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W.P. No. 27935/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
28.08.2023	07.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.27935 OF 2017

United Labour Federation
Rep. By its General Secretary
C.J. Complex, 4th Floor
149, Thambu Chetty Street
Chennai 600 001.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court, Salem.
2. The Management of Luk India Pvt.
Ltd. Rep. Nby its Director
Post Box No.20, Royakottai Road
Hosur, Krishnagiri District 635 109.
3. The Management of Ikon
Management Services, rep. By
Its Authorised Representative
City Centre Plaza
Second Floor, No.7, Anna Salai
Chennai 600 002 & also at
No.12/18, titan Township
Hosur 635 110.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the award dated 19.1.2017 made in I.D. No.62 of 2007 on the file of the first respondent, the Presiding Officer, Labour Court, Salemand quash the same as illegal and against law and consequently direct the 2nd respondent to reinstate the 36 employees with continuity of service, entire backwages and attended benefits in the 2nd respondent company.

For Petitioner : Mr. K.V.Ananthakrishnan

For Respondents : Mr. Anand Gopalan, for
M/s. T.S. Gopalan & Co. For R-2
No Appearance for R-3

ORDER

Assailing the award of the 1st respondent dated 19.01.2017 in and by the claim of the petitioner in respect of 36 workmen, who were denied the benefit of reinstatement, in I.D. No.62/2007, the present writ petition has been filed.



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2. It is the case of the petitioner that the 2nd respondent is engaged in the manufacture of clutch plates, crusher plate assemblies for four wheelers for major automobile manufacturers. Initially the 2nd respondent was functioning under the name of 'Rane Brake Linings' and on and from 1997, the name of the 2nd respondent was changed as 'Rane Luk Clutch Ltd.', and, thereafter, changed to 'Luk India Pvt. Ltd.'. It is the further case of the petitioner that the 36 employees, who have been covered under the abovesaid award, were engaged with the 2nd respondent and joined on various dates since the year 1995 and except for a few employees the majority of the employees were working continuously for ten years and more in different cadres.

3. It is the further case of the petitioner that the 2nd respondent is having 150 regular employees and 350 contract workers and about 200 office staff on their rolls. It is the allegation of the petitioner that the 36 employees were taken into service directly with the 2nd respondent and for the purpose of avoiding regularisation of those employees, it is alleged that the Management created documents to show that all the said employees were



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working under various labour contractors. It is further alleged by the petitioner that to substantiate the same, the 2nd respondent created documents initially with one Sivasubramanian and subsequently with Sakthi Management Services and, thereafter, with Ikon Management Services, the 3rd respondent herein. It is the further allegation of the petitioner that contract labourers are not given any designation or work in the contract labour register maintained by the said contractors and the workers were asked to sign in the payment wage register maintained by the contractors for getting their salary. It is the further case of the petitioner that the disbursement of salary was effected only by the 2nd respondent, but signatures were obtained in the register created by the contractors for showing that the employees were contract labourers.

4. It is the further allegation of the petitioner that initially the employees were engaged directly and contribution towards P.F., E.S.I. were deducted in the name of the company and, thereafter, to circumvent all the labour legislations, P.F. and E.S.I. contributions were made in the name of Sakthi Management Services and, thereafter Ikon Management Services.



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5. It is the further case of the petitioner that the documents showing the employees were workmen under the 2nd respondent, are in the custody of the 2nd respondent and further to establish the same, the workman at S. No.26, viz., Narayanaswamy, an employee engaged in the manufacturing activity met with an accident for which the 2nd respondent issued letter for his treatment at the ESI hospital. It is the further allegation of the petitioner that neither Sakthi Management Services nor Ikon Management Services sent the aforesaid 36 workmen to any other industries for work, except the 2nd respondent, which clearly establish that the 36 employees are workmen under the 2nd respondent and, therefore, they had been demanding regularisation since the year 2005 and because of the same, the said employees were terminated by the 4th respondent. Against the said act, the Union raised a dispute before the Conciliation Officer and on failure of conciliation the disputed was referred to the 1st respondent.

6. Before the Labour Court, the petitioner examined two witnesses, viz., W.W.1 and W.W.2 and marked Exs.W-1 to W-21. On behalf of the



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Management, witnesses M.W.s 1 and 2 were examined and Exs.M-1 to M-146 were marked. The Labour Court, on consideration of the oral and documentary evidence answered the reference against the petitioner herein and dismissed the claim petition, aggrieved by which the present petition has been filed.

