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W.P.No.28975 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2023

Pronounced on : 24.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.28975 of 2013 and
WMP.No.20625 of 2023

The General Manager,
Cordite Factory,
Aruvankadu,
The Nilgiris 643 202

... Petitioner

Vs.

1.R.Aarthi
2.M/s.Alert Security Services,
No.106, Sowrimuthu Street,
Redfields, Coimbatore 641 045
3.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai 600 006

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records in respect of the impugned award passed by the third respondent in ID.No.11 of 2012 dated 22.02.2013 on the file of the third respondent and quash the same.



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For Petitioner : Mr.AR.L.Sundaresan,
Additional Solicitor General of India
Assisted by
Mr.K.Gunasekar,
Senior Panel Counsel
for Central Government

For Respondents

For R1 : Mr.K.M.Ramesh,
Senior Counsel
for Mr.K.Bharathi

R3 : Court

R2 : Not ready in notice

ORDER

This writ petition has been filed challenging the award passed by the third respondent in ID.No.11 of 2012 dated 22.02.2013 thereby ordered to reinstate the workman into service forthwith with continuity of service and all attendant benefits including full backwages.

2. Heard, the learned counsel appearing on either side.

3. The case of the petitioner is that the petitioner factory is having permanent employees and workers at various hierarchy. Apart



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from the job undertaken by the permanent staff, certain peripheral work also to be undertaken by the petitioner factory through contract given to the eligible contractor from time to time. In order to benefit workers and employees, it runs a hospital. Other ordnance factories under the Ordnance Factory Board, Ministry of Defence are also running hospitals. Ordnance Factory Board issued terms and conditions for service availed through contract in Ordnance Factory hospital and it also issued terms and conditions for cleaning contract for hospitals. Accordingly, the petitioner invited tenders from eligible contractors and awarded contract work for cleaning and maintenance of the hospital of the petitioner in terms and conditions issued by the Ordnance Factory Board. As per the terms and conditions of the contract, the following terms are given which are relevant for this writ petition:

19.8. None of the personnel engaged by the contractor against contract shall have any right/claim whatsoever for permanent employment in the factory.

20.4. The personnel posted should possess good health, good manners, and good character. They should be responsible, reliable, punctual and amenable to discipline. They should be polite and exhibit good



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manners with hospital authorities, staff, patients and visitors.

20.8. All persons employed by the contractor shall possess valid photo identity pass while on duty.

22.6. The contractor shall bear the complete responsibility of conduct and punctuality of the personnel employed by him. The contractor shall remain fully responsible for any un-desirable incidence/situation caused/created by their conduct/activities.

22.7. If a person is found unsuitable for the work by Engineer-in-charge due to misconduct/negligence of duty / unsafe act / being under influence of alcohol/violation of any norms or instructions or any other reason, the person shall be replaced by the contractor immediately on being informed to that effect.

25.1. A short induction programme may be held at the beginning of the contract to review and refresh the knowledge and skills of the staff of the contractors and familiarize them with the requirements of the hospital.

3.1 Accordingly, the petitioner factory periodically awarded contract to the eligible contractor for hospital cleaning. The second respondent was awarded contract by supply order for the period from



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23.06.2010 to 31.01.2011 for maintenance of Cordite Factory Hospital premises. Thereafter, the second respondent engaged employees for various jobs. One of the jobs to be undertaken by the second respondent is to provide two numbers of 'Ward Sahayak' and engaged the first respondent. Insofar as permanent employees are concerned, the appointment is governed by the recruitment rules. It was superseded and fresh recruitment called 'Ordinance and Ordnance Equipment Factories Group B, Group C and Group D Non-industrial (Para-Medical) posts (Recruitment and Conditions of Service) Rules 2004 was issued. Accordingly, the post of 'ward sahayak' is given in serial No.18 which is a permanent post as sanctioned by the Government for all the Ordnance Factories. As per the guidelines, applications were called for to fill up the said post. The recruitment process were written examination and skill test. Accordingly on 04.09.2011, the recruitment exam was conducted for the post of 'ward sahayak' to fill up the vacant three permanent posts. In fact, one Stellamary, who was also working as 'ward sahayak' along with the first respondent had applied and appeared for exam, whereas the first respondent had not applied for the exam. Thereafter, three



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successful candidates were selected for the said post. That apart, there was a complaint against the first respondent as she misbehaved with other permanent employees. Therefore by letter dated 13.10.2010, it was requested to replace the first respondent with suitable other contract employee as per the terms and conditions of the hospital service contract. Therefore, the first respondent raised Industrial Dispute.

3.2 The first respondent herself category admitted that she is a contract employee and she was working under the second respondent. She was never engaged by the petitioner directly. Only if the first respondent is a direct employee of the petitioner, she can have benefit under section 25(f) of Industrial Disputes Act. The Tribunal failed to consider the relevant service rules i.e. 'Ordinance and Ordinance Equipment Factories Group B, Group C and Group D Non-industrial (Para-Medical) posts (Recruitment and Conditions of Service) Rules, 2004 - SRO 88, since the appointment to the post of 'ward sahayak' would squarely be covered only by the said rules from August 2005. Accordingly, the three vacancies arose from the month of January 2008



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and August / September 2010. Under due process, three successful candidates were selected for the said post.

