



WEB COPY



W.P. No. 31646 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.31646 of 2017

and

W.M.P.Nos.34763 of 2017, 11689, 11691 & 11692 of 2018

M/s Clarirant Chemicals India Ltd.,
SIPCOT campus,
Kudikkadu,
Cuddalore – 607 005
Rep by its Manager

... Petitioner

-VS-

1. The Presiding Officer,
The Labour Court,
Cuddalore.

2. S.Ashok

3. Bhaskaran
Contract – license Holder
M/s Clariant Chemicals India Limited,
SIPCOT campus, Kudikkadu,
Cuddalore – 607 005.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the first respondent herein and to quash the impugned award passed by the first respondent dated 09.08.2017 made in I.D.No.11 of 2016.



WEB COPY



W.P. No. 31646 of 2017

For Petitioner : Mr.S.Makesh
For Respondent No.1 : Labour Court
For Respondent No.2 : Mr.R.Muralidharan
For Respondent No.3 : Mr.G.Ilamurugu

ORDER

This writ petition has been filed seeking to quash the impugned award passed by the first respondent dated 09.08.2017 made in I.D.No.11 of 2016.

2. It is the case of the petitioner that the petitioner is a company and the third respondent is the contractor under the petitioner. The petitioner and the third respondent entered into an agreement regarding providing of certain services to the petitioner-company. The second respondent was working under the third respondent. The petitioner-company is a “Principal Employer” and the third respondent got a “license” from the Authority, under Contract Labour (Regulation & Abolition) Act (in short 'the Act'). The second respondent received salary and all other benefits from the third respondent including ESI and PF and other benefits. The second respondent filed a petition under section 2(A) of the Industrial Disputes Act, 1947 before the Conciliation Officer claiming that the petitioner company dismissed him from service, without following due process of law, and the Labour Court issued a direction to the petitioner to reinstate the second respondent into service with all other benefits. Challenging the same the present writ petition has been filed.



W.P. No. 31646 of 2017

WEB COP

3. The learned counsel for the petitioner submits that the third respondent is a registered contractor with the petitioner in terms of the agreement dated 01.07.2015 and the said agreement is marked as Ex.M.4 before the Labour Court and apart from that the ESI and PF contributions were paid by the petitioner only to the 3rd respondent / contractor, which is also marked as Ex.M.10 before the Labour Court. He further submits that though the petitioner adduced all the documentary evidences and examined Mr.R.Muthusamy and Baskaran as M.W.1 and M.W.2 on behalf of the management to show that there was a contract only between the petitioner and the 3rd respondent and that there is no direct employer employee relationship between the petitioner and the second respondent, the Labour Court without appreciating the said documents and witnesses has passed the order stating that there is direct employer-employee relationship between the petitioner and the second respondent and that the contract entered between the petitioner and the third respondent is sham and nominal. Hence, he prayed to allow this writ petition.

4. The learned counsel for the second respondent submits that the second respondent has been working as a Fork Lift Driver in the petitioner management for a period of 10 years. He further submits that the petitioner management has



W.P. No. 31646 of 2017

been effecting deductions towards EPF and ESI through the third respondent.

He further submits that since the second respondent was terminated from service without any reason, he raised an Industrial Dispute before the first respondent and the Labour Court upon appreciating the oral and documentary evidences has come to a conclusion that there is direct employer – employee relationship between the petitioner and the second respondent which cannot be interfered with. He further submits that it is evident from the training certificate issued by the petitioner management that the second respondent has successfully completed the Forklift Safety Training and the said certificate was issued during the year 2015 and the said facts were elaborately considered by the Labour Court and passed the award with a direction to the petitioner management to reinstate the second respondent in service, which cannot be interfered with. Accordingly he prayed to dismiss this writ petition.

5. Heard the learned counsel appearing on either side and perused the materials placed on record.

6. It is the claim of the petitioner that the second respondent was drawing the wages and other benefits from the third respondent and the petitioner management produced the license which was issued from the Authority under



W.P. No. 31646 of 2017

the Act before the Labour Court which was marked as Exs.M.4 and M.5. It is

also the claim of the petitioner management that the ESI and PF contributions were contributed by the second respondent to the third respondent. Now this Court has to consider whether the contract entered into between the petitioner and the second respondent is sham and nominal and camouflage. Admittedly, the present contract between the petitioner and the third respondent is not prohibited as per the notification u/s.10(1) of the Act, unless and until the said contract is prohibited as per the said notification, the second respondent is entitled to file a petition u/s.2 (A)-2 of the Industrial Disputes Act, 1947. Though the petitioner claims that there was an agreement between the petitioner and the third respondent based on which the petitioner provided employment, however, there is no proof to show that on what capacity the petitioner management issued a certificate for Forklift Safety training to the second respondent. Normally training certificate can be given based on the recognition of the second respondent from the authorities, however without any recognition, the petitioner management on their own provided training to the second respondent and issued a certificate and thereafter extracted work from him. All those facts elaborately hold that the contract entered into between the petitioner and the second respondent is sham and nominal. Therefore, the award passed by the Labour Court needs no interference of this Court.



W.P. No. 31646 of 2017

WEB COPY 7. With the above observation, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

21.09.2023

rap

Index: Yes/No

NCC : Yes/No

To

1. The Presiding Officer,
The Labour Court,
Cuddalore.



WEB COPY



W.P. No. 31646 of 2017

M.DHANDAPANI, J.

rap

**W.P. No.31646 of 2017
and
W.M.P.Nos.34763 of 2017, 11689, 11691 & 11692 of 2018**

21.09.2023