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W.A.No.107 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.107 of 2023

R.Jayaprakash

.. Appellant

-VS-

1. The Management
Indira Granites
No.7, Kesava Road
Gugai, Salem- 636 006.
2. The Management
R.V.Granites
No.12, Rajaji Road,
Salem-636 007.
3. The Presiding Officer,
Labour Court,
Salem.

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 21.10.2019 passed by this Court in W.P.No.9669 of 2016.



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W.A.No.182 of 2007

For Appellant : Mr.T.Ramkumar
For Respondents : Mr.Anand Gopalan (R1 and R2)
for M/s.Gopalan and Co.

J U D G M E N T

This Writ Appeal has been preferred by the Appellant challenging the order dated 21.10.2019 made in W.P.No.9669 of 2016, in setting aside the Award of the Labour Court dated 11.02.2015 in I.D.No.182 of 2007.

2. The case of the Appellant is that he was employed as an Accountant under the 1st Respondent/Management from 01.11.1994 to 21.07.2006. The Workman is said to have been terminated from service verbally on 21.07.2006 and questioning the said termination, he has raised an Industrial Dispute before the Conciliation Officer, Salem, wherein, the Management has contended that the workman left the services on his own and that apart, he has committed various misconducts. As the Management has not attended the conciliation proceedings held before the Labour Officer, conciliation proceedings ended in failure. Hence, the Workman raised an Industrial Dispute before the Labour Court, Salem in I.D.No.182 of 2007 and the Labour Court, on 11.02.2015, passed an Award directing the 1st Respondent/Management to reinstate the Workman with 50% backwages with other attendant benefits and continuity of service.



W.A.No.182 of 2007

WEB COPY

3. Being aggrieved over the same, Respondents 1 and 2 filed a Writ Petition in W.P.No.9669 of 2016 and the learned Single Judge, vide order dated 21.10.2019, allowed the said Writ Petition by holding as under:

"7. That being the factum, the present writ petition deserves consideration. Accordingly, the award dated 11.02.2015 passed in I.D.No.182 of 2007 is quashed. The learned counsel for the writ petitioner states that the writ petitioner/Management had deposited a sum of Rs.2,00,000/- out of which, the second respondent/employee had withdrawn 50%, which amounting to Rs.1,00,000/-. The balance amount is directed to be returned to the writ petitioner/Management. The writ petitioner/Management is at liberty to file the appropriate application before the Labour Court and in the event of filing any such application, the deposited amount with accrued interest is directed to be settled within a period of four weeks from the date of filing any such application from the writ petitioner/Management.

8. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed."

The said order of the learned Single Judge is under challenge in this Writ Appeal.

4. According to the Appellant/Workman, the Management never contended that the Appellant was not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 (in short 'the Act'). He was drawing a monthly salary of Rs.5,000/- including all allowances. The learned Single Judge, by accepting the said case of the Management, has quashed the Award of the Labour Court dated 11.02.2015 in



W.A.No.182 of 2007

I.D.No.182 of 2007. A sum of Rs.2,00,000/- was deposited pursuant to the interim order of this Court. Out of that, 50% had already been withdrawn by the Workman. The balance amount was directed to be returned to the Management based on an application filed by the employer. The deposited amount with accrued interest was directed to be returned within a period of four weeks from the date of filing of such application.

5. A reading of the Award would make it very clear that though the Workman contended that there was termination on the ground that he had evaded service, it is the duty cast upon the Workman to enter into the box and let in cogent evidence to prove his case. Merely because an affidavit has been filed by the Workman shifting the burden on the employer, it cannot be said that the Workman has proved his case. Except wage slip-Ex.W2, no other document has been filed by the Workman to show his record of service. Since, it is the duty cast on the Workman to prove his case in the light of the judgment of the Hon'ble Supreme Court in the case of **Manager, R.B.I Vs. S.Mani and Ors** reported in **2005 (2) Supreme 589**, we are of the view that the Labour Court need to give an opportunity to both the parties to let in evidence and establish their case. Though the learned Single Judge has held that the Appellant is not a workman, in case, we remand the matter to the learned Single Judge to decide the case on merits, there will certainly be multiplicity of proceedings. Instead of doing so, we



W.A.No.100 of 2020

are of the view that matter can be directly remitted to the Labour Court.

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6. In view of the above and in the light of the judgment of Hon'ble Supreme Court in the case of *Anand Bazar Patrika (P) Ltd. vs. The Workmen* reported in (1970) 3 SCC 248, the contention of the Management that the Appellant is not a workman cannot be accepted. Hence, we set aside the Award of the Labour Court dated 11.02.2015 and the order of the learned Single Judge dated 21.10.2019 made in W.P.No.9669 of 2016. However, it is open to the employer to establish that the Appellant was a freelancer doing work for different people and he may not come within the purview of definition of Section 2 (s) of the Act.

7. During the pendency of the Writ Petition, this Court directed the Management to deposit a sum of Rs.2,00,000/- before the Labour Court and out of the said amount, a sum of Rs.1,00,000/- has already been withdrawn by the Workman. When the Employer wanted to make an application to withdraw the deposited amount, the present Appeal has been preferred. Therefore, they have not withdrawn the amount lying in the deposit. In case, the Appellant does not want to pursue the Industrial Dispute any further, we permit him to withdraw the balance amount of Rs.1,00,000/- lying in deposit together with accrued interest as full quit of the claim in respect of the Industrial



W.A.No.100 of 2022

Dispute, without reserving any rights in the I.D..

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8. We expect the Labour Court to adhere to the time limit under Rule 34 (7) of Tamil Nadu Industrial Disputes Rules, 1954 and the Labour Court is directed not to adjourn the matter beyond seven working days at any point of time to bring the issue to a logical conclusion.

9. In the result, this Writ Appeal is allowed with the above directions. No costs.

[S.V.N., J.] [R.K.M., J]
07.03.2023

Index: Yes / No
Internet: Yes / No
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WEB COPY



W.A.No.100 of 2022

To

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W.A.No.107 of 2023

S. VAIDYANATHAN,J.,
and
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W.A.No.107 of 2023

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