



WEB COPY



W.P.No.7400 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM:

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

W.P.No.7400 of 2013

World Vision India,
16, V.O.C. Main Road,
Kodambakkam,
Chennai – 600 024.
Rep. by S.G.Priya Livingston
Authorized Signatory

...Petitioner

-Vs-

1. Sunder Singh

2. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to I.D.No.245 of 2004 on the file of the second respondent and quash the award dated 02.07.2012 made in I.D.No.245 of 2004.

For Petitioner : Mr.M.Vijayan
For M/s.King and Partridge

For Respondents
For R1 : Ms.AL.Ganthimathi, Senior Counsel
For Mr.L.Palanimuthu
R2 : Court



W.P.No.7400 of 2013

ORDER

WEB COPY

This Writ Petition has been filed challenging order dated 02.07.2012, passed by the second respondent viz., the Labour Court, Coimbatore, in I.D.No.245 of 2004, thereby directing the petitioner to reinstate the first respondent into service with continuity of service and other attendant benefits.

2. According to the first respondent, he has joined the service of the petitioner as a staff in the year 2001 and his last drawn salary was Rs.4,500/-. While being so on 01.10.2002, the petitioner was deputed the first respondent to supervise the works done by the Nilgiri Women's Advancement Society. On 01.08.2003, when the first respondent reported for duty, the petitioner refused to give work without assigning any reason. Therefore, the first respondent cause legal notice on 29.09.2003. Even after receipt of the same, the petitioner failed to send any reply and did not come forward to give work. Without issuance of any show cause notice and without conducting any enquiry, the petitioner refused to give work to the first respondent and terminate him from service by oral termination. Therefore, the first respondent raised



W.P.No.7400 of 2013

industrial dispute in I.D.No.245 of 2004 before the second respondent Labour Court.

3. The specific stand taken by the petitioner before the Labour Court is that the petitioner never employed the first respondent to work in their concern and the first respondent is not a workman as such, there is no question of refusing to offer work to the first respondent by the petitioner. There is no employer-employee relationship exists between the petitioner and the first respondent. At that time, the first respondent worked in Nilgiris Women's Advancement Society and it is an independent body and the petitioner has no authority or right to depute a person to supervise its activities.

4. Before the Labour Court, the first respondent himself examined as W.W.1 and marked eight documents in Ex.W.1 to Ex.W.8. On the side of the petitioner organisation, they examined M.W.1 and marked seven documents in Ex.M.1 to Ex.M.7. After considering the oral and documentary evidence and also considering the above facts and circumstances, the Labour Court set aside the order of oral termination



W.P.No.7400 of 2013

dated 01.08.2003 and directed the petitioner to reinstate the first respondent into service within a period of three months with continuity of service and other attendant benefits. Aggrieved by the same, the petitioner filed this present Writ Petition.

5. The learned counsel appearing for the petitioner submit that the petitioner is being a social service organisation does not fall under the ambit of the Industrial Disputes Act, 1947. The head office of the petitioner organisation is situated at Chennai and the office at Nilgiris was only an Area Development Program which has no power to appoint or employ or dismiss any person. The first respondent was never appointed or employed by the petitioner organisation and there is no employer and employee relationship existing between the petitioner and the first respondent at any point of time. Therefore, the question of refusing to offer work does not arise.

5.1. He further submitted that the petitioner reliably understood from the available records that the first respondent was employed in the Nilgiris Women's Advancement Society, which is an independent entity.



W.P.No.7400 of 2013

He was initially working as a volunteer under the Tamilnadu Women's Development Project Funds since 09.01.2001. Due to improper funding from Magalir Thittam, the first respondent took up work as Community Volunteer/Accountant in nonsuch cluster on contract basis from the Women Federation – Nilgiri Women's Advancement Society.

5.2. He further submitted that during August 2003, there were complaints on financial mishandling and charge sheet was sent by the women federation to the first respondent to settle the accounts by September, 2003. Thereafter, the first respondent failed to settle the account and therefore, the women federation filed complaint before the Inspector of Police, Kulacomby Police Station on 08.11.2003. On receipt of the same CSR was also issued. However, the first respondent sent letter dated 29.09.2003 stating that he was denied employment by the Nilgiri Area Development Program of the petitioner's organisation. Thereafter, the first respondent raised an industrial dispute under Section 2A of the Industrial Dispute Act, before the second respondent, against the petitioner alone alleged that the petitioner was denied employment orally from 01.08.2003.



W.P.No.7400 of 2013

WEB COPY

5.3. He further submitted that the first respondent is not a workman as contemplated under Section 2(s) of the Industrial Dispute Act. As per the Act, the first respondent out to have drawn salary less than Rs.1,600/-. Even according to the first respondent, he was drawn a sum of Rs.4,500/- per month as salary for the post of Supervisor. Therefore, he was not a workman as defined under Section 2(s)(iv) of the Industrial Dispute Act. That apart, he failed to prove that he had worked for 240 days in the given year, in order to prove that he relieved from service. Therefore, without considering the same, the second respondent mechanically ordered for reinstatement. Hence, he prayed to allow this Writ Petition.