7. Learned counsel appearing for the petitioner submitted that the contractors, initially Sivasubramanian, thereafter Sakthi Management Services and then Ikon Management Services were created just for the purpose of defeating the legitimate claim of the 36 employees. Learned counsel appearing for the petitioner submitted that it would be evident that the workmen were really employees of the 2nd respondent from the fact that initially P.F. and E.S.I. were paid by the 2nd respondent and even in respect of the workmen, who met with accident during the course of their employment, the 2nd respondent had issued letter to the E.S.I. Hospital.

8. It is the further submission of the learned counsel that though the workmen have put in more than 5 years of continuous service in the



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manufacturing activity of the 2nd respondent, however, they were terminated from service on account of their seeking regularisation, which shows that the 2nd respondent was utilising the contractors to the detriment of the workmen.

9. It is the further submission of the learned counsel that though the workmen filed writ petition in W.P. No.36014 of 2005 for regularisation of service, however, upon their termination, they withdrew the application and filed individual applications u/s 2-A of the Industrial Disputes Act challenging their dismissal. This would be evident from the withdrawal of the writ petition in W.P. No.36014/2005 in which the workmen were permitted to withdraw and agitate their rights before the Labour Court.

10. It is the further submission of the learned counsel that order of appointment, Ex.W-2 relating to the 36 employees, issued by the 3rd respondent, clearly show that there is a specific condition in the said order that the workmen have to abide by the standing orders and service rules of the 2nd respondent and that they would be supervised by the 2nd respondent, which clearly establishes the case of the petitioner that only to circumvent the



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labour legislations, the workmen were appointed through contractors.

Further, the appointment of the workmen with the 2nd respondent would stand proved by the contribution towards P.F. and E.S.I. paid by the 2nd respondent.

11. It is the further contention of the learned counsel that though the workmen were directly employed under the 2nd respondent only to camouflage the same, the contractors were pressed into service, which was changed at the convenience of the 2nd respondent, though the 36 workmen were utilised continuously under different contractors. Thus, by piercing the veil, it could be clearly seen that the 2nd respondent is the principal employer, who has been adopting unfair labour practice in the employment of the workmen and their consequent termination.

12. It is the further submission of the learned counsel that the finding of the Labour Court that the 36 workers in continuous employment are contract labour is against facts and the findings are perverse and against law. Since the 2nd respondent had illegally terminated their service, they are



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entitled for reinstatement along with all benefits. Accordingly, he prays for allowing the present petition.

13. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *Standard Vaccum Refining Co. Of India Ltd. – VS – Their Workmen & Anr. (1960 (II) LLJ 233 (SC);*
- ii) *Hussainbhai, Calicut – Vs – Alath Factory Thozhilali Union, Calicut & Ors. (1978 (II) LLJ 397 (SC);*
- iii) *The Workmen of the Food Corporation of India – Vs – M/s. Food Corporation of India (1985 (II) CTC 4 (SC);*
- iv) *Secretary, Haryana State Electricity Board – Vs – Suresh & Ors. (1999 (1) LLJ 1086 (SC);*
- v) *O.P.Bhandari – Vs – Indian Tourism Development Corporation Ltd. & Ors. (1986 (4) SCC 337);*
- vi) *Harjinder Singh – Vs – Punjab State Warehousing Corporation (2010 (1) SCR 591);*
- vii) *The Management of Safire Theatre – Vs – The Addl. Commissioner for Workmens' Compensation (1977 (II) LLJ 312 (Mad); and*
- viii) *The Management of HPCL – Vs – The Central Industrial Tribunal (W.P. No.37547/2005, etc. – Dated 22.7.2008)*



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14. Per contra, learned counsel appearing for the 2nd respondent submitted that the petitioner has no *locus* to prosecute the present claim petition on behalf of the 36 workmen, as the petitioner Union was never recognised by the 2nd respondent. Placing reliance on the findings rendered by the 1st respondent, it is the submission of the learned counsel that in the absence of the petitioner proving their claim that they are entitled to take up the issue with regard to the 36 workmen, the petitioner Union has no *locus* to prosecute the claim petition.

