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W.P.No.20012 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.20012 of 2019 and
W.M.P.No.19498 of 2019

M/s.Pratik Hosiery (P) Ltd.,
Rep. by its Administrative Officer,
Mr.G.Sairam,
No.15/18, K.R.R.Thottam,
Mangalam Road,
Tirupur - 641 604.

... Petitioner

Vs.

P.Boopathy

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned Award, dated 22.03.2019 passed by the Additional Labour Court, Coimbatore in I.D.No.45 of 2014 and quash the same.

For Petitioner : Mr.V.Anandhamurthy

For Respondent : Mr.V.Ajoy Khose



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ORDER

The Writ Petitioner is a Manufacturer of Ready made Garments wherein more than 200 workers are employed. The respondent joined the petitioner industry on 08.08.2005 as cutting Master. Subsequently, on 14.11.2012, he was terminated orally by the Management when he was working as Production Manager and his last drawn monthly salary was Rs.20,000/-. Therefore, the respondent raised an Industrial Dispute before Labour Court viz., the Additional Labour Court, Coimbatore by way of filing I.D.No.45/2014 under Section 2-A(2) of the Industrial Disputes Act, 1947, to set aside the oral termination passed by the Writ Petitioner/Management and also direct the Management to reinstate the respondent into service with continuity of service and to pay 25% of backwages from the date of oral termination i.e., on 14.11.2012 to 30.09.2015. Aggrieved over the same, the present Writ Petition is filed.

2. Mr.V.Anandhamurthy, learned counsel for the petitioner contended that the respondent was working as a Production Manager and this was admitted by him during the course of cross examination before the Labour Court and therefore he would not come under the definition of



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Section 25 F of the Industrial Disputes Act. He further contended that since the duties of the respondent is merely Managerial or Administrative and he is not a workman and therefore, he cannot raise the Industrial Dispute under Section 2-A (2) of the Industrial Disputes Act. His another contention is that he raised the Industrial Dispute with an abnormal delay and he has not shown any interest to report for duty. Therefore, the order passed by the Labour Court directing the Writ Petitioner Management to reinstate the respondent into service with 25% of backwages and continuity of service, is totally perverse.

3. Per contra, Mr.V.Ajoy Khose, learned counsel for the respondent contended that the Labour Court after analysing the evidence on record had found that the respondent is only a workman within the definition of Section 2(s) of the Industrial Disputes Act. Even during the conciliation proceedings, the petitioner Management was not ready to provide employment to the respondent and this aspect was taken into account by the Labour Court while passing the Award. It is the contention of the counsel for the respondent that the allegation of the Writ



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Petitioner that the respondent resigned his post on 14.11.2012 is totally false and this aspect was also not accepted by the Labour Court and hence, there is no reason for this Court to interfere with the orders passed by the Labour Court.

4. The main contention of the Writ Petitioner is that the respondent is not a workman since he was a Production Manager on the date of termination. Section 2 (s) of the Industrial Disputes Act defines 'workman' as under:

"Workman" means any person (including apprentice) employed in any industry to do any manual, unskilled, skilled, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose 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,



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

5. It is a trait law that the onus is only upon the workman to prove that he was employed as a workman. In order to discharge the burden of proof, the respondent had examined himself before the Labour Court and he has clearly stated the nature of the work performed by him. On the contrary, the Writ Petitioner did not adduce any contra evidence to show that the respondent was doing managerial work or in a supervisory cadre.



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6. The Hon'ble Apex Court had time and again reiterated the definition of Workman who comes within the definition of Workman under Section 2 (s) of the Act, which reads as follows:

- i. Designation is not material but what is important is the nature of work;
- ii. Find out the dominant purpose of employment and not any additional duties, the employee may be performing;
- iii. Can he bind the Company employer to some kind of decisions on behalf of the Company / employer;
- iv. Has the employee power to direct or oversee the work of his subordinates;
- v. Has he power to sanction leave or recommend it; and
- vi. Has he the power to appoint, terminate or take disciplinary action against the workmen.

7. The respondent herein does not come under any of the above categories. The Labour Court based on the evidence on record, had clearly held that the respondent is not a workman within the definition of



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Section 2(s) of the Industrial Disputes Act. The contention of the Writ Petitioner that the respondent orally resigned his job, was not substantially proved by an acceptable evidence before the Labour Court. No documentary evidence was adduced in this regard. As rightly observed by the Labour Court, when the respondent absconded himself from attending duty, the petitioner Management could not have kept quiet and they should have taken action against the employee. In the instant case, no such action was initiated and therefore the contention of the respondent that he was orally terminated on 14.11.2012, is acceptable. The Labour Court has also taken into account that the respondent would have definitely employed elsewhere on the period from the date of oral termination till 30.09.2015 and therefore, directed the petitioner Management to pay 25% of backwages to the respondent/employee.

8. The learned counsel for the petitioner contended that though the Labour Court had come to a conclusion that the respondent would have been gainfully employed elsewhere, had wrongly passed an Award, directing the Writ Petitioner to pay 25 % of backwages to the respondent.



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9. In the instant case, the respondent had been consistently stating that he was not employed elsewhere. However, the Labour Court had held that no prudent person will remain idle over seven years. Therefore, the Labour Court passed an Award, directing the Writ Petitioner to pay 25% of backwages from the date of oral termination till 30.09.2015, which, in the opinion of this Court is perfectly in order.

10. As far as the delay and latches are concerned, the oral termination is dated 14.11.2012 and the respondent had initially approached the conciliation officer on 30.01.2013. The Conciliation Officer submitted his failure report on 26.09.2013. Thereafter, he had approached the Labour Court on 24.07.2014. Therefore, there is no delay on the part of the respondent / Workman. The Labour Court by a well considered order, had passed an Award and I do not see any reason to interfere with the same. Accordingly, the Writ Petition is dismissed. The petitioner / Management is directed to comply with the orders passed by the Labour Court in I.d.No.45/2014, dated 22.03.2019, within a



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period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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R. HEMALATHA, J.

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