6. The learned counsel appearing for the first respondent submitted that the second respondent held as against the petitioner for the reason that the petitioner has not chosen to examine any of their officials as witness and the person who has been examined as witness M.W.1 is an employee of Nigiris Women Advancement Society. The petitioner also fabricated Ex.M2 as if the first respondent was



W.P.No.7400 of 2013

appointment by the Nigiris Women Advancement Society. In fact, the petitioner did not choose to lay any evidence on his behalf and no documents were marked in order to deny the claim of the first respondent. Further Ex.M.2 was under the custody of the petitioner. However, the petitioner has taken summons to the Nigiris Women Advancement Society to produce Ex.M.2. Therefore, it was fabricated one and to deny the claim of the first respondent, it was produced before the second respondent.

6.1. He further submitted that in order to prove the employment of the first respondent, he had produced Ex.W.6 to Ex.W.8. Ex.W.6 is the certificate issued by the Tamil Nadu Corporation for Development of Women Ltd., in which, it is stated that the first respondent had participated in the training program from 23.04.2001 to 28.04.2007. Ex.W.7 is also a certificate in which, it is stated that the first respondent took training from 26.11.2001 to 30.11.2001. Ex.W.8 is the certificate issued by the Collector, Nilgiri District, and it revealed that the first respondent had rendered exemplary service in conducting E.D.P. Training to SHG members during the year 2001-02. Further Ex.W.6 to



W.P.No.7400 of 2013

Ex.W.8 produced by the first respondent as he was the employee of the petitioner herein. Therefore, the second respondent Labour Court rightly ordered to reinstate the first respondent and prayed for dismissal of this Writ Petition.

7. Heard Mr.M.Vijayan, learned counsel appearing for the petitioner and Ms.A.L.Ganthimathi, learned Senior Counsel appearing for the first respondent.

8. The first respondent raised the industrial dispute on the ground that he had joined the service of the petitioner as a staff in the year 2001 and he had lastly drawn salary of Rs.4,500/-. While being so, on 01.10.2002, the petitioner deputed the first respondent to supervise the work done by the Nilgiri Women's Advancement Society. However, on 01.08.2003, when the first respondent reported for his duty, he was refused to give any work by the petitioner herein. When the first respondent raised industrial dispute under Section 2A(2) of the Industrial Dispute Act, the first respondent has to prove that he is a workman as contemplated under Section 2(s) of the Industrial Dispute Act.



WEB COPY

9. It is relevant to extract the provision under Section 2(s) of the Industrial Dispute Act, as follows :-

“2(S) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the



WEB COPY



W.P.No.7400 of 2013

nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

10. Accordingly, before amendment viz., the Act 24 of 2010, being employed in a supervisory capacity, draws wages exceeding Rs.1,600/- per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature, does not include any such person as workman. Even according to the first respondent he was drawn the salary of Rs.4,500/- per month as Supervisor. Therefore, the first respondent failed to prove that he is a workman under the petitioner.

11. The next requirement is that the first respondent has to prove the employer and employee relationship. Though the first respondent issued legal notice, which is marked as Ex.W.1 and the acknowledgment card which was marked as Ex.W.2, it did not mean that the petitioner employed by the first respondent as his employee. On perusal of Ex.M.2, the appointment order of the first respondent, it revealed that it was issued by the Nilgiri Women's Advancement Society



W.P.No.7400 of 2013

dated 01.10.2002. Further the application of the first respondent was considered and offered him the position of Community Volunteer/ Accountant in Nonsuch Cluster under the Nilgiri Women's Advancement Society that too for the period from 01.10.2002 to 30.09.2004, on contract basis. The said contract would automatically terminated on 30.09.2004 unless renewed in writing. His basic salary was fixed at Rs.3000/- p.m. In fact, the said offer was accepted with terms and conditions as stated in the appointment order by the first respondent herein and his signature was not disputed by him before the Labour Court.

12. That apart, there is no document produced by the first respondent to prove the employer and employee relationship with the petitioner. He also failed to prove that he had worked for 240 days in the given year. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2006) 1 SCC 106** in the case of ***R.M.Yellatti Vs. Asst. Executive Engineer*** which held as follows:-



WEB COPY



W.P.No.7400 of 2013

“17. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the



W.P.No.7400 of 2013

workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.”

13. In the case on hand, the first respondent failed to summon the petitioner to produce any document in order to show that he was worked for 240 days in the given year with the petitioner. Therefore, mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground to draw an adverse inference against the management. Therefore, the first respondent failed to prove that he was a workman under the petitioner and also failed to prove the employer and employee relationship with the petitioner.



W.P.No.7400 of 2013

14. In view of the above discussions, this Court feels that the impugned order cannot be sustained and it is liable to be quashed.

Accordingly, the order dated 02.07.2012 passed by the second respondent viz., the Labour Court, Coimbatore in I.D.No.245 of 2004, is hereby set aside and the Writ Petition stands allowed. There shall be no order as to cost.

11.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



W.P.No.7400 of 2013

WEB COPY

To

1. The Presiding Officer,
Labour Court,
Coimbatore.



WEB COPY



W.P.No.7400 of 2013

G.K.ILANTHIRAIYAN. J.

rts

W.P.No.7400 of 2013

11.07.2023