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W.P.No.8859 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.02.2024
Pronounced on	30.04.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.8859 of 2010

Hindustan Unilever Limited
C61-68 PIPDIC Industrial Estate,
Mettupalayam
Puducherry 605 009.
Rep. by its Senior Legal Executive

...Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Pondicherry.

2. S.Murugaiyan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari calling for the records of the first respondent in I.D.No.15 of 2003 and quash its award dated 23.03.2010.

For petitioner	:	Mr.Anand Gopalan for M/s. T.S.Gopalan and Co.
For R1	:	Labour Court
For R2	:	Mrs.Ramapriya Gopalakrishnan



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ORDER

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This writ petition is filed to quash the award dated 23.03.2010 in I.D.No.15 of 2003 on the file of the first respondent.

2. The facts in brief culled out from the affidavit enclosed in the writ petition are as follows:

2.1. One M.Krishnan was engaged by the petitioner as a contractor for running a canteen in the name of Industrial Catering & Allied Services. He was also given the contract for house keeping and garden maintenance and he had engaged more than 20 workmen. The said services were registered as a principal employer under the Contract Labour (Regulation & Abolition) Act.

2.2. M.Krishnan's establishment obtained license dated 10.01.1986 issued by Oulgaret Commune, Pondicherry and entered into a written agreement with Pond's (India) Limited. The said M.Krishnan has also been remitting the contributions in respect of the workmen to the EPF scheme and ESI Corporation.



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2.3. The services of the second respondent were dispensed with

as he was a habitual absentee. The second respondent raised an Industrial Dispute against the Pond's (India) Limited. Conciliation Officer was informed by the petitioner that the second respondent was employed with the Industrial Catering & Allied Services run by M.Krishnan. Accordingly, M.Krishnan was called by the Conciliation Officer and M.Krishnan, by a letter dated 05.04.1996, undertook to employ the second respondent as a fresh employee. But the second respondent refused for the said proposal and pursued the dispute with the Conciliation Officer. The Conciliation proceeding has been dropped against Pond's (India) Limited after the Conciliation Officer was clarified that the second respondent was employed only by the Industrial Catering & Allied Service and not by the petitioner's management.

2.4. A legal notice was sent to the petitioner management by the second respondent stating that the second respondent has raised an I.D.No.8 of 1999 and the first respondent Labour Court has held that the second respondent is not an employee under Industrial Catering & Allied Services run by M.Krishnan, but the second respondent is an employee under the management of M/s.Ponds (India) Limited, Mettupalayam, Pondicherry. The petitioner management, by a reply dated 15.07.2002, stated that it has not received any



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notice regarding I.D.No.8 of 2009 and since it was also not a party to the said proceedings the award will not bind the petitioner.

2.5. Subsequently, the petitioner received an order of reference dated 09.07.2003 made by the Government of Pondicherry purported to be in terms of Section 36-A of the Industrial Disputes Act, 1947 referring the following issues for adjudication:

(i) Whether the refusal of employment of Thiru S.Murugaiyan by the management of M/s. Ponds (India) Ltd., Mettupalayam, Pondicherry, now functioning under the banner of Hindustan Lever Limited, is disobedience of the award of the Labour Court, Pondicherry, passed in I.D.No.8 of 1999 is justified? If not, to what relief, the workman is entitled to?

(ii) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2.6. The second respondent has filed a claim statement contending that in terms of the award dated 10.02.2000 in I.D.No.8 of 2009, the petitioner management should reinstate the second respondent and to pay backwages to the extent of Rs. 3,00,000/-. The petitioner has filed a counter statement in I.D.No.15 of 2003 stating that the issues referred for adjudication



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were beyond the scope of reference made under Section 36-A, *ibid* and also the petitioner's management was closed on 30.04.2003, pursuant to which all the workmen had left the services and therefore, the dispute should be dismissed.

2.7. The petitioner contended before the first respondent Labour Court that the order of reference made under Section 36-A, *ibid*, was not valid as the petitioner was not even a party to the proceedings in I.D. No.8 of 1999 and the management cannot be roped in as a party and the consequential dispute against the petitioner management is invalid.

