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W.P. No.26505 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.07.2023**

CORAM:

THE HON'BLE MR. JUSTICE RMT.TEEKAA RAMAN

W.P. No.26505 of 2012

R.Sampathkumar

.. Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management,
Jupiter Engineering Enterprises.

3. The Management,
Super Machine Works,
Address for both the Respondent is
19/2 B, Periasamy Layour,
3rd Cross, Rathnapuri,
Coimbatore – 27.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records in ID No.368/2003 dated 09.03.2006 on the file of the 1st respondent and quash the same and direct the 3rd respondent to reinstate the petitioner with all benefits and backwages.

For Petitioner : Mr.N.Vignesh
for Mr.B.Nedunchezhiyan

For Respondents : R1-Court
No Appearance (for R2 & R3)



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ORDER

The writ petitioner filed the writ petition against the order of dismissal of his ID No.368 of 2003 dated 09.03.2006.

2. The petitioner has raised the industrial dispute initially against the 1st respondent only praying for directing the 1st respondent to reinstate him in service with continuity of service and backwages and subsequently, he filed IA No.435 of 2004 for impleading the 2nd respondent and the same was dismissed as not pressed on 20.07.2005. Again he filed IA No.142 of 2006 for impleading the 2nd respondent to the Industrial Dispute and the same was allowed on 09.03.2006 and the 2nd respondent remained exparte.

3. During the trial, the petitioner examined himself as WW1 and marked Ex.W1 to Ex.W9. The 1st respondent has not let in any oral or documentary evidence.

4. After hearing the rival submissions, the Labour Court has held that the 1st respondent before the Labour Court, is not liable since the



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petitioner made an admission in the cross examination that he is not seeking any relief as against the 1st respondent therein (2nd respondent herein) and accordingly, it was rejected as the petitioner has not claimed any relief in the industrial Dispute as against the 1st respondent. It is pertinent to note that it was based upon the petitioner's admission in the cross examination as WW1.

5. On the point of whether the 2nd respondent has violated the provision of Section 25F of the Industrial Disputes Act, the Labour Court has negated the claim on the ground that non of the documents produced by the petitioner shows that he is employed under the 2nd respondent herein.

6. Ex.W6 is the note book containing some written particulars. In the first page, the name of the 1st respondent has been mentioned. Ex.W7 is the note book having some served papers with some particulars. Nothing has been mentioned in the pleadings by the petitioner about Ex.W6 & Ex.W7. Both the notebooks are not the genuine documents maintained by the 2nd respondent in the course of carrying on business. In Ex.W6 and Ex.W7 there is no signature of the proper officials of the



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respondents for proving the genuineness of the entries made in the said note books.

7. Merely because, the 2nd respondent failed to appear before this Court and remained as ex-parte it cannot be taken that the petitioner worked under the 2nd respondent at any point of time prior to 27.11.2002. The burden lies on the petitioner to prove that he worked for more than 240 days in a period of 12 months immediately before the alleged non employment either under the 1st respondent or under the 2nd respondent. The petitioner as not discharged the said burden by placing acceptable legal evidences and therefore it is concluded that the entire case of the petitioner is a false case. The petitioner has not proved that he worked under the 2nd respondent at any point of time. The petitioner has not proved that the 2nd respondent took over the management of the 1st respondent in a manner known to law after 27.11.2002. The petitioner has not placed any evidence to take that he was dismissed from service orally on 27.11.2002 and rendered a categorical finding that the petitioner has failed to prove his employment under the 2nd respondent and therefore, there is no question of illegal dismissal.



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8. Furthermore, the petitioner has not demonstrated that he has worked for more than 240 days for the period of 12 months proceeding the alleged date of termination i.e. 27.11.2002. Based upon the answer elicited during the cross examination of WW1, the Labour Court also rendered the finding that the partners of the 1st respondent are entirely different from the partners of the 2nd respondent as admitted by WW1 in his evidence. In the said circumstances, this Court is of the considered view that the above reported decisions are not applicable to the facts and circumstances of this case. Absolutely, the petitioner has not placed any evidence to seek any claim from the 2nd respondent.

9. Hence, taking into consideration the inconsistencies, pleadings and evidence and also the lack of evidence to demonstrate the alleged employment with the 2nd respondent as discussed with regard to Ex.W4, Ex.W6 and Ex.W7, the Labour Court has rendered a categorical finding that the alleged employment of the petitioner with the 2nd respondent is not proved and accordingly, dismissed the Industrial Dispute.

10. After going through the said documents viz., Ex.W4 to Ex.W8 and also the evidence of WW1 and the admissions made thereon, I find



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that the finding rendered by the Labour Court is well considered and well
merited and does not warrant interference at this writ jurisdiction.

Accordingly, the writ petition stands dismissed. No costs.

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Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
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RMT.TEEKAA RAMAN, J.

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