



W.A.No.2751 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.No.2751 of 2023

and

C.M.P.No.23113 of 2023

The Management,
Twin Star Engineering,
No.2, Tiruneermalai Road,
Pammal,
Chennai-600 075.

... Appellant

vs.

1. The Presiding Officer,
3rd Additional Labour Court,
Chennai.

2. G.Umapathy

... Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letter Patents to set aside the order dated 11.04.2022 in W.P. No.16003 of 2013.

For Appellant : Mrs.Kavitha Rameshwar

For Respondent 2 : Mr.S.Ravi

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ appeal has been preferred as against the order passed in W.P. No.16003 of 2013 on the file of this Court dated 11.04.2022, wherein the appellant herein has filed a Writ petition challenging the award passed by the first respondent in I.D.No.341 of 2022 dated 09.10.2012. The said Writ petition was dismissed. Aggrieved by the said order, the petitioner therein has preferred this Writ appeal.

2. The brief facts of the case are as follows:-

The case of the Appellant is that the appellant concern is the small scale industry. It does not have regular work throughout the year as it works only to fulfill the orders made by the bigger industries. Daily wage



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labourers are engaged by the appellant concern as and when required. The 2nd respondent who has the claimant in the Industrial Dispute was also appointed on a daily wage basis and his services had been used intermittently. The 2nd respondent was engaged by the appellant concern on a contractual basis whenever there was a work. The Appellant has not worked for a continuous period of 240 days immediately preceding the alleged date of termination of the services and as such he is not eligible for a notice or pay in lieu of notice or any retrenchment compensation as the termination of the services by the appellant would not amount to "retrenchment" as defined under the provisions of the Industrial Disputes Act, 1947.

While being so, the 2nd respondent had approached the Labour Court alleging that he had worked for a period of 240 days and as such, his services could not be terminated without following the provisions of Section 25F of the Industrial Disputes Act, 1947 under which he claiming that the termination of his services is illegal and he is entitled to reinstatement with continuity of services and back wages along with all other attendant benefits. The Labour Court also acknowledged that the 2nd respondent



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failed to prove that he had worked continuously for a period of 240 days immediately preceding the alleged date of termination and passed an award and directed that the 2nd respondent shall be reinstated into service with continuity of service, without back wages and other attendant benefits. Therefore, the order passed by the Labour Court is liable to be set aside.

3. According to the 2nd respondent, the 2nd respondent was worked as Turner in the Appellant Company for two years and his last drawn salary was Rs.3000/- per month. While being so, on 01.01.2002, as usual when he went to work place, without any reason, he was refused to work and he was not offered any work. Therefore, the 2nd respondent raised Industrial Dispute before the Labour Court. But, similarly placed persons were given work in the appellant's company. Therefore, the said dispute was referred before the Conciliation Officer and after due enquiry, the Conciliation Officer in his report dated 13.05.2002 had referred the dispute to the Labour Court. The 2nd respondent was not given any notice under the I.D.Act. Therefore, the Labour Court after careful consideration passed order dated 09.10.2012, thereby directed the appellant/Management to reinstate the 2nd respondent without the back wages and other attendant



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benefits, with continuity of service.

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4. The learned Counsel appearing on the side of the Appellant would contend that the appellant concern is the small scale industry and they does not have regular work throughout the year as it works only to fulfill the orders made by bigger industries. Therefore, daily wage laborers are engaged as and when required. The 2nd respondent was appointed on a daily wage basis and his services had been used intermittently. The 2nd respondent was engaged by the appellant concern on a contractual basis whenever there was work. The appellant concern has not worked continuously for a period of 240 days immediately preceding the alleged date of termination of the services and as such the 2nd respondent is not eligible for a notice or pay in lieu of notice or any retrenchment compensation. The 2nd respondent raised industrial dispute before the Labour Court and the 2nd respondent failed to prove before the Labour Court that he had worked for more than 240 days continuously in the appellant/management. The Writ Court also failed to consider that the workman has not proved the continuous work for more than 240 days. Therefore, the order passed by the Labour Court as well as the Writ Court



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are liable to be dismissed.

