



W.P.No.9345 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9345 of 2017

and W.M.P.No.10320 of 2017

The Management,
Kalaimagal Gas Service,
Rep by its partner,
P.Saravanakumar

.. Petitioner

Vs.

1. The Deputy Commissioner of Labour/
Authority under the Minimum Wages Act,
Coonur,
The Nilgiris.

2. M.Chandrasekar

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue appropriate Writs, order or direction specifically in the writ in the nature of Writ of Certiorari call for the records relating to the impugned order dated 27.02.2017 made in M.W.No.2 of 2016 (Old No.75/2014) passed by the 1st respondent, quash the same.

For petitioner : M/s.N.Manoharan

For Respondents : Mr.M.S.Prem Kumar,
Government Advocate for R1.

: Ms.V.Ajoy Khose for R2.

ORDER



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Aggrieved by the impugned order passed by the 1st respondent in

WEB CO M.W.No.2 of 2016 (Old. No.75/2014), the petitioner is before this Court.

2. It is the case of the petitioner that the 2nd respondent was serving as a delivery boy in the petitioner firm for supplying gas cylinders since 1991. The Services of the 2nd respondent were not availed by the petitioner from 16.08.2015 in view of his misconduct with the customers. While so, alleging that he was orally terminated from services on 17.08.2013, the 2nd respondent approached the labour officer conciliation proceedings were initiated which ended up in failure. Thereafter, the 2nd respondent raised an Industrial Dispute under Section 2A(2) of the Act in I.D.No.49 of 2015 before the Labour Court. Pending the same, he approached the 1st respondent/Authority under Section 20(2) of the Minimum Wages Act 1948 alleging that he was paid only a sum of Rs.2000/- per month towards wages for his work, which resulted in the present impugned award directing the petitioner firm for payment of arrears of minimum wages with penalty to the 2nd respondent. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that the 2nd respondent was not in continuous employment under the petitioner firm and



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he was engaged as delivery boy for supplying gas cylinders only on payment of commission which shows that there was no employer-employee relationship between the petitioner and the 2nd respondent. Without appreciating the said fact, the present impugned order has been passed. He further submitted that pursuant to the impugned order of the 1st respondent, the petitioner had already deposited 50% of the award amount.

4. Per Contra, learned counsel appearing for the 2nd respondent submitted that though the petitioner claims that the 2nd respondent was not an employee of the petitioner, however, he was paid his monthly salary only by the petitioner firm since the date of entering into the service. The documents relating to payment of salary were marked as exhibits Ex.P1 to Ex.P6 before the Labour Court which alone is sufficient to show that there was an employer-employee relationship between the petitioner and the 2nd respondent. Hence, the order passed by the labour court cannot be found fault with and same needs no interference. However, the 2nd respondent may be permitted to withdraw the amount deposited by the petitioner.

5. This Court heard the learned counsel appearing on either side and



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perused the materials available on record.

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6. Admittedly, in year 1991, the 2nd respondent was employed as a delivery boy in the petitioner firm for the purpose of distributing Gas cylinders and he was terminated from service in the year 2013. However, it is the claim of the petitioner that the 2nd respondent was not an employee of the petitioner firm and that he was paid wages only when the supply of cylinders arises.

7. A perusal of the impugned award reveals that the attendance register had been produced by the petitioner for the period between January 2002 to March 2015 before the Authority to show that there is no employer-employee relationship between the petitioner and the 2nd respondent except which, no other materials have been placed by the petitioner to substantiate their claim. However, the 2nd respondent has produced sufficient documents to prove that he was employed under the petitioner management and the said documents were marked as Exhibits P1 to P6.

8. Since, the above facts have been properly appreciated by the authority under Minimum Wages Act while passing the impugned order in



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favour of the 2nd respondent, this Court feels that no interference is called for in respect of the order under challenge and this Writ Petition is devoid on merits. In view of the fact that 50% of the award amount was already deposited, liberty is granted to the 2nd respondent/Workman to withdraw the said amount. The petitioner is directed to deposit the balance 50% of the award amount, within a period of two weeks from the date of receipt of a copy of this order and the workman is permitted to withdraw the same.

9. The Writ Petition stands disposed of with the above direction.

No costs. Consequently, the connected Miscellaneous Petition stands closed.

21.07.2023

NHS

Index : Yes / No

Neutral Citation: Yes/No

M.DHANDAPANI, J.

NHS

To

The Deputy Commissioner of Labour/
Authority under the Minimum Wages Act,
Coonur,
The Nilgiris.



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