3.3 In fact, the first respondent did not even apply for the said post. This post is a permanent non-industrial Group-D – non-ministerial post and those who are selected for the said post would be permanent employee of the petitioner. Therefore, the term 'workman' would never be applicable to the person claiming the post of 'ward sahayak' and as such, the question of applicability of section 25(f) of Industrial Disputes Act would not arise. Further, the petitioner also filed petition seeking permission to file additional typed set of papers in order to prove that the first respondent was working under the second respondent and she was never engaged by the petitioner directly.

4. The learned Senior Counsel appearing for the first respondent submitted that the first respondent joined in the service of the petitioner as early as on 16.02.2008, whereas the petitioner awarded contract to the second respondent only from 23.06.2010. The first



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respondent category proved before the Labour court by producing all documents in order to show that she was directly employed by the petitioner and she was paid salary by the petitioner. Now they filed petition seeking permission to file additional documents to disprove the case of the first respondent. It is impermissible under law and the petitioner failed to substantiate the ground raised in the said petition. In fact, the first respondent produced Exhibit W40 is the copy of the attendance register maintained by the petitioner from 16.02.2008 to 09.09.2010. Exhibit W41 is the day wise attendance countersigned by the petitioner from 01.04.2010 to 09.10.2010. Ex.W42 is the copy of the wage roll of the first respondent endorsed by the petitioner. Ex.W43 is the copy of the EPF receipt endorsed by the petitioner. Therefore, the Labour Court rightly concluded that the termination of the first respondent is violation of section 25(f) and declared that the retrenchment is *void abinitio*.

4.1. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***W.M.Agnani Vs. Badri Das and Others***



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reported in *(1963) 1 LLJ 684*, and pointed out that the High Court has taken a different view. Apart from the correctness of one view or another, it seems to us plain that in a matter of this kind, if the Tribunal put one interpretation upon the resolution and the High Court thought it better to put another, that cannot be said to introduce an error apparent on the face of the record in the order of the Tribunal.

5. Therefore the petitioner cannot produce documents which were not produced before the Labour Court before this court for first time since the petitioner failed to avail such facility before the Labour Court. Further, admittedly the first respondent acquired status of permanent employee by working for more than 480 days within a period of two calendar years. The second respondent also failed to appear before the Labour Court and failed to produce any licence or certificate of registration of their contract. In fact, the petitioner also failed to produce any temporary registration made or temporary licence obtained by the second respondent. Further, no enquiry was conducted against the first respondent though the allegations of misconduct made against her.



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In fact, she made sexual harassment complaint against the petitioner and the same was not denied by the petitioner. Therefore, the termination from service of the first respondent is in violation of section 25(f) of Industrial Disputes Act.

6. In the case of *Hussaibhai Vs. The Alath Factory Thezhilali Union, Kozhikode and others* reported in (1978) 4 SCC 257, wherein the Honorable Supreme Court of India discussed about who is an employee in Labour Law. The management had taken specific stand that the management had entered into an agreement with the contractor who had hired the workmen and so no direct employer-employee relationship existed between the management and the workmen. The said argument was not accepted. Further held that source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. Mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal neceties, not



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competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succor for livelihood through labour. Further held that where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil of looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor.

7. Therefore, the first respondent was not contract employee and she was a direct employee under the petitioner. It is relevant to rely upon the judgment in the case of *W.M.Agnani Vs. Badri Das and Others* reported in *1963 (1) LLJ 684*, wherein it is held as follows:



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*"In dealing with this appeal, it is necessary at the outset to emphasise the limits of the jurisdiction of the High Court in entertaining a plea for a writ of certiorari under Article 226. This question has been the subject-matter of several decisions of this Court, and the law in relation to it is no longer in doubt. In order to justify the issue of a writ of certiorari, it must be shown that the impugned order suffers from an error apparent on the face of the record. It is clear that the error must be an error of law, not an error of fact, because an error of fact, though serious, and though it may be apparent on the face of the record, cannot sustain a claim for the writ of certiorari. It is only errors of law that justify the issue of the said writ, provided, of course, they are of such a character as would reasonably be treated as errors apparent on the face of the record. If a finding of fact is made by the impugned order and it is shown that it is based on no evidence, that would no doubt be a point of law open to be urged under Article 226, vide **Nagendra Nath Bora v. Commissioner of Mills Division and Appeals, Assam, (1958) SCR 1240**. If this distinction is not borne in mind, it is not unlikely that in entertaining an application for a writ under Article 226, the High Court may unwittingly assume the jurisdiction of an appellate*



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court which clearly is distinct from the jurisdiction of the writ court under Article 226. This position has not been and cannot be disputed."

8. That apart, the petitioner failed to prove that the first respondent was a contract employee under the second respondent by any piece of evidence. Further, she had undergone training given by the petitioner. If she was a contract employer, the petitioner management would not have given any training to the first respondent.

9. In view of the above, this Court finds no infirmity or illegality in the order passed by the third respondent and this writ petition is devoid of merits. Accordingly, this writ petition is dismissed. The miscellaneous petition filed seeking permission to file additional documents is also dismissed. There shall be no order as to costs.

24.08.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.M/s.Alert Security Services,
No.106, Sowrimuthu Street,
Redfields, Coimbatore 641 045
- 2.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai 600 006
- 3.The Government Advocate
High Court, Madras.

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