



W.P.No.15788 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.15788 of 2017
and WMP.No.17077 of 2017

The Management of Pentamedia Graphics Limited,
(Formerly known as M/s.Pentafor Software & Export Pvt., Ltd.,)
No.I, First Main Road,
United India colony,
Kodambakkam, Chennai-103
Rep. By its Managing Director
V.Chandrasekaran.

... Petitioner

Vs.

1. The Presiding Officer,
2nd Additional Labour Court,
Chennai.

2. M/s.Pentafore Projects & Securities Ltd.,
Thaiyur Chengannal Village & Post,
Kelambakkam, Chengalpet,
Kancheepuram District.

3. S.Balaji

P.Murugesan (Deceased)

4. M.Kiliammal (Wife)
5. Ushamanikandan (Daughter)
6. M.Nirosha (Daughter)
7. M.Pushpalatha (Daughter)
8. M.Gomathi (Daughter)
9. V.Rajamani



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10. A.Kuppan
11. K.Thirunavukkarasu
12. S.Jayaprakash
13. P.Sivamuthu
14. D.Sudhakar
15. P.Umapathi
16. R.Sanjeevidoss
17. T.Mari
18. S.Vasu
19. C.Srinivasan
20. C.Boopathy
21. S.Sivakumar
22. A.Paneer Selvam
23. S.Rose
24. S.Kumar
25. S.Rajasekar
26. J.Sathyanarayanan
- 27.K.Babu
- 28.H.Padmanaban
29. K.Mathivanan
30. P.Kannan
- 31.A.John Britto

... Respondents

PRAYER : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records connected with ID No.179 to 203 of 1998 and quash the award dated 28.02.2017 insofar the direction issued against the petitioner by the first respondent i.e. The Presiding Officer, 2nd Additional Labour Court, Chennai.

For Petitioners : Mr.Sanjay Mohan

For Respondents : Mr.Mohammed Aseaf (all the workmen)
R1 - Court



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ORDER

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This writ petition has been filed seeking to quash the order in ID No.179 to 203 of 1998, dated 28.02.2017 insofar as the direction issued against the petitioner by the first respondent.

2. The case of the petitioner is that the Petitioner is a Company registered under Companies Act and carries on the business of Software Development. The writ petitioner was at the relevant time a registered Principal Employer under the Contract Labour (Regulation and Abolition) Act, 1970 and these contractors were also licensed contractors under said Act. The 2nd Respondent being the contractor to the Petitioner he had engaged their own workmen for the purpose of fulfilling their contractual obligations at the factory of the Petitioner while it was functioning. The 2nd Respondent remitted, In respect of its employees the Provident Fund Contribution under the PF code No. TN 26364. And ESI remittances under the Code No 51-51535-101. Due to huge loss, the Petitioner was constrained to terminate the contract with the 2nd Respondent. Hence, the petitioner came to know that the 2nd Respondent terminated the Employment of his employees namely Respondents 3 to 27. Subsequent to the termination of Contract. The Second



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Respondent Issued termination Orders to its employees and settled, As far as

the writ petitioner was aware all the dues including the compensation in the

name of Good will.6) I submit that the Petitioner ie, Pentalour Software and

Exports Limited was renamed as Pentamedia Graphics Limited during Jan

2000. The Petitioner submits that due to downtrend in the business the

Petitioner was not able to run the business. All the properties were taken over

by the banks and statutory Authorities The Petitioner finally surrendered the

factory license on 31:03 2006 to the Inspector of Factories, Kancheepuram.

The Petitioner's Kelambakkam Property was taken possession under the

SARFEASI Act for the defaulted loan, by Pegasus Asset Reconstruction

Company It is submitted that the Kelambakkam property was sold under the

SARFEASI Act. The 3rd to 27th Respondents raised an Industrial Dispute

against the Petitioner and 2 Respondent before the conciliation officer. Since

the conciliation ended in failure, the 3rd to 27th Respondents raised an

Industrial Disputes before the Second Additional Labour Court I.D No179to

1.D 203 of 1998, Chennai, the First respondent herein. After hearing both

parties, the First Respondent vide his impugned order dated 27.08.2017

allowed the Industrial Dispute filed by the 3rd to 27th Respondent. The First

Respondent has in the impugned order has given a direction to the Petitioner



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to direct the 2nd Respondent to reinstate Respondents 3-27 with back wages.

Hence this writ petition.

3. The learned counsel for the petitioner submitted that the second respondent contractor set ex-parte before the Labour Court and the petitioner has arrayed as the first respondent filed a detailed counter before the Labour Court stating that the workmen have no direct employment with the petitioner and in the absence of employee and employer relationship, the award passed by the Labour Court is not sustainable one. Further, all the documents produced by the workmen viz., Exs. W-1 to W-60, which clearly proved that they were employed with the second respondent and all the contributions such EPS, provident fund were directed paid by the second respondent in the name of the workmen, which itself proved that there is no employee and employer relationship between the petitioner and the workmen and therefore, the allegation that the retrenchment is not for any reasonable cause. In the absence of any relationship, the Labour Court passed an award in favour of the workmen, which is not sustainable one and the same is liable to be quashed. Hence, this Court may allow the writ petition by setting aside the impugned order.



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4. Per contra, the learned counsel for the respondents workmen submitted that though some of the documents were clearly reveal that the workmen were engaged by the second respondent as contract employees. However, subsequently, the termination orders have been issued by the petitioner, which was marked as Ex.W.50. After issuing the termination order, the petitioner management engaged the respondents workmen continuously and issued appointment orders to the workmen, which was marked as Ex.W60 and further, the petitioner has issued the identity card to the workmen which was marked as Ex.W59. Further the management witness viz., MW1 has categorically admitted that the respondents workmen were employed with the petitioner and no show cause notice was issued before termination. When the categorical finding rendered by the employee of the petitioner, this Court may not interfere with the impugned award passed by the Labour Court. Accordingly, the learned counsel prays that this Court may dismiss the writ petition.

5. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record.



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6. The facts of the case are not in dispute. Admittedly, the respondent workmen were engaged by the second respondent at the relevant point of time. It is equally admitted facts that the petitioner has cancelled the contract entered into with the second respondent. Subsequent to the termination of the contract, the workmen claimed that they were continuously working with the petitioner. However, the issue arises in the present writ petition is that whether there was a employee-employer relationship between the petitioner and the respondents workmen. The Labour Court has arrived at a conclusion that Ex.W56/bonafied certificate marked by the respondents workmen issued by the petitioner, which itself clearly shows that the respondents workmen were employed with the petitioner. It is also not disputed that the petitioner has issued identity card to the respondents workmen. Further the management witness viz., MW1 has admitted that the respondents workmen were employed with the petitioner and there is no show cause notice issued before termination. Hence, the Labour Court has rightly passed an award in favour of the workmen and this Court cannot interfere with the same. There is no merit in the writ petition and the same is liable to be dismissed.



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7. In view of the above, this Court has no hesitation to confirm the award passed by the Labour Court and accordingly, the writ petition fails and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

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Index : Yes / No

Speaking order / Non speaking order

To

The Presiding Officer,
2nd Additional Labour Court,
Chennai.



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