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5. The learned counsel appearing for the 2nd respondent would contend that the 2nd respondent was appointed by the appellant company and he was continuously working for more than 240 days. But the appellant concern all of a sudden without giving any notice refused to give work to him. Therefore, he raised industrial dispute, the Labour Court correctly adduced the evidence and allowed the petition and directed the appellant to reinstate the 2nd respondent without back wages and other attendant benefits, with continuity of service. The workman had produced documents, including proof of having received the pay, together with the conciliation failure report. The Labour Court had placed reliance on these documents and had found that the 2nd respondent was employed for a continuous period of 240 days and the Labour Court had ordered for reinstatement. With the above finding, the Writ Court rightly dismissed the Writ Petition. Therefore, the order passed by Writ Court is in order and this Writ Appeal is liable to be dismissed.

6. Heard both sides'. Perused all the materials available on record.



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7. It is admitted fact that the Appellant/Management engaged the 2nd respondent as daily wage labourer. The Appellant/management used to receive the job orders from the companies. According to that if there is any work, the 2nd respondent will be offered with the job. According to the appellant, the 2nd respondent was engaged on a contractual basis and the 2nd respondent is a seasonal worker. He had not worked continuously for a period of 240 days. Therefore, notice of termination is not necessary to the 2nd respondent. According to the 2nd respondent he worked under the appellant/management continuously for a period of 240 days and thereby his service has to be terminated after giving notice. But notice was not served to him, without any notice, the Appellant/Management terminated the 2nd respondent from service thereby he raised industrial dispute before the Labour Court.

8. Before the Labour Court on the side of the 2nd respondent/workman, he was examined as W.W.1 and marked Exhibits.W1 to W4. On the side of the appellant/management had examined M.W.1 and marked exhibits M.W.1 to M.W.4. Before the trial



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Court, the 2nd respondent W.W.1 has categorically deposed about that he continuously worked for 240 days and also produced the salary covers (Ex.W.1) and the copy of the letter written to the respondent/Management (Ex.W.2) except those documents no other documents produced by the 2nd respondent in order to prove that the 2nd respondent was working for more than 240 days in the appellant's concern. The management also not denied the appointment of the 2nd respondent as casual labourer.

9. The M.W.1 categorically deposed that the 2nd respondent did not work under the appellant/management continuously for the period of two years. The appellant/management admitted that the 2nd respondent was a workman under the appellant/management. While so, it is the duty of the management to produce documents or any other relevant records viz., attendance register, salary register and other documents to show that the 2nd respondent has not been worked on contractual basis whenever there was work. In this context, the appellant/management has produced some documents namely attendance register, salary register, copy of the accounts of the Income Tax Department etc., In those documents, there is no whisper about the salary to the 2nd respondent/workman. Once the



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appellant/management admitted that the 2nd respondent/workman had worked in the company and it is the duty for the management to produce documents from which the date he joined duty and which date he was terminated. But there is no evidence to prove the same. Further, the management/appellant have not produced any other piece of paper except the salary and attendance register. Even as per the attendance register and salary register there is no whisper about the signatures of the concerned Government Authorities who inspected the said registers. Therefore, the Trial Court in the order, after elaborate discussion drawn the adverse interference as against the appellant/management and directed to reinstate the 2nd respondent without the back wages and other attendant benefits, with continuity of service. The Writ Court also after taking into consideration of the order passed by the Labour Court and also the evidence adduced by the both the parties fairly came to a conclusion. The order made in W.P.No.16003 of 2013 dated 11.04.2022 revealed that 2nd respondent/workman produced four documents, including proof of having received the pay, together with the conciliation failure report. The Labour Court had placed reliance on those documents and had found that the appellant was employed for a continuous period of 240 days and



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consequently had ordered for reinstatement. Therefore, the above said order of the Writ Court would clearly shows that the Writ Court after taking into consideration of all the aspects and after careful perusal of the documents, passed reinstatement order and thereby it does not warrant interference. In view of the above said discussions, this Court is of the opinion that this Writ Appeal has no merits and liable to be dismissed.

10. In the result, this Writ appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

(J.N.B.J.) & (P.D.B.J)
25.06.2024

gvn
Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No

To

The Presiding Officer,
3rd Additional Labour Court,
Chennai.

J.NISHA BANU, J



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