15. It is the further submission of the learned counsel that had the contractor, viz., the 3rd respondent was not in the picture and the 36 workmen were not under the 3rd respondent, there would have arisen no necessity for the petitioner to include the 3rd respondent as a party respondent in the writ petition as well as in the claim petition. The fact that the petitioner had included the 3rd respondent as a party respondent to the claim petition as well as in this writ petition shows that Ikon Management Services was indeed the contractor, who had supplied contract labourers to the 2nd respondent, whose services were utilised by the 2nd respondent.



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16. It is the further submission of the learned counsel that the workmen can only raise any dispute as against the person under whom they are employed and merely because they have been asked to do work at the 2nd respondent establishment under a contract, they cannot claim any right to claim any benefit, including regularisation/reinstatement with the 2nd respondent.

17. It is the further submission of the learned counsel that though it is the claim of the petitioner that the workmen were continually employed with the 2nd respondent for more than 10 years, however, it has been held by the 1st respondent that only after the severing of the contract between the 2nd respondent and the 3rd respondent in the year 2005, the present dispute had been raised by the petitioner/36 workmen, which clearly shows that the workmen were never under the employ of the 2nd respondent.

18. It is the further submission of the learned counsel that after obtaining requisite permission from the authorities to engage contract



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labourers from registered contractors, as evidenced by Ex.M-4, the 2nd respondent had taken the service from the 3rd respondent, which fact has not been disputed by the petitioner. It is the further submission of the learned counsel that merely because the contract labourers were carried from one contractor to the other upon the severance of contract with the erstwhile contractors would not be the basis for the petitioner to claim that the 2nd respondent is the employer and is bound to regularise the services of the 36 workmen and that the contract entered into cannot be said to be sham or nominal.

19. It is the further submission of the learned counsel that when the workmen had impleaded Ikon Management Services as party respondent in the Application No.483/2005 before the Deputy Labour Commissioner and also before the Labour Officer, Krishnagiri, which is borne out in Ex.M-28 to Exs.M-59 and also by the counter of the 3rd respondent. Further, all along the P.F. and E.S.I. of the workmen were paid through the code numbers of the service providers/contractors, which clearly establishes that the workmen



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were under the employ of the 3rd respondent and, therefore, they cannot claim any reinstatement into service from the 2nd respondent.

20. All the documentary evidence as well as the oral evidence have been appreciated by the 1st respondent in proper perspective, while rejecting the claim of the petitioner and, therefore, it is submitted that no interference is warranted with the order passed by the 1st respondent.

21. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *International Airport Authority of India – Vs – International Air Cargo Workers Union & Anr. (2009 (13) SCC 374);*
- ii) *Balwant Rai Saluja & anr. – Vs – Air India Ltd., & Ors. (2014 (9) SCC 407);*
- iii) *Director, Steel Authority of India Ltd.. – Vs – Ispad Khadan Janta Mazdoor Union (2019 (7) SCC 440);*
- iv) *ONGC – Vs – Krishan Gopal & Ors. (2020 SCC OnLine SC 150); and*
- v) *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat – Vs – Hind Mazdoor Sabha & Ors. (1995 (5) SCC 27)*



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22. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

23. Though very many decisions have been relied on by either side, however the fact remains that the issue is more on question of fact and covered by documents and there being no legal issue involved, the issue has to be decided on facts and therefore, advertence to decisions is not required.

24. The whole case of the petitioner revolves around their contractual employment with the 2nd respondent through various contractors, which according to the petitioner was only to circumvent the various labour legislations.

25. It is the stand of the workmen that under the guise of contractual employment, the workmen were deprived of their regularisation with the 2nd respondent and only against the same, the present dispute has been raised.



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As aforesaid, before the 1st respondent, both oral and documentary evidence have been adduced by either side in support of their contentions.

26. The foremost ground on which the 1st respondent had negated the claim of the workmen is that the contractual employment with the 3rd respondent is even admitted by the workmen. To arrive at the said finding, the 1st respondent had pointed out that while the petition in 483/2005 filed before the Deputy Commissioner of Labour as also against the Labour Officer, Krishnagiri, the 3rd respondent had been shown as party respondent to the dispute. If there was no association of the 3rd respondent with the workmen, there would have arisen no necessity for the petitioner to implead the 3rd respondent as party respondent. The aforesaid fact is evident from Exs.M-28 to M-59 filed by the 2nd respondent and the same is not disputed by the petitioner.

