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W.P.Nos.9164, etc., batch of cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.9164, 9169, 9171, 9172, 9175, 9176, 9177, 9178, 9180 & 9181 of 2019

and

W.M.P.Nos.9696, 9702, 9708, 9710, 9716, 9718, 9721, 9722, 9723, 9725, 22931, 22950, 22961, 22963, 22967, 22972, 22976, 22954, 22978 & 22964 of 2019

W.P.No.9164 of 2019

Hindustan Motor Finance Corporation Limited,
Adigathur Village, Kadambathur Post,
Tiruvallur, Chennai – 631 203.
Rep. by its Deputy General Manager,
Mr.G.Krishnakumar

... Petitioner

Vs.

1.J.Shankar

2.Hindustan Motors Limited,
Adigathur Village, Kadambathur Post,
Tiruvallur, Chennai – 631 203.

Now at:

7/1, R.N.Mukherjee Road,
Kolkata, West Bengal – 700 001.

... Respondents

Prayer in W.P.No.9164 of 2019 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Award dated 23.03.2017 made in I.D.No.26 of 2010 on the file of the I Additional Labour Court, Chennai, quash the same.



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For Petitioner : Mr.S.Silambanan
(in all WPs) Senior Counsel
for M/s.S.Shalni

For Respondents : Mr.V.Prakash
(in all WPs) Senior Counsel
for M/s.M.Karthikeyani [R1]

COMMON ORDER

Since the issue involved in these writ petitions is one and the same, with the consent of the learned counsel appearing for the petitioner as well as the respective first respondent, these writ petitions were heard together and disposed of by way of this common order.

2. The case of the petitioner is that, the second respondent established its factory in Tiruvallur District and set up the Chennai Car plant which was engaged in the manufacture of passenger vehicles. The second respondent recruited trained manpower for its factory and it began engaging trainees and commenced training so that technically qualified personnel among the lot may be placed as permanent workmen. In such circumstances, the second respondent appointed the respective first respondent as one such trainee engaged in the year 2006 and thereafter, their training was extended for a further period of two years. After the expiry of the training period, the second



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respondent did not employ the respective first respondent as permanent workmen and it terminated their traineeship. Aggrieved by the same, the respective first respondent raised industrial disputes on the file of the I Additional Labour Court, Chennai. During the pendency of the disputes before the Labour Court, Hindustan Motors Limited transferred the business of Chennai Car Plant to the petitioner herein by way of a business transfer agreement dated 14.02.2014 and therefore, the petitioner stepped into the shoes of the second respondent. Thereafter, the Labour Court passed awards ordering reinstatement of the respective first respondent as regular workmen and directed the petitioner to pay full backwages and other attendant benefits of a newly appointed permanent workman from the date of termination of service. Challenging the same, the above writ petitions have been filed before this Court.

3. The learned Senior Counsel for the petitioner submits that, the respective first respondent were not workmen of the second respondent and they are only apprentice trainee. As per Rule 2(g) of the Tamil Nadu Industries Employment (Standing Order) Rules, 1947 (in short 'the Rules'), 'apprentice' is one who is engaged essentially in learning any skilled work



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provided that the period of such learning shall not exceed one year for those with prescribed technical qualification and three years for others. In the present case, all the first respondent were appointed as trainee operator in the year 2006 and periodically their period was extended for a period of three years. After three years, since their performance was not satisfied, they were not given permanent employment and the second respondent decided to discontinue the service, which is perfectly in order. Since the respective first respondent were not workmen as defined in the Industrial Disputes Act, 1947 (in short 'the Act'), they are not entitled to raise industrial dispute before the Labour Court claiming reinstatement and backwages as if they are workmen.

4. Further, the learned Senior Counsel submitted that, after completion of the training period, the trainee apprentice will be issued with a trainee certificate. Based on the certificate, they will secure employment in other manufacture company. Since the second respondent is a reputed company in the automobile field, they will get suitable job in other companies based on the trainee certificate issued by the second respondent. Accordingly, he prays for allowing the writ petition.



