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W.P.No.27164 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

PRONOUNCED ON : 27.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

W.P.No.27164 of 2011

and M.P.Nos. 1 of 2011 & 2 of 2012

The Management
M/s.Thirumalai Chemicals Ltd.,
25-A, SIPCOT Industrial Complex,
Ranipet-632 403
Vellore District,
Rep., by N.Kalyanasundaram/GM (Mfg) ... Petitioner

vs

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

2.K.S.Rajinikanth ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, to call for the records and quash the award dated 03.01.2011 passed in I.D.No.35 of 2009, by the first respondent, Presiding Officer, Principal Labour Court, Vellore.

For Petitioners : Mr.Tarun Gupta for
M/s.Gupta and Ravi

For Respondent : Mr.V.Ajay Ghose for



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Mr.R.Krishnaswamy for R2

R1 – Labour Court

ORDER

The Writ Petition has been filed challenging the Award dated 03.01.2011 passed in I.D.No.35 of 2009, directing the petitioner to reinstate the second respondent in service with continuity of service and attendant benefits with 25% back wages.

2. Heard, Mr.T.Arun Gupta, learned counsel appearing for the petitioner and Mr.V.Ajay Khose learned counsel, appearing for Mr.R.Krishnaswamy for second respondent.

3. Learned counsel for the petitioner submitted that the second respondent was employed as a helper under a contractor Savarimuthu in the petitioner Management from 18.10.2002 and the second respondent was registered as a principal employer under the provisions of the Contract Labour (Regulation & abolition) Act and he was extended with all statutory benefits like EPF and ESI.

4. He would submit that on 09.05.2008, the second respondent had written a letter to the petitioner management stating that he has been



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working in the company from 03.01.2000, and no statutory benefits like ESI and EPF were extended to the him and he was paid wages only for the days he worked and that he was not given any weekly holidays. The second respondent also alleged that in January 2007 while he was discharging his duties, he had met with an industrial accident, as a result of which he had suffered injury in his right leg, and the treatment was given by the petitioner management. The second respondent alleged that since he was not given any weekly holidays nor any statutory benefits like ESI and EPF, he demanded the same from the management and that the said demand did not meet with any positive response and the second respondent alleged that he was denied employment by the petitioner from 22.04.2008.

5. He would further submit that, the petitioner has sent a reply to the second respondent denying all the allegations made by him and thereafter the second respondent had met the Officers of the petitioner who informed him that he was never employed by the petitioner at any point of time and he was only a contract employee engaged by the said contractor, and was also informed that the second respondent was covered under the provisions of ESI and EPF Act and, the ESI and PF Code number allotted to the second respondent was also furnished to him.



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6. He would further submit that the second respondent has further sent letters to the petitioner management alleging false incidents which was also denied by the petitioner, and that the second respondent was clearly informed that he would have to approach the contractor regarding his ESI, PF and leave benefits which is applicable to him. He would further contend that not being satisfied with the reply of the petitioner management the second respondent had raised an industrial dispute in conciliation and that the Conciliation Officer could not bring about any settlement and had forwarded the failure report. Based on the failure report, the second respondent filed a case before the 1st respondent which was taken on file as I.D.No.35 of 2009.

7. He would submit that it was the second respondent who had voluntarily stopped reporting to work after 21.04.2008, and there is no contract of employment between the petitioner and the second respondent and that the second respondent was not employed or paid wages directly by this petitioner nor he was denied employment. Hence he seeks interference before this court to set aside the award passed by the Tribunal granting



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reinstatement to the second respondent with continuity of service and attendant benefits and with 25% back wages.

8. Countering his arguments, the learned counsel for the second respondent would submit that, the respondent has joined in the petitioner management on 03.01.2000, as Operator in Pommerick Chemicals machinery, and was initially paid Rs.38 per day as wages, and he was continuously working but was not given any benefits like PF and ESI, even though being an employee within the meaning of Section 2 (9) of the ESI Act.

9. He would submit that on 28.01.2007, while discharging his duties the second respondent met with an industrial accident, and had sustained injuries in his right thigh, and thereafter he had continued his work in the petitioner management. The second respondent had continuously demanded the management to enroll himself in PF and ESI and to Employees Pension Scheme, and also to provide him with salary and bonus on par with other permanent employees. On 22.04.2008, the management had denied employment to the second respondent, without assigning any reasons or conducting any enquiry.