27. It is the categorical case of the 2nd respondent that initially the workmen were under the contractor, one Sivasubramaniam and, thereafter, they were working under the contractor, M/s.Sakthi Management Services



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and lastly under the 3rd respondent. The aforesaid contention of the 2nd respondent is not disputed by the petitioner in any form. In fact, no material has been placed either before the 1st respondent or before this Court to show that there was a direct nexus of employer-employee relationship between the workmen and the 2nd respondent.

28. The only ground canvassed by the petitioner for claiming relationship is that the PF and ESI contribution were initially paid by the 2nd respondent. To answer the aforesaid contention, it is the case of the 2nd respondent that initially the contractor Sivasubramanian was not in possession of PF and ESI code due to which the payment towards PF and ESI for the said workmen were paid under the code of the 2nd respondent. Once the workmen went under the contractor Sakthi Management Services and, thereafter, under Ikon Management Services, viz., the 3rd respondent, all the ESI and PF were paid under the code of the contractors. Further, at a later point of time, the payment of ESI and PF under the code of Sakthi Management Services and Ikon Management Services has not been disputed by the petitioner.



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29. Further, it is the categorical admission in the oral testimony of W.W.1 that the workmen, who are concerned with the present writ petition, were not in receipt of any salary hike, which is provided to the workmen under the employment of the 2nd respondent by virtue of the settlement entered into by the 2nd respondent with the Trade Union and further the Trade Union was in no manner representing the present workmen. Therefore, merely because the workmen have been in continuous engagement of the 2nd respondent cannot be a ground to confer employer-employee relationship, as the 3rd respondent, who had paid the workmen alone could be held to be the employer of the workmen.

30. Similarly, the contract entered into between Sivasubramaniam and the 2nd respondent has been marked as Ex.M-1 and Ex.M-8 is the company ledger, which have been marked through M.W.1. When the said documents were marked, no objection was raised by the petitioner to the marking of the said documents. Had the contractor Sivasubramaniam really not available, definitely the petitioner would have raised an objection for marking the said



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documents. Even no material was placed to disprove the said documents marked by the 2nd respondent. Therefore, the contract entered into between the contractors and the 2nd respondent cannot be said to be sham and nominal.

31. Further, one other document which stares on the face of the petitioner is the permission obtained by the 2nd respondent for employing contract labour. Ex.M-4 is the permission granted to the 2nd respondent for employing contract workmen, based on which the workmen concerned herein were employed through the contractors. The said document was not objected to by the petitioner. Such being the case, the whole fabric of the case of the petitioner that the employment of the workmen through contractors is sham and nominal does not deserve acceptance.

32. Further, Exs.W-9 and 10, the deductions made by the 2nd respondent towards the PF payable by the workmen and the ESI contribution made by Sakthi Management Services and Ikon Management Services in respect of the workmen have been marked by the petitioner. The said



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documents self-destruct the case of the petitioner. It is the case of the 2nd respondent that under the terms of the contract with Sakthi Management Services and thereafter with Ikon Management Services, the services of the workmen were utilised and payment with regard to the services were paid to the contractor, who in turn paid the salary to the workmen. The abovesaid documents clearly prove that the relationship of employer and employee does not exist between the workmen and the 2nd respondent; rather, the said relationship could only be claimed either with Sakthi Management Services or Ikon Management Services. Further, the documents filed by the 2nd respondent, viz., Exs.M-1, M-2 and M-3, the various contracts entered into between the 2nd respondent and the contractors, vouch the stand of the 2nd respondent that only under a contract, the service of the workmen were utilised.

33. The documents filed by the petitioner in no way prove that the workmen represented by the petitioner are in any way connected with the 2nd respondent in an employer-employee relationship and further the fact that the petitioner Union is not a recognized union to represent the workmen, as it



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is not the case of the workmen even that the petitioner Union was recognized by the 2nd respondent to represent the workmen. Such being the case when even the locus of the petitioner to represent the workmen has been negative, in the absence of any material to show the relationship between the workmen and the 2nd respondent, and there being overwhelming materials which prove the contra to what is claimed by the petitioner, rightly the Labour Court had rejected the reference and held the award against the petitioner and this Court does not find any reason to interfere with the same as the findings arrived at by the 1st respondent are neither perverse nor unreasonable and arbitrary and, therefore, no interference is warranted with the order impugned herein.

34. For the reasons aforesaid, this writ petition fails and the same is dismissed. There shall be no order as to costs.

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Index : Yes / No

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The Presiding Officer
Labour Court, Salem.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NO. 27935 OF 2017**

**Pronounced on
07.09.2023**



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