



W.P.Nos.24675 and 24679 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.24675 and 24679 of 2023

and

W.M.P.Nos.24115 and 24117 of 2023

The Management,
Operational Energy Group India Private Limited,
A, 5th Floor,
Gokul Arcade - East Wing,
2 Sardar Patel Road,
Adayar,
Chennai - 600 020.

... Petitioner
in both W.Ps

Vs.

K.Ravi
S/o.Kandasamy

... Respondent
in both W.Ps

PRAYER in W.P.No.24675 of 2023 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the Labour Court, Salem in I.D.No.103 of 2015 and quash the award dated 25.01.2022 and remand the dispute to the Labour Court, Salem for fresh adjudication giving opportunity to the petitioner.



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PRAYER in W.P.No.24679 of 2023 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the Labour Court, Salem in I.A.No.2 of 2023 in I.D.No.103 of 2015 and quash the order dated 08.06.2023 and remand the dispute to the Labour Court, Salem for fresh adjudication giving opportunity to the petitioner.

For Petitioner
in both W.Ps : Mr.P.Ragunathan
for T.S.Gopalan and Company

For Respondent
in both W.Ps : Mr.R.M.D.Nazurullah

C O M M O N O R D E R

The petitioner is the Management. Two Writ Petitions have been filed by the petitioner Management. The first Writ Petition, i.e., W.P.No.24675 of 2023 is filed challenging the award dated 25.01.2022 in I.D.No.103 of 2015 and to remand the dispute to the Labour Court, Salem for fresh adjudication giving an opportunity to the petitioner. The second Writ Petition, i.e., W.P.No.24679 of 2023 is filed challenging the order



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passed in I.A.No.2 of 2023 in I.D.N.103 of 2015 filed by the petitioner Management to condone the delay of 154 days in filing the application to set aside the ex-parte award dated 25.01.2022 in I.D.No.103 of 2015.

2. The case of the petitioner is that the respondent was joined the service of the petitioner Management in the year 2010 and in view of indiscipline during the working hours, he was terminated from service by an order dated 28.04.2015. The respondent has raised an Industrial Dispute in I.D.No.103 of 2015 before the Labour Court, Salem and on various occasions, the petitioner was called absent and during some hearings, the petitioner was represented. Therefore, the matter was listed for clarification and finally, the award dated 25.01.2022 was passed by the Labour Court, Salem directing the petitioner Management to reinstate the respondent with 50% backwages and continuity of service. Challenging the said award dated 25.01.2022, W.P.No.24675 of 2023 is filed. In the meanwhile, the petitioner Management filed I.A.No.2 of 2023 in I.D.No.103 of 2015 to set aside the ex-parte award. However, the Labour Court declined to entertain the said



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I.A. and dismissed the same by order dated 08.06.2023. Hence, as against the said dismissal order, W.P.No.24679 of 2023 is filed.

3. The learned counsel appearing for the petitioner Management contends that though the petitioner was represented by the counsel before the Labour Court, the said counsel had not appeared and therefore, there was sufficient cause for the non-appearance of the petitioner and hence, the Labour Court ought to have given an opportunity to the petitioner to contest the claim of the respondent on merits. In the meantime, the respondent has already filed a petition under Section 33(c)(2) of the Industrial Disputes Act, 1947 making claim for backwages in terms of the award of Salem dated 25.01.2022 in I.D.No.103 of 2015. When the award itself is under challenge, the respondent has no ground to seek for backwages. The Labour Court failed to take note of the fact that the claim statement was filed before the Labour Court and evidence was recorded and that pursuant to the matter was listed for clarification dated 12.08.2017, the petitioner filed proof affidavit as RW1 and the documents were marked as R1 to R4.



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A cross-examination of RW1 was also concluded. Thereafter, the Labour Court reserved the order and ultimately, passed an award saying that the petitioner Management had not been represented and therefore, the ex-parte award directing the petitioner Management to reinstate the respondent with backwages. It is also submitted that the Labour Court denied the opportunity of cross-examination of the respondent sought for by the petitioner but heard only the respondent and passed the award. The learned counsel for the petitioner relies upon the order passed by this Court in W.P.No.4195 of 2010 dated 02.03.2010 which is in *pari materia* to the facts of the present case.

4. The learned counsel appearing for the petitioner further submits that in the proof affidavit filed before the Labour Court, the petitioner has categorically stated that the respondent was not a permanent employee of the petitioner Management. The petitioner Management itself was undertaking sub-contract works and therefore, had never engaged any employee on permanent basis and the employment provided by the



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petitioner was based on the contract awarded to the petitioner. Therefore, the respondent was engaged in one of the sites of the petitioner and during such engagement, he was sleeping and was also not diligent in performing the duty assigned to him. That apart, the learned counsel for the petitioner submits that the respondent was technically qualified and after termination, the respondent could have earned gainfully from other employment. Therefore, the Labour Court was not justified in passing the order directing reinstatement of the respondent. Raising the above grounds, the learned counsel for the petitioner challenges the award.

5. The learned counsel appearing for the respondent submits that the respondent was employed as a permanent employee of the petitioner Management and that he was terminated without conducting any enquiry. Therefore, the termination is illegal and that the respondent can very well be considered as an employee of the petitioner Management as per the provisions contemplated under Section 2(s) of the Industrial Disputes Act. It is also submitted that no charge memo was served on him and no



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disciplinary enquiry was conducted. Therefore, the principles of natural justice was never complied with in termination of the respondent. Hence, the award passed by the Labour Court in I.D.No.103 of 2015 dated 25.01.2022 and the consequent order passed in I.A.No.2 of 2023 dated 08.06.2023 rejecting the claim of the petitioner Management to set aside the award is totally justified and therefore, the learned counsel for the respondent seeks for dismissal of the Writ Petition.

6. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7. Admittedly, the respondent joined the petitioner Management on 20.01.2010 and the appointment order was marked as R2 and this has been accepted by the petitioner Management before the Labour Court. The service of the respondent has also been regularised with effect from 20.07.2010 after completion of the probation period of six months.



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Therefore, the Labour Court had come to a conclusion that the respondent was working as an employee of the petitioner Management. However, on going through the materials placed on record, this Court is able to come to a conclusion that the petitioner Management is undertaking only sub-contract works and engage labourers as per the contracting works undertaken by them. That apart, the respondent is aged around 49 years as on date and even if the award of the Labour Court is held to be sustainable, the petitioner Management will not be in a position to engage the respondent in any role, therefore this Court is inclined to safely conclude that the petitioner Management can be directed to pay a compensation *in lieu* of reinstatement. Though the petitioner Management was not represented in the initial stages of hearings, thereafter, the petitioner Management has substantiated its stand before the Labour Court by filing proof affidavit and submission of oral and documentary evidence before the Labour Court and sufficient opportunity was given to the respondent employee for cross-examination also. Therefore, this Court is of the view that the award of the Labour Court can be modified to the effect that the petitioner Management



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shall pay compensation to the respondent employee. Accordingly, the petitioner Management is directed to pay a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) as compensation to the respondent employee *in lieu* of reinstatement and backwages within a period of four weeks from the date of receipt of a copy of this order.

8. In view of the award dated 25.01.2022 made in I.D.No.103 of 2015 being modified, the order passed in I.A.No.2 of 2023 is quashed. Accordingly, both the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.09.2023

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

vji

To
The Labour Court,
Salem



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M.DHANDAPANI, J.

vji

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