



W.P.No.27698 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.27698 of 2008

and M.P.No.1 of 2008

The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
R.W.S Sub-Division,
Dharmapuri.

.. Petitioner

Versus

1. M.Jayaraman

2. The Presiding Officer,
Labour Court, Salem.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records made in impugned award I.D.No.487 of 2002, dated 25.06.2008, on the file of the Labour Court, Salem, the 2nd respondent herein and quash the said award.

For Petitioner : Mr.S.Ravindran,



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Senior Counsel,
Asst. by Mrs.S.Mekhala

For Respondents : Mr.V.Vijayarajan, for R1

: R2 - Court



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ORDER

This Writ Petition is filed challenging the award, dated 25.06.2008 in I.D.No.487 of 2002. By the said award, the claim of the workman was upheld and the petitioner management was directed to reinstate the petitioner in his previous status as a Watchman with continuity of service without back-wages with costs of Rs.2,000/-.

2. The case of the workman was that he has been working in the petitioner management from the year 1988 at Dharmapuri. From the year 1995 onwards, he was employed in G.O Inspection works as Assistant. From the year 1995, he was employed as night Watchman at Dharmapuri Chloride Division. From 01.01.1997, he was working as a Watchman in Dharmapuri Division Godown. From 08.06.1998, he was working as a Watchman in the Inspection Bungalow. While so, on 04.06.2002, he was orally terminated from service. Aggrieved by the same, he raised the



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dispute. Upon failure of conciliation, he filed the Claim Petition, which was taken on file as I.D.No.487 of 2002.

3. The Claim Petition is resisted by the management by filing a counter-statement. The averments made by the workman are denied. It is stated that on need basis, the petitioner was sporadically employed on daily wages basis at several places. The particulars are not available completely. The workman stated that he was working in the Chloride Division after the year 1995. That division was also subsequently closed and now it is known as Dharmapuri Special Project Division. These casual labourers will be employed by the board only on need basis. There was no error which was committed while employing them.

4. As a matter of fact, as of the year 1996, by virtue of settlement under Section 12(3) of the Industrial Disputes Act, 1947, all the employees, who had put in 480 days of service, within a period of two years, were all



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regularised. As on 04.06.2002, the workman was not in the employment of the board. The board also attended the conciliation. The statement of the workman that he was in the service of the management board is false. Then and there, maintenance works, inspection work, like that, were carried on with the help of the contractors and it is only the said contractors, who engaged workman. The wages were only paid by them and the work is extracted only by the contractors. Therefore, there is no employer-employee relationship between the workman and the management. The workman did not implead the contractor in the Claim Petition. The board cannot be treated as the principal employer as the works were adhoc in nature. The workman was never employed by the management and therefore, not entitled to any relief from the management.

5. Before the Labour Court, the workman, *Jayaraman*, examined himself as *P.W.1* and *Ex.P-1* to *Ex.P-21* were marked. On behalf of the management, one *A.Dhanushu*, was examined as *R.W.1* and *Ex.R-1* to *Ex.R-*



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61 were marked. The Labour Court, after framing the issues, found that
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there was employer-employee relationship between the workman and the management. The Labour Court further found that the workman had put in more than 240 days of service in a particular year. It also found that the workman was wrongfully non-employed from 04.06.2002 and ordered reinstatement without back-wages. Aggrieved by the same, the present Writ Petition is filed.

6. *Mr.S.Ravindran*, learned Senior Counsel for the petitioner management would submit that it is for the workman to discharge his burden and establish that there was employer-employee relationship between himself and the management. Taking this Court through the various exhibits filed, he would submit that there is no such clinching material produced by the workman. The workman merely relied upon the letters for allotment of rooms, in which, his name is also endorsed, requesting him to allot the



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rooms. The same by itself would not prove the employer-employee relationship.

7. On the other hand, the entries from the M-book would clearly show the name of the contractor from the year 1999 onwards. In the M-book, the petitioner name was mentioned only prior to the year 1999. Therefore, it would demonstrate that as of the year 1999, the workman was only under a contractor and therefore, after the year 1999, there is a severance of relationship and when the workman was employed only under the contractor in the year 2002, no claim can be made against the petitioner management.

8. In support of his submission, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Workmen of Nilgiri Co-Operative Mkt. Society Ltd. Vs. State of Tamil Nadu and Ors.***¹, more specifically, relying upon paragraph No.47 to contend that the burden is on the workman to prove that there is employer-employee relationship.

