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W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

and

M.P.No. 1 & 1 of 2006 & 1 & 1 of 2007

and

W.M.P.No. 8762 of 2006

W.P.No.7904 of 2006

The Management of
V.G.P. Golden Beach Resort Limited,
Injambakkam,
Chennai - 600 041.
Rep by its Director.

... Petitioner

Vs

1. The Presiding Officer,
II Additional Labour Court,
Chennai.

2. P. Mahendran
3. M. Vellaichamy
4. J. Suryamurthy
5. P. Sakthivel

Respondents 2 to 5

Rep. by A. Parthasarathy & A.Varadarajan,
Trade Union Officials,
7, Mclean Street, Chennai - 600 001.

... Respondents



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the first respondent in I.D.No. 51 to 54 of 2000 and quash its common award dated 10.10.2005.

For Petitioner : Mr. P.Raghunathan
for Mr.T.S.Gopalan & Co.

For R1 : Labour Court

For R2 & R5 : Mr.K.M.Ramesh, Senior Counsel
Assisted by Mr.V.Subramani

W.P.No. 36539 of 2006

The Management of
V.G.P. Golden Beach Resort Limited,
Injambakkam,
Chennai - 600 041.
Rep by its Director.

... Petitioner

Vs

1. The Presiding Officer,
II Additional Labour Court,
Chennai.

2. K.Ganapathy

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the first respondent in I.D.No. 380 of 1999 and quash the Award dated 21.02.2006.



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W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

For Petitioner : Mr. P.Raghunathan
for Mr.T.S.Gopalan & Co.

For R1 : Labour Court

For R2 : Mr.K.M.Ramesh, Senior Counsel
Assisted by Mr.V.Subramani

W.P.No. 36540 of 2006

The Management of
V.G.P. Golden Beach Resort Limited,
Injambakkam,
Chennai - 600 041.
Rep by its Director.

... Petitioner

Vs

1. The Presiding Officer,
II Additional Labour Court,
Chennai.
2. N.Lathiba
3. Francis Xavier

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the first respondent in I.D.No.872 of 1999 and quash the Award dated 22.02.2006.

For Petitioner : Mr. P.Raghunathan
for Mr.T.S.Gopalan & Co.

For R1 : Labour Court



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

For R2 & R3

: Mr.K.M.Ramesh, Senior Counsel
Assisted by Mr.V.Subramani

WEB CO W.P.No. 21067 of 2007

The Management of
V.G.P. Golden Beach Resort Limited,
Injambakkam, Chennai - 600 041.

... Petitioner

Vs

1. The Presiding Officer,
I Additional Labour Court,
Chennai.
2. R. Roseleen
3. Senthurkani
4. J.Pushpa Leela
5. A. Amutharani
6. M.Krishnaveni
7. Sivaji Lalitha

Rep. by A. Parthasarathy & A.Varadarajan,
Trade Union Officials,
7, Mclean Street, Chennai - 600 001.

8. Francis Zaviear

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the first respondent in I.D.No.395 of 1999 to 400 to 1999 and quash its common award dated 30.08.2006.

For Petitioner

: Mr. P.Raghunathan
for Mr.T.S.Gopalan & Co.



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W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

For R1

: Labour Court

For R2 & R7

: Mr.K.M.Ramesh, Senior Counsel
Assisted by Mr.V.Subramani

W.P.No. 21281 of 2007

The Management of
V.G.P. Golden Beach Resort Limited,
Injambakkam, Chennai - 600 041.

... Petitioner

Vs

1. The Presiding Officer,
First Additional Labour Court,
Chennai.
2. R.Mukkammal
3. S.Murugaiyan
4. S.Suresh
5. A.Allwin

Rep. by A. Parthasarathy & A.Varadarajan,
Trade Union Officials,
7, Mclean Street, Chennai - 600 001.

6. Francis Zaviear

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the first respondent in I.D.No.343 of 1999 to 346 of 1999 and quash its common Award dated 30.08.2006.

For Petitioner

: Mr. P.Raghunathan



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

for Mr.T.S.Gopalan & Co.

For R1	: Labour Court
For R2 to R5	: Mr.K.M.Ramesh, Senior Counsel Assisted by Mr.V.Subramani
For R6	: Vacated

ORDER

All these writ petitions are connected to each other and are taken up for disposal by way of this common order.

2. These matters relate to the non-employment of workmen. The management of V.G.P.Golden Beach Resorts Limited has taken a plea that all these workmen are employed only through the contractor. The said contractor is also arrayed by the workmen as a second respondent in the respective industrial disputes.

