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W.P.No.29059

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.29059 of 2010
and M.P.No.2 of 2010

P.Anandan
Contractor,
Behind the Succdor Memorial Hospital,
Karai, Ranipet – 632 401.

...Petitioner

Vs.

1.The Additional Labour Court Vellore,
Rep. by its Presiding Officer,
Vellore.

2.K.Vijayakumar
3.S.Madankumar

4.The General Manager,
E.I.D Parry India Limited,
Gandhi Road, Ranipet.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the Common Award dated 06.09.2010 passed by the 1st respondent Labour Court in ID.Nos.16 of 2007 and 22 of 2007 respectively and quash the same as being illegal, perverse and unjust, award costs.

For Petitioner	:	Mr.C.K.Chandrasekhar
For Respondents	:	R1 – Labour Court
		R2 to R4 – No appearance



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ORDER

The instant Writ Petition had been filed challenging the common award passed by the first respondent in directing reinstatement of the respondents 2 & 3.

2.Heard Mr.C.K.Chandrasekhar, learned counsel appearing for the petitioner. In spite of notice to the respondents, they have neither chosen to appear in person nor enter appearance through counsel.

3.Even though the award had been challenged by the petitioner, he would contend that he had issued notice to the respondents 2 & 3 asking them to report duty on 01.10.2010 without prejudice to his rights to challenge the award. The said notice had been sent by the petitioner even much before the filing of this Writ Petition. But, however, a reply dated 11.11.2010 had been sent by the respondents 2 & 3 indicating that when they had approached the petitioner, the petitioner had informed them that he would not be providing any work to them and he had only issued with notice to hoodwink the award passed by the Tribunal.

4.Learned counsel for the petitioner would submit that the petitioner had sent a further letter dated 02.12.2010, in which he had indicated that the demand of the



respondents 2 & 3 to appoint them in Roga Bathroom Products and such order of appointment should be issued by the said company. But, however, he called upon them to report for duty so that the petitioner would send them to the same company under his contract to which there was no response from the respondents 2 & 3.

5.He would at the outset submit that the respondents 2 & 3 were not interested in joining the services of the petitioner but wanted an employment with the fourth respondent. He drew my attention to the claim petition of the respondents 2 & 3 particularly, the paragraphs 2 & 3 of the claim petition and submit that the respondents 2 & 3 were trying to indirectly attack the contract between the petitioner and the fourth respondent management to provide contract labour, as a sham & nominal one by contending that it was the fourth respondent who was the principal employer and they are trying to take shield by projecting the petitioner as the contractor and wanted to be reinstated into services with full wages. But, unfortunately, the Tribunal had held that the petitioner who is the contractor, had employed the respondents 2 & 3 and had directed the petitioner to reinstate them. The petitioner had also issued a notice calling upon them to report for duty which was firstly replied with untenable allegations. Again the petitioner had issued notice to the respondents 2 & 3 to join them for him to allot them for work before the fourth respondent company for which there was no response.



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6.I have considered the rival submission made by the learned counsel for the petitioner and perused the materials available on record.

7.From a perusal of the claim petition filed by the respondents 2 & 3, their primary claim is that they were in the direct employment with the petitioner, and the fourth respondent was only shown as contractor to hoodwink the rightful rights of the respondents 2 & 3 that they are entitled to from the fourth respondent. Even though the first respondent had passed an order directing the petitioner to reinstate the respondents 2 & 3, they had not preferred any Writ Petition against the same which would mean that they had given up their rights which had been pleaded in the claim petition before the petitioner. In spite of notices being issued by the petitioner to the respondents 2 & 3 to report for duty, the respondents 2 & 3 had not reported for duty and I am not convinced with the letter that was written in reply to the first notice issued by the petitioner asking them to report for duty as their object has expressed in their claim petition is to only get an employment with the fourth respondent since the award did not favour to them, they were not willing to take the job. Further, again the petitioner called them to report for duty in the month of December 2010 indicating that if they report to duty, they will be sent to the fourth respondent under his contract, the respondents 2 & 3 had not responded in any



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manner. Only thereafter, the petitioner had preferred this Writ Petition.

8. In such view of the matter, I am of the view that the claim made by the respondents 2 & 3 in their claim petition is only to seek employment with the fourth respondent and not with the petitioner. Since enough opportunity had been given by the petitioner to the respondents 2 & 3 to report to duty before him, they had failed to report to duty and therefore, I am of the considered opinion that the award passed by the Industrial Tribunal need not been given effect to by the petitioner since the respondents 2 & 3 had acquiesced themselves with the non-employment of their services by the petitioner.

9. In view of the aforesaid reasonings & findings, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.11.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
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K.KUMARESH BABU, J.

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To

The Presiding Officer,
Additional Labour Court Vellore,
Vellore.

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