



W.P.No.1097 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 13.09.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE M. DHANDAPANI**

W.P.No.1097 of 2018

and

W.M.P.No.1321 of 2018

The Management of the United Planters'  
Association of Southern India,  
rep. by its Secretary General, Ullas Menon,  
Post Box No.11, Coonoor, The Nilgiris.

... Petitioner

Vs

1.Reeny Joseph

2.The Presiding Officer,  
Labour Court,  
Coimbatore.

... Respondents

Prayer : Writ Petition 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 second respondent and quash the impugned award dated 01.07.2017 made in I.D.No.99 of 2005.



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For Petitioner : Mr.M.Vijayan for  
M/s.King & Partridge  
For Respondents : Mr.J.Saravanel [R1]  
Labour Court [R2]  
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### **ORDER**

This Writ Petition has been filed by the petitioner seeking to quash the award dated 01.07.2017 in I.D.No.99 of 2005 on the file of the second respondent.

2. The petitioner is a society registered under the Societies Registration Act, 1860. The petitioner association namely The United Planters Association of Southern India (UPASI) is the representative of Apex Organisation of Plantation Employers engaged in the cultivation and manufacture of Plantation crops spread over the three southern States of Kerala, Karnataka and Tamil Nadu. The main object of UPASI is to promote trade, commerce and industry and aid its development to promote scientific knowledge of cultivation and processing of plantation crops and to undertake scientific research on all aspects relating to plantation crops. The



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petitioner association is a non-profit organization which is funded entirely through subscription from its members.

2.1. The first respondent joined the services of the petitioner on 04.06.2001 as a Public Relations Officer (PRO). She was initially under probation for six months and her services were confirmed on 04.12.2001. She went on maternity leave from 16.02.2004 to 09.05.2004. At instance of the first respondent, she was granted leave till 13.07.2004 and salary was paid. Due to the financial crunch, which the petitioner was facing at the relevant point of time, the Executive Committee of the petitioner decided to abolish certain posts so as to save cost. Hence, the services of the first respondent were terminated by order dated 13.07.2004 and this was intimated to her well in advance.

2.2. The conciliation proceedings initiated at the instance of the first respondent ended in failure. Therefore, the first respondent raised the industrial dispute before the second respondent/Labour Court under Section



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2A(1) of the Industrial Disputes Act, 1947 (in short 'the ID Act') seeking to set aside the termination order issued by the petitioner dated 13.07.2004 and to reinstate her with continuity of service and back wages. According to the petitioner, the first respondent was not a workman under Section 2(s) of the ID Act and hence, she could not invoke the jurisdiction of either the Labour Officer or the Labour Court. The petitioner filed a counter to the said industrial dispute refuting the claim made by the first respondent. Ultimately, the second respondent directed the petitioner to pay Rs.3 lakhs towards compensation in lieu of reinstatement and full back wages. Challenging the same, the petitioner association is before this Court.

3. The learned counsel appearing for the petitioner association submitted that the first respondent was employed as PRO and the nature of employment is not in terms of Section 2(s) of the ID Act and she is not coming under the purview of the workman defined under Section 2(s) of the ID Act. However, the Labour Court arrived at a conclusion that the first respondent was employed in supervisory capacity and passed an award for



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compensation to the tune of Rs.3,00,000/-, which is not sustainable and the Labour Court have no jurisdiction to entertain the dispute raised by the first respondent, who is not a workman defined under Section 2(s) of the ID Act. However, without jurisdiction, the Labour Court passed award in favour of the first respondent, which is not sustainable.

4. Further, when a person is receiving a salary of more than Rs.10,000/-, he/she will not come under the purview of the workman. However, the first respondent received a sum of Rs.10,925/- as salary as on 8<sup>th</sup> May, 2001. Hence, that amount is more than Rs.10,000/-, thereby, she is not coming under the purview of workman defined under Section 2(s) of the ID Act. In support of his contention, he relied upon the decision of the Apex Court in the case of ***Management of Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh*** reported in (2005) 3 SCC 232 and the relevant portion of the judgment is as follows :-

*“18. In S.K. Verma (supra), this Court without taking into consideration the earlier binding precedents and in particular the decision of May & Baker (India) Ltd. vs. Workmen [AIR 1967 SC 678] arrived at a conclusion that an*



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*employee who does not perform any supervisory or managerial nature of duties, would be a workman. S.K.Verma (supra) was held to have been rendered per incuriam by a Constitution Bench of this Court in H.R. Adyanthaya (supra).*

*19. The question came up for consideration recently before this Court in Mukesh K. Tripathi vs. Senior Divisional Manager, LIC and Other [(2004) 8 SCC 387], wherein it was held :*

