



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 30.08.2024**

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**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**W.P.No.11806 of 2013**

J.Manohar

...

Petitioner

***versus***

1.Chennai Sarvodaya Sangh,  
Rep. by its Secretary,  
46, Ranganathan Street,  
T.Nagar, Chennai-600 017.

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

...

Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records and quashing the order dated 24.09.2012 passed by the second respondent in I.D.No.415 of 2004.

For Petitioner : M/s.Manoj Sreevalsan

For Respondent No.1 : M/s.N.A.Nissar Ahmed

For Respondent No.2 : Labour Court

**ORDER**



The petitioner / workman has filed this Writ Petition challenging the award of the learned Presiding Officer, III Additional Labour Court, Chennai, made in I.D.No.415 of 2004 dated 24.09.2012.

2. The petitioner has raised a dispute stating that he has been terminated illegally and sought reinstatement along with backwages and all other attendant benefits. The learned Presiding Officer has dismissed the claim of the petitioner stating that there was an employee employer relationship existed between the petitioner and the first respondent was not proved. It is further stated that the petitioner was engaged as a trainee assistant and he was not recruited as an employee in the first respondent's Company. The amount of Rs.1,500/- given to the petitioner every month was towards his stipend and not towards his salary.

3. Mr.Manoj Sreevalsan, learned counsel for the petitioner / workman submitted that the above findings of the Labour Court are erroneous and not based upon the documents filed before the Court. It is further submitted that the evidence of the Management witness viz. M.W.1



was not properly appreciated by the Court, despite there are materials in his evidence which would prove the averments made by the petitioner.

4. When the petitioner claims himself as the employee of the first respondent, the first respondent states that the petitioner was only inducted as a trainee and he has not been appointed as assistant as alleged by him. The Identity Card of the petitioner has been marked as Ex.W.1, wherein the petitioner was shown as the Assistant in the first respondent's Company.

5. However, Mr.N.A.Nissar Ahmed, learned counsel for the first respondent denies the authenticity of the Identity Card and submitted that based on the above Identity Card alone, the Court had come to the conclusion that the petitioner was an employee of the first respondent.

6. The fact remains that the first respondent did not state that the petitioner was a stranger and he was in no way related to the first respondent's Company. It appears from the evidence of M.W.1 that the petitioner is said to have been appointed as a trainee along with 4 other persons. During the cross examination, M.W.1 has stated that the training



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period would be between 6 months and one year and after the training is completed, the trained persons will be appointed in the first respondent's Company, if there are vacancies. It is submitted that the petitioner has been inducted into training in the year 1999. It is further admitted fact that Ex.W.1 Identity Card has been issued by the first respondent's Company.

7. From the above evidence, two facts would come to light. One is that the petitioner was inducted for training in the year 1999. In such case the petitioner would have completed either 6 months or one year of training in the year 2000. The petitioner is said to have been dismissed only in the year 2002. So in the interregnum, the petitioner was still attached to the first respondent's Company and it would show that the petitioner could have been absorbed as a staff in the first respondent's Company after completion of his training.

8. The above fact would be strengthened further with Ex.W.1, which would describe the petitioner as the assistant in the first respondent's Company. The learned trial Judge has overlooked the above fact and arrived at the conclusion as though Ex.W.1 a document which cannot be relied



upon. Since Ex.W.1 has been admitted by the first respondent's witness himself, the above document ought to have been considered as proved. In such case, whatever monetary benefit is paid to the petitioner each month could only represent his salary and not a stipend.

9. Whenever there is such contention as to whether the petitioner was a trainee or assistant in the first respondent's Company and whether the amount paid to him each month represents the salary or stipend, the burden would lie upon the first respondent to produce the relevant documents because the petitioner, being the workman, cannot have custody of the attendance register, acquaintance register or any other documents which would show the status with his Company except the Identity Card which was issued to him. The petitioner has rightly produced the Identity Card to substantiate the fact that he was an employee and not a mere trainee.

10. It is submitted by the learned counsel for the petitioner that on 30.11.2000, the petitioner was asked to deposit a sum of Rs.4,000/- as security deposit. So far the petitioner was working as a trainee, he was not asked to make any deposit and the conduct of the first respondent in asking the petitioner to deposit a sum of Rs.4,000/- as security would also show that



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the petitioner had already been absorbed as an employee and hence, it is not correct on the part of the first respondent to contest that there was no employer employee relationship existed between himself and the petitioner. In such case, the stoppage of the petitioner by the first respondent can only be construed as termination and not otherwise.

**11.** The petitioner had issued a legal notice on 13.12.2002 alleging that he had been illegally terminated. In the reply notice issued by the first respondent also, it is stated that the petitioner will be absorbed by giving priority once the financial status of the first respondent's Company improves. Without considering all these facts, it is not right for the Labour Court to come to the conclusion that the petitioner did not establish employer employee relationship with the first respondent. Since the claim of the petitioner has been dismissed on the sole ground that the petitioner did not establish the employer employee relationship, the award so passed by the Labour Court is liable to be reversed.

**12.** The petitioner was not given with 17-B wages also so far and the matter is pending from the year 2004 and now 20 years have passed. At



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this length of time, a relief of reinstatement would not be of any use because the petitioner's otherwise engagement for survival during all these years would also get effected and further, the first respondent has declared that they do not have the financial crises to engage the petitioner and in fact, 7 of their employees have also gone on voluntarily retirement.

13. In view of the above said reasons, I feel in all fairness, the relief of reinstatement cannot be of any practical utility to the petitioner and in that case, I feel the petitioner can be given the relief under Section 11A of the Industrial Disputes Act, 1947. The petitioner is said to have been deriving a salary of Rs.1,500/- per month and he was dismissed from service on 09.12.2002. Taking into consideration of the monthly wages payable to the petitioner at the relevant point of time and also considering the financial condition of the first respondent's Company, I feel it is appropriate to award reasonable compensation of Rs.1,00,000/- along with interest @ 6% from the date of termination till the date of relationship.

14. In the result, this Writ Petition is **allowed** and the award passed by the second respondent in I.D.No.415 of 2004 dated 24.09.2012 is set aside. The first respondent is directed to award lumpsum amount of



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Rs.1,00,000/- [Rupees One Lakh only] along with interest @ 6% from the date of termination till the date of the realisation of the said amount to the petitioner. The above award required to be payable by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

**30.08.2024**

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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W.P.No.11806 of



To

The Presiding Officer,  
III Additional Labour Court,  
Chennai.



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**R.N.MANJULA, J.**

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