



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2023

Pronounced on : .09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.31673 of 2017

and

W.M.P.Nos.34802 & 36458 of 2017 & 1662 of 2018

Vestas Wind Technology India Private Limited
(Production Business Unit)
Rep by Manager (Legal)
No.298, Rajiv Gandhi Salai,
Chennai-600 019.

... Petitioner

Vs.

1. The Presiding Officer,
Third additional Labour Court,
Chennai.

2. Arul Prakasam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records connected with I.D.No.209/2013 and quash the Award dated 07.10.2017 passed by the 1st Respondent i.e., the Presiding Officer, III Additional Labour Court, Chennai.



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For Petitioner : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam
and Associates

For Respondents : Mr.P.R.Thiruneelakandan for R2

ORDER

Assailing the impugned award of the 1st respondent, the Presiding Officer, III Additional Labour Court in I.D.No.209/2013, the petitioner has filed this Writ Petition.

2. The petitioner herein is a Company registered under the Companies Act 1956 wherein, the 2nd respondent was appointed as a Technician Production in the year 2007 and thereafter, he was promoted as Senior Technician and thereafter promoted to the post of Team Supervisor in the cadre of Assistant Manager/Team Leader. The petitioner Company offered a package of voluntary retirement to its employees including the 2nd respondent which was orally accepted by him and the same was acted upon by the petitioner and the 2nd respondent was voluntarily retired from service



on 26.09.2012. Pursuant to his voluntary retirement, all terminal benefits were settled to the 2nd respondent.

3. Subsequently, the 2nd respondent raised an Industrial Dispute as against the petitioner under Section 2 A(2) of the Industrial Disputes Act in I.D.No.209 of 2013 before the 1st respondent/Labour Court alleging denial of employment from 26.09.2012 as also for reinstatement of his service along with backwages and all other attendant benefits and the Labour Court has passed the impugned Award in favour of the 2nd respondent which is under challenge in this Writ Petition.

4. Learned counsel for the petitioner submitted that the 2nd respondent having resigned himself voluntarily from the services of the petitioner company, had raised an Industrial Dispute under Section 2 A (2) of the Act before the Labour Court alleging denial of employment which petition is not maintainable in view of the fact that 2nd respondent does not come within the definition of “*workman*” as defined under Section 2(s) of the Industrial Disputes Act. Pursuant to said voluntary retirement, a sum of



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5,61,214/- towards severance compensation has also been transferred to the bank account of the workman and the documents to that effect have also been placed before this Court.

5. It is further submitted that, subsequent to his termination in the year 2012, the workman had started his Construction Company in the year 2013 under the name and style of M/s.Srilekha Homes at Plot No.33/1A, Priyadharshini Nagar, Sithalapakkam, Chennai-73 which was found from the Facebook profile of one Arul Mani who posted an Advertisement of Srilekha Homes and, therefore, the 2nd respondent is gainfully employed and, therefore, without appreciating the above, the award has come to be passed in the year 2017. The 2nd respondent having suppressed the fact of his gainful employment even since 2013, had obtained the award in his favour.

6. Further, during the pendency of this Writ Petition, the 2nd respondent filed a miscellaneous petition in W.M.P.No.36458 of 2017 claiming wages under Section 17B of the ID Act on the basis of the



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impugned Award passed by the Labour Court, which was allowed by the learned Single Judge of this Court vide order dated 24.09.2018, against which, Writ Appeal was filed by the petitioner company before the Division Bench of this Court in W.A.No.440 of 2019 which was allowed vide order dated 05.04.2019 holding that the benefit of wages under Section 17 B of the Act cannot be extended to the 2nd respondent in view of the fact that he is gainfully employed subsequent to his termination of services from the petitioner Company.

7. In view of the above, the petitioner is not entitled for reinstatement with back wages and continuity of service. However, without appreciating the aforesaid facts as also a detailed counter affidavit filed on behalf of the petitioner, the Labour Court has mechanically passed the award under Section 33-C(2) of the Industrial Disputes Act which is not sustainable and the same is liable to be set aside. Accordingly, he prays for allowing this Writ Petition.

8. Learned counsel appearing for the 2nd respondent submitted that the main contentions which have been raised by the Writ Petitioner



herein is that the 2nd respondent has no *locus standi* to raise an Industrial Dispute under Section 33-C(2) of the Act since, the 2nd respondent does not fall under the definition of “workman” as defined u/s 2(s) of the Industrial Disputes Act and that he had voluntarily resigned himself from service accepting the severance compensation.

9. It is the further submission of the learned counsel that though the petitioner claims that the 2nd respondent/workman does not fall within the ambit of 2(s) of the Act since he was in the cadre of Assistant Manager entrusted with powers and duties in a supervisory capacity at the time of his termination with the salary to the tune of Rs.7,40,676/- per annum, however, it is to be pointed out that on 01.04.2004, the 2nd respondent was initially appointed in the petitioner company only as an Electrician trainee and his service conditions remained unchanged as an Electrician and no such supervisory powers were given to the 2nd respondent as alleged by the petitioner.