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5. The learned Senior Counsel appearing for the respective first respondent submitted that, the respective first respondent were appointed as trainee operator in the year 2006 and thereafter, without extending their training period contemplated under Rule 2(g) of the Rules, the second respondent given fresh appointment to the respective first respondent on completion of each year and they have not issued certificate and they have not extended the period of training in terms of Rule 2(g) of the Rules and the respective first respondent are workmen employed as full time employees and no training was imported by the second respondent and they extracted work from them and after completion of three years, they dis-continued the services of the respective first respondent. Thereafter, they started recruitment for each and every year by recruiting manpower and dis-continued all the persons, who are already engaged as apprentice and the same is unfair labour practice, which was well established before the Labour Court. The Labour Court, after considering the evidence of M.W.1, who was examined on behalf of the management and appointment orders issued by the second respondent, had arrived at a conclusion that, an unfair labour practice was adopted by the second respondent, thereby, ordered for reinstatement with backwages, which cannot be interfered with and the same does not suffers any perversity. Hence,



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the fact findings rendered by the Labour Court cannot be re-appreciated by this Court under Article 226 of Constitution of India. Accordingly, he prays for dismissal of the writ petition.

6. In support of his contentions, he relied upon the judgment passed by the Division Bench of this Court W.A.No.539 of 2005 dated 28.03.2005 in the case of ***National Small Industries Corporation Ltd., Vs. Presiding Officer, I Additional Labour Court, Madras & Anr.*** reported in ***2005 (3) L.L.N. 719.***

7. In response, the learned Senior Counsel appearing for the petitioner submitted that, during the pendency of these writ petitions, immediately after the award, the union was transferred and there is no manufacturing activities, thereby, the learned Senior Counsel categorically submitted that, the petitioner and the second respondent were not in a position to reinstate the respective first respondent. Therefore, the respective first respondent are entitled only for backwages and they are not entitled for reinstatement.

8. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the second respondent and perused the materials available on record.



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9. The facts in the present case is not in dispute. Admittedly, the second respondent appointed the respective first respondent as apprentice trainee in the year 2006 and the appointment orders were issued by the second respondent in their favour and the same was marked as Ex.W.1 to Ex.W.3 before the Labour Court. A perusal of the appointment orders issued by the second respondent in favour of the respective first respondent reveals that, initially, they were appointed as apprentice trainee for a period of one year and subsequently, another appointment order was issued with very same conditions without disclosing the earlier employment rendered by the respective first respondent and each and every year, they have issued fresh appointment orders without mentioning the earlier services rendered by the respective first respondent. That itself shows that the second respondent extracted work from them in the capacity of workmen and not in the capacity of apprentice trainee.

10. Rule 2(g) of the Rules makes is clear that, the apprentice is one who is engaged essentially in learning any skilled work provided that the period of



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such learning shall not exceed one year for those with prescribed technical qualification and three years for others. Contrary to the said rule, each and every year, the second respondent had given fresh appointment orders to the respective first respondent without extending their training period. Further, the Labour Court, in its discussion makes it clear that, the management has not produced any evidence to show that, why the training was imported to the respective first respondent. It is the duty of the second respondent to establish the fact that, on what basis, they were recruited as trainee in their organization and without disclosing the skilled training to the workmen, it is presumed that they are engaged only for the purpose of extracting work as a permanent workmen and not intended to give training. Hence, the orders impugned cannot be interfered with and these writ petitions are liable to be dismissed.

11. However, it appears that, during the pendency of these writ petitions, the second respondent company is closed and no manufacturing activities was carried out by the second respondent, thereby, there is no possibility of reinstatement of the respective first respondent. In view of the above, in order to resolve the dispute in between the parties, this Court is inclined to fix a fair compensation to the respective first respondent.



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12. Accordingly, the petitioner is directed to pay a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as lumpsum compensation to the first respondent in all the writ petitions, within a period of twelve weeks from the date of receipt of a copy of this order, failing which, the compensation amount shall be paid along with 9% interest till the date of payment.

13. Accordingly, these writ petitions are dismissed with the above terms. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

06.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The I Additional Labour Court, Chennai.



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M.DHANDAPANI, J.

sp

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