¹ (2004) 3 SCC 514



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For the proposition that the contract labour cannot claim relief as against the principal employer, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Kirloskar Brothers Limited Vs. Ramcharan and Ors.***², more specifically, relying upon paragraph No.4.6 of the said judgment.

9. The learned Senior Counsel would further submit that in this case, it can be seen that the issue in question is with reference to whether or not the workman is employed directly or under the contract labour. Such questions cannot be gone into with reference to the petitions under Section 2A of the Industrial Disputes Act, 1947. In support of his submission, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Bharat Heavy Electricals Ltd. Vs. Anil and Ors.***³, more specifically, relying upon paragraph No.18 of the said judgment. The learned Senior Counsel would also place reliance upon the judgment of the

² 2023 (1) LLN 32 (SC)

³ (2007) 1 SCC 610



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Hon'ble Supreme Court of India in ***International Airport Authority of India***
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Vs. International Air Cargo Workers' Union⁴, more specifically, placing reliance upon paragraph No.38 to claim that merely because some works are allotted or some instructions are given by the management board, the existence of the employer-employee relationship should not be presumed. On the contrary, the documents which are marked, including ***Ex.R-14*** to ***Ex.R-39***, would all clearly show that from the year 1999, the petitioner was only working under *R.Selladurai*, the Contractor. Therefore, he would submit that the Labour Court erred in holding that there was employer-employee relationship and that he was terminated from the service in the year 2002.

10. Further, the finding with reference to 240 days was made with reference to an irrelevant period. The learned Counsel would submit that considering the nature of service and the efflux of time, the Labour Court ought not to have ordered reinstatement without back-wages, but, ought to

⁴ (2009) 13 SCC 374



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have ordered only compensation in lieu of reinstatement. He would submit that there is absolutely no proof that he was in service upto 04.06.2002 and that he was terminated from service as on 04.06.2002. Therefore, the non-employment was also not proved before the Labour Court.

11. Per *contra*, *Mr.V.Vijayarajan*, learned Counsel for the first respondent/workman would submit that the workman, in this case, produced ample proof in the form of documents. It can be seen that the workman initially involved in various types of works and finally, he was posted as a Watchman in the guest house. Several documents, repeatedly directing the respondent/workman to allot a particular room to the guests, have been marked. It can be seen that his services have been continuously engaged. He was not at all under the contractor. All this period, he was receiving wages directly from the petitioner management. As a matter of fact, certain communications, in the form of **Ex.P-18** and **Ex.P-19** are also marked, in which, instructions were given by the Superintending Engineer to engage the



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services of the Watchman. Therefore, it is incorrect to contend that the petitioner was employed through a contract labourer.

12. The Labour Court also went into the nature of the contract with the said *Selladurai* and after taking into account the date of purchase of stamp paper and the date of contract etc., had categorically disbelieved the very case of the management and held that there is employer-employee relationship. It is the positive assertion of the workman that he was in employment up to 04.06.2002 and thereafter, he was orally terminated from the service. The Labour Court, after considering the plea of the management as well as all the evidence on record, considered the same and granted relief to the workman and it does not require any interference from this Court.

13. I have considered the rival submissions made on either side and perused the material records of the case.



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14. Firstly, with reference to the burden of proof, there can be no quarrel over the proposition that the initial burden is on the workman to prove that there was employer-employee relationship. Apart from the workman himself being examined, on behalf of him, **Ex.P-1** to **Ex.P-9** were also marked to prove the employer-employee relationship. In **Ex.P-18** and **Ex.P-19**, specifically, the services of two Watchmen were directed to be utilized on contract basis. Engaging a person on casual or contractual basis is different from entrusting work to a contractor. Therefore, the workman has discharged his burden to prove that he is in the employment of the management board.

15. The various letters written assigning work to him to allot rooms etc., would fortify the same. On the contrary, it is the contention of the learned Senior Counsel for the petitioner that from the year 1999, the workman was put under the Contractor from direct employment. That is the specific case of the respondents. Therefore, even going by the judgment



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relied upon by the learned Senior Counsel in ***Nilgiri Co-Operative Mkt.***

Society Ltd.'s case (cited *supra*), in paragraph No.47, the Hon'ble Supreme Court of India held that the person who sets up a plea should discharge the burden of proving the same. Therefore, it is for the management to have discharged the said burden. In this regard, it can be seen that the case of the petitioner management is not at all clear.

