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W.P.Nos.25842 of 2021, etc., batch of cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

**W.P.Nos.25842, 25844, 25849, 25850, 25851, 25854, 25862, 25866,
25868, 25870, 25875, 25878, 25883, 25884, 25886, 25888, 25889 &
25892 of 2021**

W.P.No.25842 of 2021

Sneha

... Petitioner

Vs.

1.The Manager of Ashok Leyland,
Kathivakkam High Road,
Ennore, Chennai – 600 057.

2.The Management of Gananatha Transport,
No.64/20A, Manickam Nagar 2nd Street,
Thiruvottiur, Chennai – 600 019.

3.B.Nagesh Mallya
4.Meera Nagesh Mallya

... Respondents

Prayer in W.P.No.25842 of 2021 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in the impugned order dated 31.08.2021 in I.D.No.159 of 2014 passed by the II Additional Labour Court, Chennai and quash the same.



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For Petitioner : Mr.A.Thirumaran
(in all WPs)

For Respondents : No appearance [R1]
(in all WPs) Not ready in notice [R2 to R4]

COMMON ORDER

Since the issue involved in these writ petitions being one and the same, with the consent of the learned counsel appearing for petitioners, these writ petitions were heard together and disposed of by this common order.

2. The petitioner in W.P.No.25842 of 2021 has filed the same on behalf of her husband R.Ravi/workman, since he passed away and the other writ petitions have been filed by the workmen.

3. The case of the petitioners is that, the workmen entered into service of the first respondent as Driver and was working continuously. The work of the second respondent was to deliver the chassis manufactured by the first respondent to various destinations and as per the instructions of the first respondent, salary was paid by the second



respondent. The workmen are receiving salary from the first respondent through the second respondent and the respective workmen were working daily 19 hours from the beginning and the some of the co-workers working 570 hours per month and there were not paid any overtime wages, however, they were not allowed to avail Earn Leave, Casual Leave, Weekly and National Holidays etc. Further, the second respondent made the provident fund benefits to the workmen. However, all of a sudden, they were orally terminated on different dates. Aggrieved by the same, they raised conciliation proceedings before the Labour Officer and the Labour Officer submitted a failure report. Thereafter, they raised industrial disputes before the Labour Court and the Labour Court dismissed the said disputes on the ground that the workmen were not continuously employed for 240 days either with the first respondent or with the second respondent. Further, there is no employee-employer relationship between them. Challenging the same, the above writ petitions are filed before this Court.

4. The learned counsel appearing for the petitioners submits that in order to establish that there is an employee-employer relationship and



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that contribution was made by the second respondent, the respective workmen examined themselves as W.W.1 and one D.Chellaram as W.W.2., who is the former employee of the second respondent. Apart from that, the respective workmen marked copy of agreement between the employee and the management and complaint before the Inspector of Police, H8 Police Station, Thiruvottriyur and copy of trip sheet and EPF contribution made by the second respondent and copy of settlement under Section 12(3) of the Industrial Disputes Act, 1947 (in short 'the Act') as Ex.W1 to Ex.W6. However, without considering all those documents filed by the respective workmen, the Labour Court mechanically arrived at a conclusion that there is no employee-employer relationship between the workmen and the second respondent, since they have not continuously worked for 240 days. On the sole ground, the Labour Court dismissed the disputes raised by the workmen, which is not sustainable and the same is perverse. Accordingly, he prays for allowing the writ petitions.

5. Though the writ petitions were admitted in the year 2021, however, till date, the petitioners have not taken any effective steps to serve notice to the respondents except first respondent. Considering the



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pendency of these writ petitions, this Court is inclined to dispose of these matters based on the available records.

6. In the claim petition, the respective workmen claimed that they are the employees of the first respondent and subsequently, in the oral evidence, they claimed that they are the employee of the second respondent and they received salary from the second respondent as per the instructions of the first respondent. Though such a contra plea is raised before the Labour Court, however, the workmen did not adduce any evidence to show that they are the employees of the first respondent. The workmen examined one D.Chellaram as W.W.2, who is the ex-employee of the second respondent. In his cross examination, he admitted that there is no employer-employee relationship in between the first respondent and the workmen. Later, the workmen claimed that they are the employees of the second respondent, however, the same was not averred by them in the claim petition. In view of the contra stand taken by the workmen, the Labour Court arrived at a conclusion that there is no employer-employee between them.

7. Though the learned counsel appearing for the petitioners



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vehemently contended that the second respondent paid the EPF contribution in the name of the workmen, however, the mere payment of EPF contribution for a particular period cannot be a conclusive proof to hold that the workmen are the employees of either the first respondent or the second respondent. Further, no evidence is available to hold that the workmen are employed either with the first respondent or the second respondent. The workmen have miserably failed to establish that they are continuously employed for 240 days in a calendar year. Hence, the impugned awards passed by the Labour Court is perfectly in order, which cannot be interfered with and the writ petitions are liable to be dismissed.

8. Accordingly, these writ petitions are dismissed. No costs.

24.08.2023

(2/2)

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The II Additional Labour Court, Chennai.



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M.DHANDAPANI, J.

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W.M.P.Nos.27343 & 27348 of 2021

in

W.P.Nos.25875 & 25878 of 2021

M.DHANDAPANI, J.

These miscellaneous petitions filed seeking to permit the petitioners to file a single writ petition, is ordered as prayed for.

24.08.2023

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