



W.P.Nos.15463/2009 & 10348/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.15463/2009 & 10348/2008

W.P.No.15463 of 2009

The General Secretary
Indian Oil Corporation LPG Plant
Labour Union, Salem.

... Petitioner

Vs.

- 1.The Presiding Officer
Central Government
Tribunal-cum-Labour Court
1st Floor, 'B' Wing
26, Haddows Road
Shastri Bhavan
Chennai -6.
- 2.T.K.Balachandran
IOC, LPG Bottling Plant Handing
and House Keeping Contractor
Salem District.
- 3.Indian Oil Corporation
LPG Bottling Plant



W.P.Nos.15463/2009 & 10348/2008

Karuppur, Salem District.

...Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the award dated 26.03.2007 passed by the first respondent in I.D.No.378 of 2004, quash the same in so far as not granting the relief of reinstatement and consequently direct the third respondent to reinstate the workman concerned with continuity of service, backwages and other attendant benefits, award costs.

W.P.No.10348 of 2008

T.K.Balachandran

... Petitioner

Vs.

- 1.The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court
1st Floor 'B' Wing
26, Haddows Road
Shastri Bhavan
Chennai 6.
- 2.The General Secretary
Indian Oil Corporation LPG Plant
Labour Union
Salem.



W.P.Nos.15463/2009 & 10348/2008

3.Indian Oil Corporation
LPG Bottling Plant
Karuppur, Salem.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in I.D.No.378 of 2004 on the file of the Central Government Industrial Tribunal-cum-Labour Court, I Floor, 'B' Wing, 26, Haddows Road, Shastri Bhavan, Chennai -6, the first respondent herein and quash the award dated 26th March 2007 passed therein.

For Petitioners
in both W.P.Nos. : Ms.Porkodi
for V.Ajaykhose

For Respondents
in both W.P.Nos. : R1 – Tribunal
Mr.G.Anand Gopalan
for M/s.AGAM LEGAL
for R2 & R3

COMMON ORDER

These Writ Petitions are filed against the same award and as such taken up together and disposed of by this common judgment.



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2. The brief facts leading to the filing of these Writ Petitions are

that the Workman, namely V.Siddhan was working in the site of the third respondent Corporation namely Indian Oil Corporation, Salem (herein after referred to as the principal employer). It is the case of the parties that the Workman was employed through a contractor namely T.K.Balachandran (herein after referred to as the contractor) who is the second respondent in W.P.15463 of 2009. The Workman is represented by the trade union, namely the Indian Oil Corporation, LPG Plant Labour Union, Salem. When the Workman was employed, he was suddenly relieved from service on. 31.03.2003 on the ground that he has attained the age of superannuation by completing 60 years of age. The Workman denied the said fact and the present dispute was raised and by the order dated 11.06.2004, the question was referred for adjudication by the appropriate Government. A claim petition was filed by the Workman claiming that his Date of Birth is mentioned in the ESI and Provident Fund records as 1950 and 1952. When two entries are made the entry which is favourable to the Workman should only be taken into account and as such his Date of Birth should be taken as of the year 1952 and if the year 1952 is to be taken, he is entitled to continue in service till the year



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2012 and therefore, his relieving from service is illegal. The said claim was resisted by the contractor.

3. It is the case of the contractor that the Workmen are not brought to service by the contractor. They are already working in the site. The contractor is periodically changed and they are supposed to continue the same Workmen only. Therefore, the contractor period got ended in the year 2003 itself and therefore, the contractor is not liable. The counter filed by the principal employer is that the employment is only through the contractor and if at all the date of retirement it is to be answered, it is only by the contractor and the principal employer is not liable to pay the balance of wages. Additionally, it is also contended that even otherwise, when the contract has been terminated, it is not sure whether the Workman would have been continued or not or like some other employees would have gone away with the contractor also and therefore, no liability can be mulcted on the principal employer.



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4. On the said pleadings the Central Government Industrial

WEB COURT Tribunal-cum-Labour Court, Chennai, proceeded for enquiry. On behalf of the Workman, one C.Ramakrishnan was examined as *W.W.1* and the contractor examined himself as *M.W.1*. On behalf the Workman *Ex.W.1 to Ex.W.9* were marked. On behalf of the contractor *Ex.M.1 to Ex.M.4* were marked. No oral and documentary evidence was let in on behalf of the principal employer.