*"21. Once the ratio of May and Baker (supra) and other decisions following the same had been reiterated despite observations made to the effect that S.K. Verma (supra) and other decisions following the same were rendered on the facts of that case, we are of the opinion that this Court had approved the reasonings of May and Baker (supra) and subsequent decisions in preference to S.K.Verma (supra).*

*22. The Constitution Bench further took notice of the subsequent amendment in the definition of 'workman' and held that even the Legislature impliedly did not accept the said interpretation of this Court in S.K. Verma (supra) and other decisions.*

*23. It may be true, as has been submitted by Ms.Jaisingh, that S.K. Verma (supra) has not been expressly overruled in H.R. Adyanthaya (supra) but once the said decision has been held to have been rendered per incuriam, it cannot be said to have laid down a good law. This Court is bound by the decision of the Constitution Bench.*

*This court opined :*

*"34. The definition of 'workman' as contained in Section 2(s) of the Industrial Disputes Act, 1947*



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*includes an apprentice, but a 'workman' defined under the Industrial Disputes Act, 1947 must conform to the requirements laid down therein meaning thereby, inter alia, that he must be working in one or the other capacities mentioned therein and not otherwise.*

\* \* \* \* \*

*36. A 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in the establishment for the purpose of doing any work contemplated in the definition. Even in a case where a period of apprenticeship is extended, a further written contract carrying out such intention need not be executed. But in a case where a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and regular work is taken from him, he may become a workman. A person who claims himself to be an apprentice has certain rights and obligations under the statute."*

5. Per contra, the learned counsel appearing for the first respondent submitted that the first respondent was employed as PRO vide appointment order dated 08.05.2001 and she employed in the capacity of PRO up to 13.07.2004 continuously for a period of three years. Further, when the first respondent is employed in supervisory capacity in terms of Section 2(s) of

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the ID Act, definitely they are coming under the purview of the ID Act.

6. Further, the nature of the employment is to render assistance to the editor of the petitioner association and not employed in the managerial capacity. However, the basic pay is Rs.7,900/- i.e., below Rs.10,000/-. All those facts were elaborately considered by the Labour Court, the Labour Court awarded a sum of Rs.3,00,000/- as compensation instead of ordering for reinstatement, which cannot be interfered with. Accordingly, he prays for dismissal of the above writ petition.

7. Heard the learned counsel appearing on behalf of the petitioner association and the learned counsel appearing for the first respondent and perused the materials available on record.

8. It is borne from the records that the first respondent was appointed as Public Relations Officer (PRO) in the petitioner association vide appointment order dated 08.05.2001. Initially, she was under probation for



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six months and her services were confirmed on 04.12.2001. Thereafter, she went on maternity leave from 16.02.2004 to 09.05.2004. At instance of the first respondent, she was granted leave till 13.07.2004 and salary was paid. In the meantime, it was decided by the Executive Committee of the petitioner to abolish certain posts like PRO, IRO, etc., as cost-saving measures due to the financial crisis faced by the petitioner Association. Therefore, the first respondent was terminated on 13.07.2004 and the same was intimated to her well in advance.

9. Before the Labour Court, on the side of the first respondent, the first respondent examined herself as W.W.1 and marked Ex.W.1 to Ex.W.4 and on the side of the petitioner association, one Ullas Menon, the Secretary of the petitioner association was examined as M.W.1 and Ex.M.1 to Ex.M.17 were marked.

10. From the cross-examination of the first respondent and the evidence of M.W.1, it is clear that the first respondent cannot take any



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decision on her own and she was not supervising the activities of the other staff. However, the nature of the work of the first respondent was only to assist the editor of the petitioner association and there is no evidence to prove that the first respondent was employed in managerial or supervisory job. In such circumstances, this Court is of the view that the first respondent was a workman defined under Section 2(s) of the ID Act. Further, the petitioner association has claimed that they abolished two posts, namely PRO, IRO, etc. because of the financial crisis faced by them and in view of the same, the first respondent was terminated. By considering all the above aspects, the Tribunal had passed an award awarding compensation of Rs.3 lakhs to the first respondent in lieu of reinstatement and full backwages, which is perfectly in order and the same cannot be interfered with.

11. Therefore, this Court finds no infirmity or illegality in the award passed by the second respondent/Labour Court and this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. However, the petitioner association is directed to pay the compensation of Rs.3,00,000/- as



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awarded by the second respondent/Labour Court without any interest, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, the 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

The Presiding Officer,  
Labour Court,  
Coimbatore.



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**M.DHANDAPANI,J.,**

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