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W.P.No.19799 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.19799 of 2023

and

WMP.No.19114 of 2023

Toshiba JSW Power System Private Limited.,
No.74/95, Vayalkadu Village,
Andarkuppam Check Post, Manali Pudhu Nagar,
Chennai – 600 103.

...Petitioner

Vs.

1. Mushtak Ahemed
2. Abdulsamed
3. G.Moses
4. M/s. Day and Day Services Private Limited.,
Through its Managing Director,
No.1, Second Main Road, Ramakrishna Nagar,
Chennai – 600 028.
5. M/s. Lead HR Services Private Limited,
Through its Managing Director,
502- 504, 5th Floor, Challa Mall Complex,
No.11, Thiagarajan Road, T.Nagar,
Chennai – 600 017.

...Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records and quash the order dated 23/05/2023 passed in I.A.No.2/2022 in C.P.No.87/2021 by the Hon'ble III Additional Labour Court, Chennai and dismiss the C.P.No.87/2021 on the file of the Hon'ble III Additional Labour Court, Chennai.

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

For Respondents : Mr.V.Prakash, Senior Counsel,
for Mr.Sudalai Kannu, for R1 to R3

ORDER

This Writ petition has been filed seeking quashment of the order dated 23.05.2023 passed in I.A.No.2/2022 in C.P.No.87/2021 and to consequently, dismiss the C.P.No.87/2021 on the file of the III Additional Labour Court, Chennai.

2. Mr.Sudalai Kannu, learned counsel takes notice for the respondents 1 to 3. In view of the consent expressed by the Learned counsel on either side, this petition is taken up for final disposal at the admission stage itself.

3. Since no adverse order is being passed against the 4th and 5th respondents, notice to the 4th and 5th respondents is dispensed with.



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4. The case of the petitioner is that the petitioner company is engaged

in the business of manufacturing steam turbine and generators for thermal power plants and had engaged certain contractors viz., 4th & 5th respondents herein to supply drivers and the respondents 1 to 3 herein were employed by the 4th & 5th respondents in the petitioner company. While so, the respondents 1 to 3 have filed a Claim petition in C.P.No.87 of 2021 before the III Additional Labour Court, Chennai, claiming overtime wages from the petitioner on the false pretext that they are directly employed under the petitioner. While so, the ULF Union, on behalf of the respondents 1 to 3, raised a 2(k) Industrial Dispute before the Conciliation Officer, seeking status of permanent employment and extending all the benefits and privileges provided to the permanent employees, however the same ended in failure and the Conciliation Officer sent the Failure report to the Government of Tamilnadu, which in turn, vide G.O.(D).No.286 dated 14.06.2022, referred the issues to the Industrial Tribunal, Chennai and the same is numbered as O.P.No.8 of 2022 and the same is pending. Aggrieved by the same, the petitioner management filed an I.A.No.2 of 2022 in C.P.No.87/2021, however, the III Additional Labour Court, Chennai, vide order dated 23.05.2023, dismissed the Maintainability petition as the same



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is pre-mature and unwarranted at such stage. Challenging the same, the petitioner has come up with this Writ petition.

5. Learned counsel for the petitioner submitted that in Claim petition No.87 of 2021, the respondents 1 to 3 claimed overtime wages from the petitioner on the false pretext that they were directly employed by the petitioner. He further submitted that the petitioner company filed an maintainability application in I.A.No.2 of 2022 in C.P.No.87 of 2021, which has to be decided as a preliminary issue, while so without deciding the said preliminary issue directing the petitioner to face the main claim petition is not sustainable. Hence, he prayed for appropriate orders.

6. On the above said contentions, heard learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

7. A perusal of the material documents placed on record particularly the impugned order reveals that, the Labour Court has rightly dismissed the Maintainability petition in I.A.No.2 of 2022 filed by the petitioner company as premature and unwarranted. This Court finds no perversity in the impugned order as during the pendency of C.P.No.87 of 2021, the Tamil



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Nadu Government, vide G.O.(D).No.286 dated 14.06.2022 referred the issues for adjudication to the Industrial Tribunal, Chennai and the case is numbered as O.P.No.8 of 2022.

8. In view of the above, the III Additional Labour Court, Chennai is directed to conclude the proceedings in C.P.No.87 of 2021 within a period of twelve weeks from the date of receipt of a copy of this order, without adjourning the matter beyond seven working days at any point of time. However, it is open to the petitioner company to put forth their grievances before the Labour Court, citing reference to G.O.(D).No.286 dated 14.06.2022.

9. Accordingly, this Writ Petition stands disposed of with the aforesaid directions. No costs. Consequently, connected Miscellaneous petition is closed. Registry is directed to mark a copy of this order to the III Additional Labour Court, Chennai.

06.07.2023

skt

NCC	: Yes / No
Speaking Order	: Yes / No
Index	: Yes / No

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M.DHANDAPANI., J.

skt

To

The III Additional Labour Court,
Chennai.

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