



W.P.No.42002 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.42002 of 2016

And

W.M.P.Nos.35946 of 2016 and 20134 of 2019

The Management of Harshal Graphics
Represented by its Proprietrix

... Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.DN.Jogi

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records and quash the award passed in I.D.No.62 of 2013 dated 23.09.2016 by the first respondent.

For Petitioner : Mr.C.Manohar Gupta
for M/s.Gupta and Ravi

For Respondents : R1 - Court
Mr.S.Saravanan for R2



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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records and quash the award passed in I.D.No.62 of 2013 dated 23.09.2016 by the first respondent.

2.The case of the petitioner is that the petitioner company is a small proprietary company and the second respondent was accommodated by the petitioner as a free lancer to design boxes for the petitioner's customers and the second respondent would collect charges directly from the petitioner's customers and at no point of time he was engaged as an employee by the petitioner and this arrangement was also stopped during September, 2010. Whiles, the second respondent raised a dispute in conciliation alleging that the petitioner orally terminated him from service on 12.03.2011 and since the conciliation failed, the second respondent filed I.D.No.62 of 2013 before the first respondent passed award dated 23.09.2016 directing the petitioner to reinstate the second respondent with continuity of service, full backwages and all other attendant benefits. Challenging the same, the petitioner has filed this writ petition.



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3.The learned counsel appearing for the petitioner submitted that the second respondent was accommodated by the petitioner as a free lancer to design boxes for the petitioner's customers and the second respondent would collect charges directly from the petitioner's customers and at no point of time he was engaged as an employee by the petitioner. However, the first respondent without any document to prove that the second respondent was under direct employment with the petitioner, simply referred to copy of the Form 16 given by the petitioner and passed the impugned award which is not sustainable one and the same is perverse.

4.The learned counsel appearing for the second respondent submitted that the second respondent entered the service of the petitioner as graphic designer during April, 1995 and was initially paid monthly salary of Rs.15,000/- by the petitioner. Thereafter, his salary was revised from time to time and at the time of termination he received monthly salary of Rs.50,000/-. Inorder to avoid income tax issues, the petitioner used to pay the salary by way of cash. The learned counsel further submitted that the petitioner Management did not maintain attendance register and wage register in respect of the



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second respondent in order to defeat the rights of the second respondent and further submitted that M.W.1 examined on the side of the petitioner categorically admitted in his deposition that the second respondent is an employee of the petitioner. After considering the factual aspects, the first respondent passed award in favour of the second respondent which warrants no interference.

5. Heard the arguments advanced on either side and perused the materials available on record.

6. The case of the second respondent before the first respondent was that the petitioner is involved in the business of designing, printing and manufacturing various kinds of packing materials, cardboard boxes for various companies and is also having business under the name of 'HPP Limited' and more than 100 workers are employed by the petitioner. The second respondent entered the service of the petitioner as graphic designer during April, 1995 and was initially paid monthly salary of Rs.15,000/- by the petitioner. Thereafter, his salary was revised from time to time and at the time of termination he received monthly salary of Rs.50,000/-. All of a sudden, he was removed from service on 12.03.2011 without any



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enquiry in violation of principles of natural justice.

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7.However, no document was marked before the first respondent by the second respondent to substantiate that he received monthly salary of Rs.50,000/- from the petitioner. Even the copy of the Form 16 was marked by the petitioner and it disclosed the salary of the second respondent as Rs.15,000/- per month and based on the copy of the Form 16 marked by the petitioner, the first respondent arrived at a conclusion that the second respondent was in continuous employment under the petitioner from the year 1995 to 2011 and awarded reinstatement of the second respondent with continuity of service, full backwages and all other attendant benefits.

8.However, the first respondent failed to consider whether the second respondent was employed continuously for 240 days in a calender year. No evidence was produced to substantiate the same before the first respondent.

9.The Hon'ble Division Bench of this Court has elaborately discussed similar issue in the case of the **Chief General Manager, State Bank Of India, Local Head Office, No.6, College Road,**



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Chennai Vs. The Central Government Industrial Tribunal cum Labour Court, No.6, Haddows Road Shastri Bhavan, Chennai – 6 and another in **W.A.No.1749 of 2015** on 25.01.2016 and has held as follows:

"6.The question as to whether violation of Section 25-F of the I.D.Act would entail automatic reinstatement with backwages came into consideration in catena of decisions. Lately, in Vice-Chancellor, Lucknow University, Lucknow, U.P. Vs. Akhilesh Kumar Khare and another [(2015) SCC Online SC 797], the Supreme Court has examined the issue afresh in the light of the various decisions rendered earlier and held as under:

"16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126 and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short the ID Act)? The course of the decisions of this Court in recent years has been uniform



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on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479, Uttaranchal Forest Development Corpn. v. M.C. Joshi, (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma (2007) 1 SCC 575, M.P. Admn. v. Tribhuban (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority v. Ramsahai (2006) 11 SCC 684, GDA v. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this



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Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

[Emphasis added]

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

4. Jagbir Singh (2009) 15 SCC 327 has been applied very recently in Telegraph Deptt. v.



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Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

10. Considering the facts and circumstances of the case, this Court is inclined to modify the award dated 23.09.2016 passed by the first respondent in I.D.No.62 of 2013 and award some compensation to the second respondent.

11. This Court's view is also supported by the decision of the Hon'ble Supreme Court reported in **(2012) 1 Supreme Court Cases 558 (Bharat Sanchar Nigam Limited Vs. Man Singh)**, the relevant portion of which reads as follows:

"5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely



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worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6.Accordingly, the impugned judgment passed by the High Court as also the award dated 27-5-2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchar Nigam Limited to pay Rs.2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum."

12.Applying the ratio laid down in the decision of the Hon'ble Supreme Court reported in ***(2012) 1 Supreme Court Cases 558 (Bharat Sanchar Nigam Limited Vs. Man Singh)***, this Court is inclined to award a sum of Rs.2,50,000/- as compensation to the second respondent. Accordingly, the petitioner is directed to deposit a sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only), in full and final settlement, to the credit of I.D.No.62 of 2013 on the

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file of the first respondent, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the second respondent is at liberty to withdraw the said amount.

13.The writ petition is allowed on the above terms. No costs.
Consequently, connected miscellaneous petitions are closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

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M.DHANDAPANI,J.
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