16. When the workman clearly pleaded that he is in employment from the year 1988 and he categorically mentioned what are all the places he has been working from the year 1998, the counter-statement filed by the management is absolutely unclear and confusing. On the one hand, in paragraph Nos.1 to 7, it is pleaded that as if the workman is employed on need basis in various places. Suddenly, in paragraph No.9, it is stated that the entire claim of the workman that he was employed by the management is false and he was engaged only through the contractor and he should have filed the Claim Petition only by impleading the Contractor. Therefore, the



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plea which is now taken before this Court that he was in direct employment from the year 1999 and thereafter, he was put under Contractor, was never specifically taken in the counter-statement or in the evidence or seems to have argued before the Labour Court.

17. That being the situation, a perusal of the pleadings and the evidence on behalf of the petitioner management, it can be seen that they were not at all clear as to what is their case. It assumes significance more so when the M-book is produced even with reference to the year 1999. Prior to the year 1999, if the petitioner was an employee under non-muster roll, then, entering into the particulars in the same M-book which is required to be measured in respect of the contractor, is also not explained by the petitioner management.

18. Similarly, when *Selladurai* is said to be the Contractor, when contract is entered by virtue of **Ex.R-39**, the Labour Court found that the



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stamp paper was dated 10.01.1999 whereas the contract was written on 03.01.2000 and in between the petitioner is admittedly working as a daily rated employee in the petitioner board. In any event, when the communication in **Ex.P-18** and **Ex.P-19** which are all admitted communications between the Superintending Engineer and the Executive Engineer, when the services of the Watchman are mentioned only on contract basis and not as a contract labour, the said documents clinch the issue in favour of the workman and I am of the view that the Labour Court considered all the evidence on record, including the cross-examination of *R.W.1* to hold that there was employer-employee relationship and I am unable to accept the contention of the learned Senior Counsel that from the year 1999, the petitioner was only under the Contractor. I am of the view that neither such a plea is specifically taken nor any reliable evidence has been let in on behalf of the management and therefore, the workman proved that there is employer-employee relationship between him and the management.



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19. It is true that there is no particular evidence to prove that on 04.06.2002, the workman was orally terminated. The workman has made a positive assertion in his claim statement and let in evidence as *P.W.1*. This has to be considered that the petitioner management agreed that he was in employment and that he was not in employment when the dispute was raised. Therefore, the Labour Court is right in relying upon the evidence of the workman and concluding that he was non-employed with effect from 04.06.2002.

20. The next contention of the learned Senior Counsel that the other dispute such as contract employment cannot be brought into in a petition under Section 2-A of the Industrial Disputes Act, 1947 is concerned, it is necessary to extract the paragraph No.18 of the judgment of the Hon'ble Supreme Court of India in ***Bharat Heavy Electricals Ltd.***'s case (cited *supra*) which reads as hereunder:-



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"18. There is one more reason for coming to the above conclusion. There is a difference between an individual dispute which is deemed to be an industrial dispute under Section 2-A of the said 1947 Act on the one hand and an industrial dispute espoused by the union in terms of Section 2(l) of the said 1947 Act. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(l) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In ***Radhey Shyam v. State of Haryana [(1998) 2 LLJ 1217 (P&H)]*** it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(l) of the said 1947 Act]. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc."

Thus, it can be seen that the Hon'ble Supreme Court of India only stated that in petitions under Section 2-A, other issues such as wages, bonus etc., can never be gone into. This is a case of non-employment and the plea



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that the workman is only a contract labour is set up as a defence. Therefore, the defence can certainly be gone into the petition under Section 2-A of the Industrial Disputes Act, 1947 and therefore, I reject the contention of the learned Senior Counsel.

21. The final contention of the learned Senior Counsel is that the Labour Court ought to have awarded only compensation. The Labour Court already denied back-wages. The workman is now stated to be aged 51 years. In this case, I have already dealt with about the nature of the plea made by the management and the nature of evidence which is also let in by the management. In the teeth of the stand taken by the management, not coming with any fair stand and particulars, no such plea on behalf of the management can be entertained.

22. When the workman was employed as a Watchman in the guest house and has been regularly given duties of allotment etc., on the non-



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employment, considering the long period of service which is pleaded by the workman, even though it is contended on behalf of the management that there are no records available for the work period between the years 1988-1995, considering the age and all the attendant circumstances, this is not a case where compensation can be awarded to the workman and when the Labour Court, especially, considering the unreasonable counter-statement filed by the management and also the nature of the evidence let in by them, ordered reinstatement without back-wages, I do not see any reason to interfere with the same.

23. Accordingly, finding no merits, the Writ Petition stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

02.12.2024

Neutral Citation : yes
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The Presiding Officer,
Labour Court,
Salem.



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D.BHARATHA CHAKRAVARTHY, J.

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