3. In W.P.No. 7904 of 2006, the awards of the Labour Court in I.D.Nos. 51 to 54 of 2000 are being challenged. In this case, the workmen involved are P.Mahendran, M.Vellaichamy, J.Suryamurthy, P.Sakthivel. In W.P.No. 36539 of 2006, the award of the Labour Court in I.D.No. 380 of



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

1999 is being challenged. In this case, a workman, K.Ganapathy is involved.

In W.P.No. 36540 of 2006, the award of the Labour Court in I.D.No.872 of 1999 is being challenged. In this case, a workwoman N.Lathiba is involved.

In W.P.No. 21067 of 2007, the awards of the Labour Court in I.D.Nos. 395 of 1999 to 400 of 1999 are being questioned. In this case, the workmen involved are R.Roseleen, Senthurkani, J. Pushpa Leela, A.Amutharani, M.Krishnaveni and Sivaji Lalitha. In W.P.No. 21281 of 2007, the awards of the Labour Court in I.D.No. 343 of 1999 to 346 of 1999 are being challenged. In this case, the workmen involved are R.Mukkammal, S.Murugaiyan, S.Suresh and A.Allwin.

4. Heard *Mr.P.Raghunathan*, the learned counsel appearing on behalf of petitioner management and *Mr.K.M.Ramesh*, the learned senior counsel appearing on behalf of the respondent workmen.

5. The argument of the learned counsel appearing for the management is that these workmen were all engaged through a contractor. Without any adequate evidence, the Labour Court held that they were directly employed by



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

the management, namely V.G.P. Golden Beach Resorts Limited. This finding is erroneous in law. It is based solely on the order passed by the Provident Fund Authority, which can be passed even as against the principal employer under the provisions of the Act. He would further submit that, in view of the changed circumstances, reinstatement is not warranted. The contention is that in some of the cases, the workmen have not even discharged the initial burden of proving their case by stepping into the box.

6. I have considered the submission made by the learned counsel for the petitioner.

7. The self same arguments have been made in detail in similar cases and this Court has already considered the case of the workman and the management in detail and has decided the issue as follows:-

“17. The first question to be decided is that whether or not the workmen are directly under the employment of the petitioner management. The workmen have pleaded that they are directly under the management. They have examined W.W.1 to W.W.3 claiming that they were directly under the management and that the wages were paid by them. They have also produced Ex.W12 etc., in their favour. When it is the specific case of the management that they are only contract labourers, the



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

person making an assertion has the initial burden to prove the same. Except for producing the invoices, no other evidence is there on record. The invoices neither contain the names of the workmen nor contain the name of the said Francis Xavier who is said to be the contractor. Therefore, the same doesn't lead anywhere. No specific contract etc., is pleaded or produced. Even in the counter affidavit, the name of the contractor etc., is not categorically pleaded. Further, it can be seen that in Ex.W.12, it is not the case that the Provident Fund Authorities that the management is liable as a principal employer. When Provident Fund Authorities claimed dues in respect of the very workmen who are before this Court and also other workmen, in all totalling 96 persons, the defence of the management was that they were all contract labourers and were not directly under their employment. The authorities under the Employees Provident Fund Act went into the said question and it was specifically found that the case of the management that these employees were contract labourers and that there was a separate code allotted in their name are factually incorrect.

18. The authorities found that in 1997 one code had been registered in favour of one contractor. Therefore they held that the workmen were directly employed. Therefore, I find that the reliance placed by the Industrial Tribunal in Ex.W12 etc., to hold that the workmen were directly employed by the management is in order. I reject the submissions made to the contrary and hold that the workmen have proved that they were directly employed by the management. Further, though in Ex.W3 and W4, the said Francis Xavier is also mentioned as a contractor, as rightly pointed out by the learned Senior counsel, it has been mentioned in the context as if he is the alleged contractor. Therefore,



WEB COPY



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

the Industrial Tribunal, in the exercise of its labour jurisdiction, has to take into account the entire evidence on record and come to a conclusion as to whether the employees are contract labourers or not.

19. On the oral and documentary evidence that are produced before the Court, especially in the absence of a specific pleading about the name of the contractor, the production of the contract and other records relating to contract employment etc., I am of the view that the finding of the Industrial Tribunal cannot be termed as perverse or incorrect. I hold that the workmen are directly employed under the management.

20. Once the workmen are held to be the direct employees under the management then their non-employment, without any domestic enquiry or without following the provisions of Section 25F, is incorrect and illegal. Therefore, the non-employment is not justified and accordingly, the finding of the Industrial Tribunal that their non-employment is not justified is in order.

