** in the case of ***P.M.Raju Vs. Presiding Officer, Labour Court, Madurai and anr.***, in which this Court held that it is very well settled that the allegation, which was not pleaded and even if evidence is adduced in that regard cannot be examined because the other side had no notice of it and if such evidence is entertained, it would tantamount to granting unfair advantage to the party, who had not pleaded its case properly. Therefore, if the plea is not put forward, such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless such a plea is raised. In fact, no plea was raised by the workmen and no



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evidence was adduced by them to that effect. Hence, the findings of the first respondent is perverse and against the evidence.

14. Further, the workmen raised the industrial dispute under Section 2(A)(2) of the ID Act. However, they pleaded that they were engaged by the contractor and they were received salary only from the third respondent. The third respondent only terminated them from the service. Therefore, the workmen were required to raise regular industrial dispute under Section 2(k) of the ID Act before the Industrial Tribunal instead of raising dispute before the first respondent under Section 2(A) (2) of the ID Act, since the workmen wanted direct employment from the petitioner. There is a different between an individual dispute which is deemed to be an industrial dispute under Section 2A of the ID Act, on the one hand an industrial dispute espoused by the union in terms of Section 2 (l) of the ID Act. An individual dispute which is deemed to an industrial dispute under Section 2(A) of the ID Act, concerns discharge, dismissal, retrenchment or termination, where an industrial dispute under Section 2(l) of the ID Act, covers a wider field.



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15. The Hon'ble Supreme Court of India in the judgment reported in *(1998) 2 LLJ 1217 (P&H)* in the case of *Radhey Shyam Vs. State of Haryana*, held that Section 2(A) of the ID Act, contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the ID Act. Section 2(A) of the ID Act, does not cover every type of dispute between an individual workman and his employer. It enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. It applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman and it does not cover other kinds of disputes such as bonus, wages, leave facilities, etc. Hence, the workmen ought to have raise industrial dispute under 2(k) of the ID Act. Therefore, the judgments cited by the learned counsel appearing for the workmen are not helpful to the case on hand.

16. In view of the above discussion, the award passed by the first respondent cannot be sustained and it is liable to be quashed.



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Accordingly, the award dated 30.07.2004 passed by the first respondent viz., the Labour Court, Chennai, in I.D.Nos.85 & 84 of 1998, are hereby set aside and both the Writ Petitions are allowed. Consequent, connected miscellaneous petitions are closed. There shall be no order as to cost.

20.09.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

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G.K.ILANTHIRAIYAN. J.

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COMMON ORDER IN
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