2.8. The first respondent, by an order dated 23.03.2010, had held that in the earlier dispute in I.D.No.8 of 1999, it was found that the petitioner management was the original employer and the petitioner management, with an intention to escape from its liabilities, has intervened Industrial Allied & Catering Services. However, the first respondent/Labour Court had held that the non employment of the second respondent was not justified and it was also the duty of the petitioner management to offer employment to the second respondent and that the petitioner's establishment is amalgamated with Hindustan Lever Limited and hence, the petitioner has to



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bear the liability of Ponds India Limited and that the second respondent shall be reinstated into service with backwages.

2.9 The petitioner's establishment was closed on 30.04.2003 where all the workmen had left the services and hence, reference made under Section 36-A, *ibid* is invalid. Further, when the petitioner was not a party in I.D.No.8 of 1999 in a reference made under Section 36-A, *ibid* , the petitioner could not be made a party just to implement the award dated 10.02.2000 in I.D.No.8 of 1999 against the petitioner. The first respondent/Labour Court held that the reference under Section 36-A, *ibid*, was not a proceedings analogous to a review application, and granted a relief against the petitioner management directing to reinstate the second respondent and pay backwages in terms of the award in I.D.No.8 of 1999. The petitioner's management was closed in the year 2003 and inspite of the closure of the factory the petitioner's management was directed to reinstate the second respondent with backwages. Even if the second respondent continued to be in employment in the petitioner's management, he would have left along with all other workmen during April 2003 due to closure of the factory and hence, the second respondent cannot be reinstated. As per Section 36-A, *ibid*, when the petitioner management was not a party in the



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earlier proceedings, i.e., I.D.No. 8 of 1999, it could never be made a party in continuation to the earlier said proceedings. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and perused the record.

4. The second respondent was working in the petitioner's company. As he was removed from service he has raised Conciliation proceedings. During the course of the said proceedings the petitioner management has taken a plea that the second respondent is not an employee of the petitioner management but was working under a contractor. The said contractor was called for during the course of enquiry in the Conciliation proceedings, who has submitted filed records stating that the second respondent was working under him and was not working with the petitioner management.

5. When the Conciliation proceedings failed, a reference was made to the Labour Court in I.D.No.15 of 2003, wherein the second respondent and the contractor alone were the parties to the said I.D. and the petitioner management was not a party to the said I.D. The said I.D. was disposed of by



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the Labour Court by giving a finding that the second respondent was not working under a contractor but was working as an employee of the petitioner management. Since the petitioner is not a party to the said I.D. proceedings, the petitioner is not aware of the outcome of the labor Court award, wherein the petitioner management was directed to reinstate the second respondent. The petitioner management was informed about the award of the Labour Court in I.D.No.15 of 2003 but did not agitate the same before any forum including this Court on the ground that the petitioner management is not a party to the I.D. proceedings, thereby they are not binding on it.

6. Subsequently, the petitioner management raised an issue stating that the said award of the I.D.No.15 of 2003 is not binding on the petitioner management. The Labour Court on considering the reference made under Section 36-A has given a finding that the award passed in I.D.No.15 of 2006 is enforceable against the petitioner management.

7. It is submitted by the learned counsel for the petitioner that the Labour Court while considering the application under reference of Section 36-A of the I.D.Act has gone beyond its jurisdiction and interpreted that the award passed in I.D.No.15 of 2003 is enforceable against the petitioner. As per Section 36-A of the I.D.Act, the scope of clarification that can be given by the



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Labour Court is very limited only to the extent of interpreting certain words or certain sentences of the Labour Court, which is ambiguous. But the Labour Court cannot interpret or give a new finding stating that it can be enforced by the petitioner management and thereby, the impugned award passed by the first respondent/Labour Court is totally perverse and without jurisdiction.

8. It is submitted by the learned counsel for the second respondent that the petitioner management who is aware of the outcome of the proceedings before the Conciliation Officer has kept quiet without participating in the I.D. proceeding in I.D.No.15 of 2003 before the Labour Court. It is further submitted that when reference was made to the Labour Court under Section 36-A, *ibid*, directing the Labour Court to interpret as to whether the I.D. award can be enforced against the petitioner management, the management has simply kept quiet without challenging the same before this Court. Therefore, it is submitted that the award passed by the Labour Court is reasonable and not beyond its limit and jurisdiction, etc.