21. Next Mr.Raghunathan contends that no meaning can be ascribed to the Industrial Tribunal's decision since the consequential relief was not given. Per Contra, Mr.Ramesh contends that everything should be deemed to be granted. Both the contentions cannot be accepted. Once the reference is made regarding the question of non-employment and the relief to be granted to the workmen, the same has to be considered in the context of labour jurisdiction. In the context of labour jurisdiction, even if the non-employment is held to be unjustified, the reinstatement with back wages and continuity of service is not automatic.



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

The relief has to be expressly granted for reinstatement with or without back wages, with or without continuity of service. The Tribunal also can grant the relief of compensation in lieu of reinstatement. In this case, it is only by oversight the Tribunal did not advert to the further relief to be granted. That is an error. This Court, under Judicial Review, is not powerless to rectify the said error. The relief can be granted by this Court. But there cannot be any presumption as to constructive res-judicata as this is not a second or subsequent proceeding but a judicial review of the award itself. Similarly, the award of the labour court should only be given meaning by correcting the error and shall not be rendered unenforceable or meaningless by following the principles of Section 34 of the Specific Relief Act. The argument is opposed to the context and illogical.

22. Thus, to decide what relief to be granted to the workmen, the following factors are taken into consideration:

- a. Despite the award partly in their favour, the workmen have not subsequently filed even 17B wages before this Court.*
- b. The management has obtained the stay of the award and this writ petition has been pending since 2004, for the past 20 years.*
- c. Several of the workmen have also crossed the age of superannuation.*
- d. The very nature of the employment under the management had undergone significant changes.*

Therefore, for all the above foregoing factors, I am of the view that this is a fit case to order compensation in lieu of reinstatement with back wages rather than reinstatement with back wages.



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

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23. Coming to the question of compensation, it is as per the judgement of the Hon'ble Supreme Court of India in the O.P Bhandari case that roughly an amount equivalent to the wages of 39 months can be granted with adding some more amount towards the loss of future employment. The learned counsel for the management contends that the wages were Rs.50/- per day at the relevant point of time, whereas the contention of the learned counsel appearing on behalf of the workmen by relying upon the averments made in C.P.No. 321 of 2007 is that the wages were Rs.80/- per day. When this Court went through the computation petitions, some of the workmen have claimed Rs.35/- per day and some of them have claimed Rs.80/- per day. Therefore, I am of the view that it can be taken as Rs.50/- as contended by the learned counsel for the Management. Therefore, the compensation roughly works out to Rs.58,500/-. Adding a little more sum towards the loss of employment and all other claims, such as gratuity etc., so that the workmen need not be further dragged into various other fora, I am of the view that each of the workmen will be entitled to a sum of Rs. 85,000/- as full quit for all claims.

24. Further, as regards two references, as rightly contended by the learned counsel for the management, when the transfer of 5 workmen has been dealt with in a separate I.D., and the non-employment of the 43 workmen has also been in the first referral. the second I.D. itself is superfluous and the Industrial Tribunal has also not granted any relief based on the second reference. Therefore, there is force in the contention of the learned counsel for the management. However, absolutely no outcome is there. Even in the claim petition, the very same reinstatement is only pleaded in the second claim petition.



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W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

25. *In view thereof, these writ petitions are disposed of on the following terms:-*

(i) *The award of the Industrial Tribunal dated 11.01.2002 passed in I.D.No. 175 of 1999, is upheld in as much as it holds that the workmen are the direct employees under the management and that their non-employment is not justified;*

(ii) *The award is held to be illegal in as much as it did not grant the further consequential relief and the further consequential relief of compensation in lieu of reinstatement with back wages is granted by this Court;*

(iii) *Each of the workmen shall be paid by the petitioner Management for a sum of Rs.85,000/- which sum shall be in full quit towards all and any further claim whatsoever, within twelve weeks from the date of receipt/production of the website-uploaded copy of this order, not waiting for the certified copy of the order;*

(iv) *If the amount is not paid within the said period, thereafter, it shall carry further interest at the rate of 6% per annum;*

(v) *If any of the cases, the workmen have since passed away, their legal heirs will be entitled to make a claim to the management by producing the death certificate and legal heirship certificate and upon verification, the compensation amount shall be paid to the legal heirs;*

(vi) *The very reference and consequently the award with the limited reference to I.D.No. 109 of 2000 is held to be*



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

superfluous;

(vii) Consequently, connected miscellaneous petitions are closed. No costs.

