



W.P.No.8799 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.8799 of 2017

and

W.M.P.No.3920 of 2018

WellKnit Industries,
Represented by its HR-ADMIN Manager P.Murugesan,
No.61, 15 – Velampalayam Main Road,
Anupparpalayam (P.O.),
Tiruppur – 641 652.

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.M.Murugesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent relating to award dated 27.09.2016 passed in I.D.No.675 of 2008 on the file of the Labour Court, Coimbatore and quash the same.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Labour Court [R1]
Mr.V.Ajoy Khose [R2]



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ORDER

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This Writ Petition has been filed by the petitioner seeking to quash the order dated 27.09.2016 in I.D.No.675 of 2008 on the file of the Presiding Officer, Labour Court, Coimbatore.

2. The case of the petitioner is that it is an industry, which is engaged in manufacture of garments at Tirupur for the past 23 years. The second respondent was engaged as a contractor for carrying out dresses ironing work in the petitioner factory and he was doing work by engaging his men as and when required for some time. Later, when the volume of work increased the management wanted to regularize the contract of Ironing dresses by a formal Agreement. While so, an agreement was executed between the management and the second respondent on 19.03.2003 and the second respondent was executing the contract until 21.12.2006. Suddenly, on 21.12.2006, the second respondent submitted a letter to the management to relieve him from the contract. Contrary to his letter of relieving him from the contract, a union sent a letter in the month of June, 2007 alleging that the second respondent was engaged only as a worker in the factory on a monthly salary of Rs.15,000/- and he was orally stopped from the work on 21.12.2006 and



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requested for reinstatement. Thereafter, the second respondent approached the

conciliation officer and the conciliation officer submitted a failure report.

Thereafter, he raised a dispute before the second respondent/Labour Court in I.D.No.675 of 2008 under Section 2A of the Industrial Disputes Act, 1947 (in short 'the ID Act') seeking reinstatement with backwages. After adjudication, the Labour Court passed an award for reinstatement without backwages vide award dated 27.09.2016. Challenging the same, the petitioner Corporation is before this Court.

3. The learned counsel appearing for the petitioner submitted that the second respondent entered a contract with the petitioner management and doing ironing work on contract basis. Though the said contract is not registered in terms of Contract Labour (Regulation and Abolition) Act, 1970, however, the nature of work employed by the second respondent is contractual in nature, in which, he is not coming under the definition of employee under Section 2(s) of the ID Act and later claiming that there was oral termination and raising a dispute under Section 2A(2) of the ID Act before the Labour Court is not sustainable.



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4. Further, before the Labour Court, on behalf of the petitioner management, they examined one S.Vamanan as R.W.1 and through him, they marked Ex.W.1 to Ex.W.6. By marking all those documents, the petitioner management proved that there is no direct employer-employee relationship and the second respondent was employed as a contractor and received money as and when he has done contract work. However, without properly appreciating the said facts, the Labour Court mechanically arrived at a conclusion that there was an employee-employer relationship and ordered for reinstatement without backwages, which is not sustainable. Accordingly, he prays for allowing the writ petition.

5. Per contra, the learned counsel appearing for the second respondent/workman submitted that the second respondent examined himself as W.W.1 and marked Ex.W.1 to Ex.W.7 and Ex.W.1 relates to service certificate issued by the petitioner management on 25.08.2006. Further, the petitioner management issued a payment slip to the second respondent for the year 2004 – 2005, which itself is sufficient to prove that the second respondent is in continuous employment with the petitioner management for 240 days in a calendar year. The petitioner management paid ESI contribution in the name of the second respondent



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and his family to the ESI authorities. That itself is enough to show that there is a direct employer-employee relationship. All those facts were elaborately considered by the Labour Court and thereby, the Labour Court passed an award for reinstatement without backwages, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner management and the learned counsel appearing for the second respondent and perused the materials available on record.

7. Admittedly, an agreement was executed between the petitioner management and the second respondent on 19.03.2003 and the second respondent was executing the contract until 21.12.2006. Suddenly, on 21.12.2006, the second respondent submitted a letter to the management to relieve him from the contract. However, contrary to his letter, a union sent a letter in the month of June, 2007 alleging that the second respondent was engaged only as a worker in the factory on a monthly salary of Rs.15,000/- and he was orally stopped from the work on 21.12.2006 and requested for reinstatement. Thereafter, the second raised dispute



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before the second respondent/Labour Court in I.D.No.675 of 2008 under Section 2A of ID Act seeking reinstatement with backwages. After adjudication, the Labour Court passed an award on 27.09.2016 for reinstatement without backwages.

8. From the records, it is seen that the petitioner management has paid ESI contribution to the ESI authorities in the name of the second respondent and his family. Further, the service certificate dated 25.08.2006 and the payment slip for the year 2004 – 2005 issued by the petitioner management, were marked as Ex.W.1 to Ex.W.2, which reveals that the second respondent was in continuous employment of 240 days in a calendar year. Further, if at all the petitioner management claims that there was an agreement between the petitioner management and the second respondent, the petitioner management has to register the same with the authority under the Contract Labour (Regulation and Abolition) Act. In the present case, the petitioner management has not produced any records to show that they have registered the agreement with the authority. All those things conclusively prove that there is a direct employer-employee relationship between the petitioner management and the second respondent. By considering all those



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facts, the Labour Court has passed an award for reinstatement without backwages,

which cannot be interfered with.

9. Therefore, this Court finds no infirmity or illegality in the award passed by the Labour Court and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition is dismissed by confirming the award passed by the first respondent/Labour Court in I.D.No.675 of 2008, dated 27.09.2016. No costs. Consequently, the connected miscellaneous petition is closed.

12.09.2023

Index : Yes (or) No

Neutral Citation Case : Yes (or) No

Speaking Order : Yes (or) No

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To

The Presiding Officer,
Labour Court,
Coimbatore.



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M.DHANDAPANI,J.,

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