5. Under the said circumstances, the Labour Court considered the issue and decided that as per the records provided by the Workman which are the entries in the EPF records, the Date of Birth of the Workman V.Siddhan has been taken as 10.11.1952 on the basis of the Ex.W.7 and Ex.W.8 and therefore the non employment as of the year 2003 was illegal. However restricted the relief only upto the year 2004 by holding that the contractor's contract entered was only up to 31.05.2004. Aggrieved by the fact that it was restricted only up to the year 2004 and it ought to have been granted up to the year 2012, the Workman is before this Court by way of W.P.No.15463 of 2009. Aggrieved by the fact that the contract expired even



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in the year 2003 and therefore the contractor should not be held liable up to the year 2004, the contractor is before this Court by way of W.P.No.10348 of 2008.

6. Heard the learned counsel for the parties.

7. After hearing the parties, this Court noted that in *Ex.M.1* which is the *Form-9* under the Employees Provident Fund Scheme, the Date of Birth of the petitioner is noted as 03.01.1942. In *Ex.W.7* it is mentioned as 1950 (45 years). In *Ex.W.8* the Date of Birth is mentioned as 10.11.1952. In view thereof, considering the fact that the Workman was working in the relevant period, this Court directed the learned counsel appearing on behalf of the Workman to come up with a specific case as to what would be the Date of Birth of the Workman. With reference to the entries to the very same Provident Fund Authorities etc., two dates differed and this Court directed that whether there is any other independent proof for the Date of Birth of the Workman. When the matter came up for further hearing, the learned counsel



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appearing on behalf of Workman would produce a copy of the Aadhaar whether the Date of Birth is mentioned as 06.05.1946.

8. In view thereof, not relying upon *Ex.M.1* which says as 1942 and *Ex.W.7* and *Ex.W.8* which says 1950 and 1952, I am inclined to hold that the Date of Birth of the Workman is only as 06.05.1946. Taking that date as the correct Date of Birth of the Workman, still the relieving of the Workman in the year 2003 was erroneous and the Workman was entitled to continue in service until 05.05.2006. Therefore, benefits have to be paid to the workman until 05.05.2006. The next question is that who has to bear the liability. The Contract Labour (Regulation and Abolition) Act, 1970 itself under *Section 21 (4)* clearly states that the liability will be on the principal employer. However, liberty will be there for the principal employer to recover the same from the contractor if any.

9. It can be seen from the pleadings of the parties that in this case the Workmen were regularly working in the LPG plant belonging to the principal employer namely Indian Oil Corporation and it is only the



1) The award of the Labour Court made in ID.No.378 of 2004 dated 26.03.2007 is partly upheld in as much as it upholds the non employment of the petitioner in the year 2003 as illegal and set aside in as much as the relief is granted.;

2) *The Date of Birth of the Workman will be taken as 06.05.1946 and he would be deemed to be in service **till 05.05.1946** and all the wages for the said period from 01.04.2003 till 05.05.2006 shall be paid by the second respondent principal employer. However, with liberty to recover the same from the contractors who were all there as contractors for the said period;*



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3) Instead of leaving the quantum to be decided on the basis of the fact that the Workman was receiving the wages at the rate Rs.1030/- per month, eventhough the sum will come somewhat more, the same is reduced and rounded off to Rs.1,50,000/- which shall be paid by the second respondent to the Workman within a period of 8 weeks from the date of website uploaded copy of the order, without waiting for the certified copy of the order. If the sum is not paid within a period of 8 weeks then the same shall carry further interest at the rate of 9% per annum from today. It is now stated that the Workman has since died on 12.10.2021 leaving behind his wife and son as the sole legal heirs. The said sum shall be paid to the legal heirs without insisting on filing of any further application etc., as there is a legal heirship certificate showing that only two of them namely his wife and son are the legal heirs of the Workman.

No costs.

19.12.2024

Neutral Citation : Yes
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Central Government
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