8. In view of the above, these writ petitions are disposed of on the same terms. Each of the workmen will also be entitled to the same benefit of Rs.85,000/- . Therefore, these writ petitions are disposed of on the following terms:-

(i) The awards made by the Labour Court in I.D.No.51 to 54 of 2000 dated 10.10.2005, I.D.No.380 of 1999 dated 21.02.2006, I.D.No. 872 of 1999 dated 22.02.2006, I.D.No. 395 of 1999 to 400 of 1999 dated 30.08.2006 and I.D.No. 343 of 1999 to 346 of 1999 dated 30.08.2006 are upheld inasmuch as it held that the workmen were directly employed by the petitioner management, namely V.G.P. Golden Beach Resorts Private Limited and that their non-employment was illegal.

(ii) In view of reinstatement with backwages, the awards are modified and set aside with reference to the relief that is granted to the workmen. In lieu of all claims for gratuity, reinstatement and back wages, a total sum of Rs.85,000/- is awarded as compensation, payable to each of the workman. If any of the workmen involved in these writ petitions have since passed away, their legal heirs shall make a claim before the petitioner management by sending a representation and enclosing a website-uploaded copy of the



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

award, without waiting for the certified copy of the award. Upon receipt, the management shall pay the said amount. The amount shall be paid within a period of twelve weeks from the date of receipt/production of the website-uploaded copy of this order, not waiting for the certified copy of the order;

(iii) In the matter of W.P.No.36539 of 2006 alone, the facts are slightly different and additional argument is made by the learned counsel for the management that in this case, the workman voluntarily left employment while working as a lifeguard and resigned from the services on his own. However, the Labour Court found that no such letter of resignation was produced and therefore, disbelieved the said case and held that the non-employment of the workman was also illegal. No exception can be taken with reference to said finding and said workman also will be entitled to the same benefit as the other workmen.

(iv) Consequently, connected miscellaneous petitions are closed. No costs.

21.12.2024

Neutral Citation: Yes/No
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W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

D.BHARATHA CHAKRAVARTHY, J.

nsI

To

1. The Presiding Officer,
II Additional Labour Court,
Chennai.
2. The Presiding Officer,
I Additional Labour Court,
Chennai.

W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

21.12.2024

16/21



WEB COPY



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

W.P.Nos.7904, 36539 & 36540 of 2006 and 21067 & 21281 of 2007

and

M.P.Nos.1 & 1 of 2006, 1 & 1 of 2007

and

W.P.M.P.No.8792 of 2006

D.BHARATHA CHAKRAVARTHY, J.

Today this matter has been listed under the caption 'for being mentioned'. The Registry is directed to correct the following corrections in the order dated 21.12.2024:

(i)In the first page at the cause title portion of the order dated 21.12.2024, W.M.P.No.8762 of 2006 has been typed and the same shall be corrected as “**W.P.M.P.No.8792 of 2006**”;

(ii)In the third page of the order dated 21.12.2024, in the cause title portion of W.P.No.36540 of 2006, the 3rd respondent name has been typed as Francis Xavier and the same shall be corrected as “**Dr.Francis Xavier**”;

(iii)In the fourth page of the order dated 21.12.2024, in the cause title portion of W.P.No.21067 of 2007, the 8th respondent name has been typed as Francis Zaviear and the same shall be corrected



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

as “**Dr.Francis Zaviear**”;

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(iv)In the fifth page of the order dated 21.12.2024, in appearance portion of W.P.No.21067 of 2007, it has been typed as For R2 & R7 : Mr.K.M.Ramesh, Senior Counsel Assisted by Mr.V.Subramani and the same shall be corrected as “**For R2 to R7 : Mr.K.M.Ramesh, Senior Counsel Assisted by Mr.V.Subramani**”;

(v)In the fifth page of the order dated 21.12.2024 in appearance portion of W.P.No.21067 of 2007, the appearance of 8th respondent has not been typed and the same shall be typed as “**For R8 : Vacated**”;

(vi)In the fifth page of the order dated 21.12.2024, in the cause title portion of W.P.No.21281 of 2007, the 6th respondent name has been typed as Francis Zaviear and the same shall be corrected as “**Dr.Francis Zaviear**” and

(vii)In the sixth page of the order dated 21.12.2024, after the appearance portion, it has been typed as ORDER and the same shall be corrected as “**COMMON ORDER**”.



W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

2. Registry is directed to carry out the above said corrections and

re-issue the corrected order copy.

3. The other portions of the order dated 21.12.2024 remains unaltered

and the same is confirmed.

12.02.2025

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20/21



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W.P.Nos. 7904, 36539, 36540 of 2006, 21067 & 21281 of 2007

D.BHARATHA CHAKRAVARTHY, J.

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W.P.Nos.7904, 36539 & 36540 of 2006 and 21067 & 21281 of 2007
and
M.P.No.1 & 1 of 2006, 1 & 1 of 2007
and
W.P.M.P.No.8792 of 2006

12.02.2025