9. The learned counsel for the second respondent has filed the following authorities:



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(i) ***Kirloskar oil engines Ltd., Kirkee vs Workmen and***

others reported in ***(1961 STPL 2596 SC)***, relevant portion of which is extracted hereunder:

“4. In the present appeal the learned Attorney- General attempted to argue that the accumulation of privilege leave up to 45 days allowed by the award was not justified. In our opinion, this argument cannot be entertained in the present appeal for two reasons. First, no such plea appears to have been made before the tribunal in the present clarification proceedings and so the appellant cannot be allowed to raise a new plea now. Besides, it is necessary to bear in mind the limitations of the enquiry permitted under the proceedings contemplated by s. 36A of the Act. The said section empowers the appropriate Government to refer any question to the tribunal if the said Government is satisfied that any difficulty or doubt arises as to the interpretation of any provision of an award made by the said tribunal. It further provides that when such a question is referred to it the tribunal shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties. It is thus clear that the scope of the enquiry under s.36A is limited to the decision of the difficulties or doubts arising as to the interpretation of any provision in the award. If the words used in any provision of an award are ambiguous or obscure and it is not reasonably possible to interpret them the difficulty arising from the use of such ambiguous or obscure words may be resolved by moving the appropriate Government to make a reference under s. 36A. It



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is obvious that any question about the propriety, correctness or validity of any provision of the award would be outside the purview of the enquiry contemplated by the section. If a party to the award is aggrieved by any of its provisions on the merits the only remedy available to it is by making an appeal, say for instance under Art. 136 of the Constitution, to this Court. A grievance felt by a party against any provision of the award can be ventilated only in that way and not by adopting the procedure prescribed by s. 36A. Thus, the enquiry permissible under s. 36A is limited to the question of the interpretation of the provision of the award in question and no more. That is why, we think, that even if the appellant had sought to raise the question about the propriety of allowing the accumulation of privilege leave up to 45 days before the tribunal, and even if such a question had been referred by the State Government to the tribunal under s. 36A, the tribunal would have been justified if in refusing to consider it because the point raised had nothing to do with the interpretation of the provision but is concerned with its merits and its propriety. Therefore, in our opinion, the appellant is not entitled to raise this point before us in the present appeal.”

(ii) ***Bhilwara Dugdh Utpadak Sahakari Samiti Ltd., vs Vinod***

Kumar Sharma Dead by Lrs. and others, (2011) 15 SCC 209 and the relevant portion is extracted below”

“Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on



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an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees. This Court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers.”

10. The basic question to be decided is whether the orders in I.D.No.8 of 2009 can be forced against the petitioner as he is not a party to the proceedings. If a person is not a party to a proceedings the findings of the said proceedings shall not bind the said person. In the case on hand the petitioner is not a party in I.D.No.8 of 2009 and hence the the award in the said I.D. cannot be enforced against the petitioner.

11. Further, Section 36-A of the I.D.Act runs as under:

"36 A. (1) If, in the opinion of the appropriate Government, any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National



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Tribunal as it may think fit.

(ii) *The Labour Court, Tribunal or National Tribunal to which such question is referred shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties."*

And the reference made by the Government in under:

(i) *Whether the refusal of employment of Thiru S.Murugaiyan by the management of M/s. Ponds (India) Ltd., Mettupalayam, Pondicherry, now functioning under the banner of Hindustan Lever Limited, is disobedience of the award of the Labour Court, Pondicherry, passed in I.D.No.8 of 1999 is justified? If not, to what relief, the workman is entitled to?*

(ii) *To compute the relief, if any, awarded in terms of money, if it can be so computed.*

12. In kirloskar case *ibid* , it is held that under 36-A, can be used only for interpretation of the words or phrases of the award. However, when the petitioner management itself is not a party to the award then Section 36-A of the I.D. Act cannot be extended to interpret that the award applies to the factory which is not even a party to the I.D. proceeding. This is nothing but exceeding the jurisdiction by the lower Court and therefore the findings of the Labour Court are perverse and accordingly, the award is quashed.



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13. According to the second respondent, the petitioner management is a mighty organization whereas the second respondent is a poor employee employed in the petitioner's management for a meager salary and submitted further that this Court under a writ jurisdiction while considering the issue can take into consideration the equity, mould and balance the relief.

14. This aspect of the second respondent cannot be considered in the view of the fact that the award in I.D.No.15 of 2003 is beyond the reference under Section 36 – A of the I.D.Act.

15. In the result, this writ petition is allowed. Costs made easy.

30.04.2024

vca

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Citation : Yes/No

To:

The Presiding Officer,
Labour Court,
Pondicherry.



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Dr.D.NAGARJUN,J.
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**Pre-delivery order made in
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