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10. Learned counsel, drawing the attention of this Court to the decision of the Delhi High Court reported in 2003 (2) LLJ 210 wherein, it was held that the salary cannot be the criteria for deciding the status of the employee, as to whether he will come under the provision of Section 2(s) of the Act or not stressed that the said decision would stand attracted to the case and relied upon the following :-

***“2003 (2) LLJ 210-Delhi High Court-
K.H.Pandhi, Petitioner Vs.The Presiding
Officer, Addl.Labour Court Respondents-
“A.Industrial Disputes Act, 1947, Section 2(s)-
Petitioner working as Accountant-Whether a
'workman'-Labour Court held petitioner not to
be a workman-Petitioner basically during
clerical work under guidelines issued by Chief
Accountant and Chartered Accountant -Held,
designation of an employee is of no
consequence, he can fall within definition of
workman as a result of his main duty-Hence
petitioner was a workman within meaning of
Section 2(s) of Act.”***

11. In the light of the aforesaid decision and also on the evidence of MW1, the Labour Court held that, the salary of the 2nd respondent gains less significance. Based, on the above facts and



circumstances, the Labour Court concluded that the 2nd respondent is a workman who comes under the purview of Section 2(s) of the Industrial Disputes Act and he has every right to raise the Industrial Dispute questioning his termination before the Labour Court.

12. It is further submitted by the learned counsel appearing for the 2nd respondent that without issuing any notice mandated under Section 25 N(1)(a) of the Act, the 2nd respondent was terminated from service, pursuant to which, the Writ Petitioner had unilaterally remitted the alleged compensation amount of Rs.5,61,214/- into the petitioner's account. Further, no material has been placed before the Labour Court as well as this Court as to the voluntary resignation of the 2nd respondent from service. In fact, the 2nd respondent has returned the gratuity amount of Rs.82,814/- on 18.02.2013 which was also received by the Writ Petitioner and the documents to that effect were also placed before the Labour Court while passing the impugned award.



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13. It is the submission of the learned counsel that all the aforesaid facts have been elaborately considered by the Labour Court while passing the award for reinstatement of the 2nd respondent into service with backwages and continuity of service. It is evident from the materials placed before the Labour Court on behalf of the petitioner that no material has been placed as to the voluntary resignation of the 2nd resignation from the services of the petitioner. In the above backdrop, the award passed by the Labour Court does not suffer the vice of illegality and needs no interference. Accordingly, he prays for dismissal of this Writ Petition.

14. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and perused the materials available on record.

15. A perusal of the materials available on record reveals that subsequent to his voluntary retirement from the services of the petitioner company, the 2nd respondent/workman had raised an Industrial Dispute in



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I.D.No.209/2013 before the Labour Court by filing a petition u/s 2-A (2) of the Industrial Disputes Act alleging denial of employment as also for reinstatement wherein, the Labour Court has passed the award in favour of the workman.

16. Even from a careful perusal of the materials available on record it is evident that Award is of the year 2017, however, the workman had started his own Construction Company as early as in the year 2013, which is prior to passing of the Award. The gainful employment of the 2nd respondent is writ large on the record by the form of the decision of this Court negating the petition of the 2nd respondent claiming wages u/s 17-B of the Act. The said facts, though within the knowledge of the 2nd respondent, however, the same were not placed before the Labour Court by the workman. Having suppressed the fact that he is gainfully employed, the workman had obtained the Award in his favour which has prompted the petitioner to file the present Writ Petition.



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17. Further suppression had come in the form of the writ petition filed by the 2nd respondent claiming wages under Section 17-B of the Act, which was granted in the writ petition against which writ appeal was filed wherein, the Division of this Court having elaborately discussed the aforesaid facts, has held that the benefit of wages under Section 17B cannot be extended to the workman, when such workman is gainfully employed, as the intent of Section 17-B is only to provide wages to an employee for the purpose of survival.

18. True it is that salary cannot be the criteria to decide the nature of employment. However, it should not be lost sight of that it is the case of the petitioner that the 2nd respondent was employed in a supervisory capacity. In fact, it is the case of the workman that initially he joined as Electrician but that cannot be the basis to determine that even as on date the 2nd respondent is an electrician. It is not the case of the 2nd respondent either that he is still working as electrician. It is the claim of the workman that he has not been given any supervisory job, though it has not been stated by the 2nd respondent that he is still working as an electrician. Such being



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the case, in the absence of any material filed by the 2nd respondent to show that he is still functioning as electrician so as to attract the definition of “*workman*” u/s 2 (s) of the Act, the overwhelming materials placed by the petitioner to establish that the 2nd respondent was working in a supervisory capacity cannot be brushed aside. Without there being any contra material, the stand of the workman cannot be the basis to take the claim and hold that the 2nd respondent is entitled for reinstatement.

19. When the 2nd respondent has not come to court with clean hands and had suppressed very many material facts, the Labour Court ought not have passed the Award in favour of the 2nd respondent which clearly shows the non-application of mind by the Labour Court while passing the impugned Award. The award passed by the Labour Court manifests itself with very many infirmities and reveals non-application of mind that the award passed for reinstatement with other consequential benefits are not supported by the materials available and, therefore, the impugned Award of the Labour Court in I.D.No.209 of 2013 deserves to be interfered with.



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20. For the reasons aforesaid, this writ petition is allowed and the the award passed by the Labour Court in I.D. No. 209 of 2013 is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous Petition stands closed.

.09.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

NHS/GLN

To

The Presiding Officer,
Third additional Labour Court,
Chennai.



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M.DHANDAPANI, J.

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**Pre-Delivery order
in
W.P.No.31673 of 2017**

.09.2023