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W.P.No.3269 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.3269 of 2017

and

**W.M.P.Nos.3228 of 2017, 30385, 30390 & 30393 of 2018 and
1888 of 2020**

M/s.Chennai Container Terminal
Limited, Rep. by its Chief Executive
Officer – Cum – Director, Chennai Port
Trust, Old Administration Office Building,
Chennai – 600 001.

... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai.

2.G.Suresh Kumar (Emp.I.D.No.1320)
3.R.Harikrishnan (Emp.I.D.No.1253)
4.G.Bhuvanesh (Emp.I.D.No.1400) (died)
5.S.Balachandran (Emp.I.D.No.1277)
6.K.Lakshmanan (Empl.I.D.No.1228)
7.B.Rajeshwari
8.B.Akshaya
9.B.Keerthana

... Respondents

[R7 to R9 – impleaded as LR's of 4th respondent vide
order dated 26.09.2023 made in W.M.P.No.25059 of 2023
in W.P.No.3269 of 2017]



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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.Nos.118, 119, 120, 122 of 2014 and I.D.No.4 of 2015 and to quash the common Award dated 27.10.2016 passed by the first respondent.

For Petitioner : Mr.Sanjay Mohan, SC
for M/s.S.Ramasubramaniam &
Associates

For Respondents : Labour Court [R1]
Mr.N.G.R.Prasad
for M/s.Row & Reddy [R2 to R9]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records connected with I.D.Nos.118, 119, 120, 122 of 2014 and I.D.No.4 of 2015 and to quash the common Award dated 27.10.2016 passed by the first respondent.

2. The case of the petitioner is that, it is a company registered under Companies Act, 1956 and engaged in the business of Container Terminal Handling having its registered office at Mumbai and Terminal office at Chennai. DP World is the holding company and has subsidiaries in India and one of the subsidiaries is the petitioner. There are two categories of employees in the petitioner company. One category belongs to those in the



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"workman" category in accordance with the provisions of the Industrial Disputes Act, 1947 (in short 'the ID Act') and another belongs to those in the officers category.

2.1. The respondents 2 to 6 herein are working as officers and not in the category of "workman" and they are not covered by the provisions of ID Act. As against the termination order passed by the petitioner, the respondents 2 to 6 raised industrial disputes before the conciliation officer under Section 2A of the Industrial Disputes Act, 1947 (in short 'the ID Act') and since the conciliation ended in failure, they had approached the first respondent/Labour Court and the industrial disputes are numbered as I.D.Nos.118, 119, 120, 122 of 2014 and 4 of 2015. After adjudication, the first respondent passed a common award for reinstatement of the respondents 2 to 6 with backwages, continuity of service and all other benefits. Challenging the same, the petitioner filed the above writ petition before this Court.

3. The learned Senior Counsel appearing for the petitioner submitted that, the petitioner contested the disputes before the first respondent by



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contending that the respondents 2 to 6 are not workmen in terms of ID Act and they are not entitled to raise industrial disputes, since they belong to officers category. He further submitted that the respondents 2 to 6 are officers and their nature of work is managerial and supervisory. When they are in the managerial cadre, they are not entitled to raise dispute under Section 2A of the ID Act and they cannot be considered as Workmen. However, the Labour Court had mechanically arrived at a conclusion that the respondents 2 to 6 are workmen and they are entitled for reinstatement and backwages, thereby, the order passed by the Labour Court is perverse and the same is liable to be interfered with.

4. Further, the learned Senior Counsel submitted that the, during the pendency of this writ petition, the fourth respondent passed away and the petitioner management has calculated the backwages of the fourth respondent to the tune of Rs.14,48,362/- and he is entitled for the said amount, if the award is confirmed by this Court. Accordingly, he prays for appropriate orders.



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5. Per contra, the learned counsel appearing for the respondents 2 to 9 submitted that, the petitioner management had taken over the entire Container Handling Operations of Chennai Port Trust in the year 2001 for a period of 30 years. He also submitted that the respective workmen joined as 'Checker' and subsequently, promoted as Junior Grade Officer and in view of the adoption of dual standards in wage pattern by the petitioner management, the respective workmen joined Madras Port Trust Employees Union to ventilate their grievances. Subsequently, the Union placed a Charter of Demands stating that the benefits of the settlement dated 19.01.2011 entered into between the petitioner management and the Union should be extended to the so-called Supervisory Staff / Officer also. Since the petitioner management failed to accede to the demands of the Union, a strike notice was issued and pursuant to which, the respective workmen were transferred to some other terminal. Challenging the malafied transfer, they have raised disputes before the conciliation officer and the conciliation officer submitted a failure report. In the meanwhile, the transferred workers including the workmen herein filed a writ petition before this Court in W.P.No.22492 of 2013. When the matter came up for hearing, the petitioner management withdrew the transfer order. Instead of directing the workmen to report for



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duty at Chennai, the petitioner management issued an order of termination on 21.04.2014 and the said termination order is contrary to Section 33 of the ID Act and is in violation of Sections 25F, 25G and 25H of the ID Act and the case of victimization. Hence, the respective workmen raised disputes before the Labour Court. After elaborate consideration, the Labour Court arrived at a conclusion that the order of termination is an unfair labour practice and passed award in favour of the respective workmen, which cannot be interfered with and the same is not perverse. Accordingly, he prays for dismissal of the writ petition.

6. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents 2 to 9 and perused the materials available on record.

7. Initially, the respective workmen entered the service of the petitioner management as 'Checker' and subsequently, they were promoted to supervisory cadre. In the meanwhile, the petitioner management transferred their employees including the workmen herein. Challenging the transfer order passed by the petitioner management, they have filed writ petition before this



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Court. In the meanwhile, for non-compliance of the transfer order, the petitioner management initiated disciplinary proceedings against them and the same ended in dismissal of service, which was successfully challenged before the first respondent/Labour Court. Before the Labour Court, the petitioner management contested the cases on the ground that the respective workmen are not workmen in terms of Section 2(s) of the ID Act and they are working in the supervisory cadre and they were receiving more than Rs.10,000/-, thereby, they are not entitled to raise disputes before the Labour Court.

8. The issues arises in this writ petition are (i) whether the respondents 2 to 6 are workmen, (ii) whether they rendered service in the capacity of workmen or supervisor and (iii) whether the punishment the imposed by the petitioner management is disproportionate or not? Since the issues are interconnected, all the issues are answered commonly.

9. In order to substantiate the claim that the respondents 2 to 6 are not workmen and they are not entitled to approach the Labour Court in terms of Section 2(s) of the ID Act, the petitioner management examined two



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witnesses, namely M.W.1 and M.W.2. During the cross-examination of M.W.1, he admitted that as seen from Ex.M.106, the second respondent has posted Form-13. He also stated that usually Form-13 is posted by the Checker and only if the Checker is not available, it is done by the Supervisor. From which, it is clear that, in the absence of Checker at the relevant point of time, Supervisor will be deputed to do the work of the Checker. Further, M.W.2 is the General Manager of the Administration Department and during his cross-examination, he had deposed that the petitioner establishment is having more number of Supervisors than workmen. He admitted that the respondents 2 to 6 are entitled to take disciplinary action against the contract employees only. However, they are not entitled to take disciplinary action against the permanent workers. That power is available only with the petitioner management. It is pertinent to note that, no document was produced to prove that the respondents 2 to 6 were working in the managerial capacity. On a cumulative perusal of the entire document produced before the Labour Court reveals that, the petitioner management has promoted the respondents 2 to 6 only to deprive them from enjoying the status of workmen. It is seen that the post of supervisor is more than the post of workmen and the respondents 2 to 6 are employed only in the capacity of workmen and not in



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supervisory capacity. Hence, the respondents 2 to 6 are entitled to raise dispute in terms of 2(s) of the ID Act. However, the punishment imposed by the petitioner management is highly disproportionate as per the ratio laid down by the Apex Court in the case of ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)***.

10. By considering all the above aspects and based on the oral and documentary evidence adduced by the petitioner management and the workmen, the first respondent/Labour Court passed the impugned award, which is *per se* sustainable, thereby, this Court is not inclined to interfere with the order of reinstatement passed by the first respondent. Therefore, the petitioner management is directed to reinstate the respondents 2, 3, 5 and 6 either in Redhills or Vallur, with continuity of service and all other benefits, within a period of four (4) weeks from the date of receipt of a copy of this order.

11. In respect of the backwages awarded by the first respondent, this Court is of the view that based on the evidence adduced by the parties, the Labour Court has awarded backwages in favour of the respective workmen,



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thereby, the same cannot be interfered with. Hence, the backwages awarded by the first respondent is hereby confirmed.

12. It is seen from the records that, during the pendency of this writ petition, the fourth respondent passed away and his legal heirs were impleaded as respondents 7 to 9. As per the award passed by the Labour Court, the respondents 7 to 9 are entitled to receive a sum of Rs.14,48,362/- towards backwages of the fourth respondent, as per the calculation memorandum filed by the petitioner management. Hence, this Court directs the petitioner management to disburse the said amount to the respondents 7 to 9 within a period of four (4) weeks from the date of receipt of a copy of this order. If they are aggrieved by the said amount, they are at liberty to file a computation petition before the Labour Court under Section 33 C(2) of the ID Act within a period of four (4) weeks from the date of receipt of a copy of this order and if any computation petition is filed, the Labour Court is directed to conclude the same and pass appropriate award, within a period of twelve (12) weeks thereafter, after providing opportunity to the petitioner management and the legal heirs of the deceased fourth respondent.



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13. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes / No
Speaking order / Non-speaking order
Netruai Citation Case : Yes / No
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To

The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhavan,
Chennai.



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W.M.P.No.25059 of 2023

in

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M.DHANDAPANI, J.

The present writ miscellaneous petition is filed seeking to implead the proposed respondents being the legal heirs of the 4th respondent (deceased) as respondents 7, 8 and 9 in the above writ petition, is ordered as prayed for.

26.09.2023

sp

(1/2)

Note: Registry is directed to carry out the necessary amendment in the cause title.