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10. He would further submit that, claiming employment the respondent had sent letters dated 09.05.2008 and 14.05.2008 to the petitioner. For which the petitioner management had sent a reply on 16.05.2008, and thereafter he had met the Deputy Manager, M.A.Srinivasan, on 23.05.2008. On such an occasion the management had demanded the second respondent to submit a letter stating that the contents of his letters dated 09.05 2008 and 14.05.2008 are not true and also to state that the Management has not denied any employment, and further stated that he should not ask for any continuity of service and backwages. When the same was denied by the second respondent, the management had made a claim that the second respondent was employed through a contractor and he is not an employee of the petitioner management and for any relief the respondent should approach the said contractor.

11. Aggrieved by the same the second respondent, had raised an industrial dispute, and before the Conciliation Officer, the petitioner management had stated that the employee was covered under PF, ESI and Employees Pension Scheme in the name of the contractor, as the petitioner did not come forward for any settlement, the Conciliation Officer submitted



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his failure report and the dispute was taken as I.D.No.35 of 2009, and the 1st respondent allowed his dispute and had directed the petitioner management to reinstate the second respondent with continuity of service and other attendant benefits but with only 25% backwages.

12. He would submit that the petitioner had paid a sum of Rs.34,393/- towards 25% backwages as per the award, through letter dated 29.07.2011, but the petitioner has not reinstated the second respondent as directed by the Labour Court. The 1st respondent has clearly held that the second respondent is a direct employee of the petitioner management and that he was no way connected with the loading/unloading work, said to have been carried out by the alleged contractor Savarimuthu on behalf of the petitioner management, and from the date of termination, the second respondent was suffering without employment. Therefore, he would seek this Court to dismiss the Writ Petition filed by the Writ Petitioner and direct reinstatement of the second respondent.

13. I have heard the submissions made by the respective counsel appearing on either side and perused the materials placed on record.



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14. It is an admitted case that the second respondent was working in the petitioner company. The petitioner however denied the employment of the second respondent as he being appointed only through a contractor. To substantiate the claim of the petitioner, the petitioner had produced the ESI and EPF forms and the same seems to have been contested by the second respondent by relying upon exhibits W-13 & W14, which were information that he had obtained under the Right to Information Act to contend that there was no returns filed by the petitioner to the ESI or EPF authority, which is sought to be substantiated by the petitioner under Exhibits M-4 to M14. A perusal of the Exhibits M-4 to M14, are forms submitted by the petitioner to the concerned authority. In both the forms, it has been signed only by the Deputy Manager (Personal) of the petitioner company. The petitioner had not produced any acknowledgment of the respective department to substantiate such submission of forms. On the contrary, the second respondent had produced Exhibits W13 & W14 to substantiate that such forms have not been filed before the authorities. Further the second respondent had relied upon a medical permission slip which had been marked as Exhibit W-3, wherein the second respondent had been referred to a private hospital and the employment of the second respondent had been shown to be in the Production Department. The said Exhibit W-3, reads as



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follows:-

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Please give necessary treatment to the bearer of this letter Mr.K.S.Rajinikanth, Dept/Contractor Production and send us your bill for payment.

15. If the second respondent name has been registered with the ESI by the petitioner company, there is no necessity for the second respondent to refer to a private hospital and request the said hospital to issue a bill. The petitioner also placed before this Court, a letter issued by the private hospital indicating that the second respondent was given permission and was advised to take rest for a day along with the charges for the treatment. A further letter addressed by the said hospital dated 01.02.2007, was also produced before this Court indicating that some of the employees of the petitioner company are being referred to the said hospital, and the said letter denotes the bill of the respective employees which included the petitioner.

16. A conjoint reading of the aforesaid documents would only force me to take a conclusion that forms sought to be relied upon by the petitioner have been created for the case this is in view of Exhibits W-13 & W14, where the respective department have sent that no forms have been received for the respective particular period and Exhibit W-3, a letter of the



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Management to the private hospital.

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17.The petitioner had claimed that the second respondent was a daily wager engaged through a contractor for loading and unloading work. From Exhibit W-3, it is clear that the petitioner had been engaged in the Production Department as claimed by the second respondent. In such view of the matter, I am of the view that the petitioner had engaged the second respondent in its operational work as a Machine Operator as claimed by the second respondent.

18.For the aforesaid reasonings and also findings and reasonings arrived at by the first respondent, I find no reasons to interfere with the order impugned in this Writ Petition.

19.In fine, the Writ Petition is dismissed. However there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index/ Yes/No



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Speaking order: Yes/No
Neutral citation: Yes/ No

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To

The Presiding Officer,
Principal Labour Court,
Vellore.

K.KUMARESH BABU,J.
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A Pre-delivery order made in

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