



WP.No. 4794 of 2018

In the High Court of Judicature at Madras

Dated : 07.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.4794 of 2018
& WMP.No.5936 of 2018

The Management of Arif Bai
Steel Pattarai rep.by its
Proprietor Mohammed Arif

...Petitioner

Vs

1.The Presiding Officer, First
Additional Labour Court,
High Court Compound,
Chennai-104.

2.S.Sekar, C/O General
Secretary, Madras District
Lorry Shed Drivers & Labour
Union, Chennai-108.

...Respondents

Prayer: This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent in I.D.No.103 of 2017 dated 22.1.2018 and quash the same.

For Petitioner : Ms.J.Hemalatha Gajapathy
For R2 : Mr.K.V.Ananthakrishnan



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ORDER

This is a petition filed by the petitioner seeking to quash the award dated 22.1.2018 in I.D.No.103 of 2017 on the file of the first respondent.

2. The facts leading to filing of this case are as follows :

(i) The second respondent was working under the petitioner as a labourer. He was not a permanent employee at any point of time. Contending that he was an employee of the petitioner from 2006, that he was paid the weekly salary of Rs.3,000/-, that when he insisted for increase in salary, he was orally terminated on 18.6.2016 without any prior notice and that he should be reinstated with back wages, the second respondent initiated conciliation proceedings before the Labour Officer-1, Chennai. However, the conciliation ended in failure.

(ii) Thereafter, the second respondent filed the industrial dispute before the first respondent seeking to set aside the oral termination dated 18.6.2016 and to direct the petitioner to reinstate him into the services with back wages, continuity of service and all other attendant benefits. In that, the petitioner filed a counter. But, they did not file any documents, as the



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petitioner was a very small unit and had not maintained any records relating to piece rate wages paid to the second respondent and others.

(iii) Ultimately, by the impugned award, the first respondent awarded a compensation of Rs.30,000/- to the second respondent in lieu of his claim for reinstatement with continuity of service, back wages and other attendant benefits. Challenging the same, the petitioner is before this Court.

3. On 05.3.2018 when the matter came up for admission, this Court granted an order of interim stay for a period of four weeks.

4. The learned counsel for the petitioner submits that the second respondent during his cross examination admitted that he is gainfully employed in some other utensil manufacturing unit at Elephant Gate and also that he would be satisfied with lumpsum compensation in lieu of reinstatement. He further submits that without considering the said facts the Labour Court awarded compensation in lieu of reinstatement, which is *per se* unsustainable. Accordingly, he prayed to allow this writ petition.



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5. The learned counsel for the second respondent submits that the second respondent entered into the services of the petitioner as pressman and drumming, beading employee on 03.05.2006. Subsequently, he was terminated orally on 16.06.2016 without issuing any notice. Though it is the claim of the petitioner management that they hired the second respondent to work on piece rate basis by way of contract, however, the said contract was not registered in terms of Contract Labour (Regulation and Abolition) Act, 1970. In the absence of such registration, the second respondent is governed under Section 2(s) of the Industrial Disputes Act, 1947. Hence, prayed to dismiss this writ petition.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent.

7. Admittedly the workmen entered the services of the petitioner management during the year 2006, subsequently, the second respondent was orally terminated in the year 2016. Seeking for reinstatement the second respondent raised the industrial dispute before the Labour Court, the Labour



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Court upon appreciating the oral and documentary evidences has directed the petitioner management to pay a sum of Rs.30,000/- to the second respondent, which is under challenge in the present writ petition.

8. Though it is the claim of the petitioner management that there was no employer-employee relationship between the petitioner and the second respondent and that the second respondent was engaged only as a sub-contractor, however, as rightly pointed out by the learned counsel for the second respondent, if at all there was any contract between the petitioner and the second respondent, the petitioner management has to register the same with the authority under the Contract Labour (Regulation and Abolition) Act. In the present case, the petitioner management has not produced any records to show that they have registered the agreement with the authority. In the absence of any proof to disprove the employer-employee relationship between the petitioner management and the second respondent, the Labour Court, considering all the aforesaid facts, has passed an award with a direction to the petitioner management to pay a sum of Rs.30,000/- to the second respondent as a lumpsum compensation in lieu of reinstatement



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on the ground that the workman was gainfully employed and also the fact that the workman did not want to pursue the relief of reinstatement, which cannot be said to be impermissible. Hence, while confirming the order passed by the Labour Court, the petitioner management is directed to pay a sum of Rs.30,000/- to the second respondent workman without any interest by way of demand draft within a period of two (2) weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



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To
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I Additional Labour Court,
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