



W.P.No.26774 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

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

W.P.No.26774 of 2014
and M.P.No.1 of 2014

The Management,
Sri Venkateswara Gas Agency,
By its Proprietor S.Mahapandiyan
M.N.R.Argate, Krishna Nagar,
Vellore.

.... Petitioner

Vs

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

2. Raghu

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records in I.D.No.41 of 2013 dated 26.08.2014 on the file of the 1st respondent, Principal Labour Court, Vellore and quash the same.

For Petitioner	:	Mr.P.Chandrasekar
For R1	:	Court
For R2	:	Mr.S.T.Varadarajulu Senior Counsel

ORDER

This Writ Petition has been filed challenging the Award date 26.08.2021 passed in I.D.No.41 of 2013 by the first respondent, thereby



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directed the petitioner to reinstate the second respondent with continuity of service, back wages and other attendant benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Senior Counsel appearing for the second respondent and perused the materials available on record.

3. The second respondent claimed that he had employed as a Gas Delivery Boy with the petitioner Management from 06.01.2000 on a monthly salary of Rs.1,500/- However he was terminated from his service on 25.06.2012 when he sought for extra wage of bonus besides other such as coverage under the ESI and PF Act. Therefore, the second respondent submitted an application before the Labour Officer, Vellore. However, after notice, the petitioner ready to appear before the Labour Officer for conciliation and as such the Labour Officer sent a failure report to the Government. On receipt of the failure report, the second respondent filed Claim Petition before the first respondent under Section 2A(2) of the Industrial Disputes Act.



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4. The petitioner Management filed counter stating that the second respondent had never worked as Gas Delivery Boy under the petitioner's Management from 06.01.2000. He was not paid any salary as claimed by the second respondent. There is no privity of contract between the petitioner and the second respondent and as such there was no employer and employee relationship.

5. Before the first respondent, the second respondent produced his identity card and various consumer cards in order to prove that he was working under the petitioner and he had delivered gas cylinder to the consumers. The petitioner Management filed documents such as Attendance Register and Salary Register. At the time of cross examination of the second respondent, he produced the original Identity Card and the same was also marked by the petitioner Management. Though the petitioner had taken a specific stand that the second respondent had never worked under the petitioner Management and he was not paid any monthly salary, the petitioner failed to substantiate the said contention by documentary evidence. Therefore, the second respondent proved that he was under employment of the petitioner as Gas Delivery Boy and he has also received Rs.1,500/- as monthly salary.



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6. The learned counsel appearing for the petitioner also raised a contention that the second respondent, without approaching the Conciliation Officer, directly filed a petition under Section 2A(2) of the Industrial Disputes Act, before the Labour Court, Vellore.

7. A perusal of the records revealed that the second respondent submitted an application before the Labour Officer, Vellore. The Labour Officer issued notice to the petitioner Management and the same was returned 'unserved' and the same was also marked by the second respondent before the Labour Court. The Labour Officer, Vellore, concluded that there was no conciliation and submitted his failure report to the Government. On receipt of the failure report, the second respondent filed a petition under Section 2A(2) of the Industrial Dispute Act. Therefore, the first respondent rightly ordered reinstatement with service continuity and back wages.

8. However, the learned counsel appearing for the petitioner would submit that now the petitioner Company is no more existing since they had closed down the business.



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9. Considering the above submission, instead of reinstating the service of the second respondent, this Court modifies the Award to the effect that the petitioner shall pay a sum of Rs.1,00,000/- as compensation to the second respondent within a period of four weeks from the date of receipt of a copy of this order.

10. With the above modification, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Lpp

To

The Presiding Officer,
Principal Labour Court,
Vellore.



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G.K.ILANTHIRAIYAN, J.

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