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WP.No.22533 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

**CORAM:
THE HONOURABLE MS.JUSTICE R.N.MANJULA**

W.P.No.22535 of 2012

M.Arul Eliyas

...

Petitioner

versus

1. Labour Officer,
Office of the Labour Department,
No.33, Byrappa Colony Road,
Near Anand Theatre, Krishnagiri,
Krishnagiri District.

2.The Management,
Magtorq Private Limited,
Plot No.38-C, SIPCOT,
Hosur 635 126.

[R2 impleaded vide order dated 24.02.2022
made in WMP.No.25386/2021
in WP.No.2235/2012 y MSRJ]

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for records from respondent labour officer, the records relating to the impugned order O.Mu.No.A/267/2011 dated 11.08.2011 and quash the same and directed the respondent labour officer to entertain the petitioner's 2(A) petition dated 29.03.2011 and send failure report under Section 12(4) of the I.D. Act.



WP.No.22533 of 2012

For Petitioner : Mr.R.Rajaram
For Respondents : Mrs.E.Ranganayaki, AGP for R1
: Mr.S.Shivathanu Mohan for
M/S.S.Ramsubramaniam and Associates for R2

ORDER

On 30.08.2024, this Court has passed the following order:

"The Writ Petition has been filed challenging the order of the first respondent dated 11.08.2011 with the prayer to quash the same on the allegations that the first respondent has exceeded his jurisdiction. It has adverted into the issue of whether the petitioner is a workman or not and rendered a finding on that score, the petition filed under Section 2(A) of the I.D. Act was dismissed.

2. The learned counsel for the petitioner submitted that whenever workman has filed a 2(A) petition, the first respondent is expected to initiate conciliation proceedings and in the event of failure of the conciliation proceedings, a report has to be given in order to enable the workman to raise a dispute before the Labour Court. So according to the submission of the learned counsel for the petitioner, the first respondent has exceeded his jurisdiction and had converted



into the issue of whether the workman is a workman or not.

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3. However, the learned counsel for the second respondent submitted that the petitioner in the very same application dated 29.03.2011 described himself as a fabrication shop supervisor and it is not the finding rendered by the first respondent as to his status. So it is claimed that the petitioner, on his very application, has given materials to show that he did not fall under the definition of a workman and hence, the impugned order does not suffer from any lack of jurisdiction or competence.

4. However, it is denied by the learned counsel for the petitioner that the application dated 29.03.2011 was not the one which was filed before the Labour Officer under Section 2(A), but it was the application submitted by the workman to the second respondent Management. As it appears from the manner in which the letter dated 16.03.2011 is drafted, it is addressed to the Management. However, a copy of the same has been marked to many authorities, including the first respondent. However, in the impugned order dated 11.08.2011, a reference is made to the petitioner's application dated 11.05.2011.

5. Even though the petition of the petitioner dated 29.03.2011 may not have any relevance to the order passed



by the first respondent dated 11.08.2011, the application of the petitioner dated 11.05.2011 would assume more significance. If the first respondent could produce the said application dated 11.05.2011, it could be helpful to find out whether the petitioner himself has described himself as shop Superintendent or whether it is the exercise done by the first respondent to find out the position of the petitioner whether he was a workman or not.

6. In view of the above stated reasons, I feel it is appropriate to direct the first respondent to produce the application dated 11.05.2011 in order to enable the Court for pass further orders."

2. Today when the matter was taken up the learned counsel for the 1st respondent produced the application dated 11.05.2011.

3. With regard to the above letter the respondent has described that the petitioner has been appointed as fabrication shop supervisor. Therefore, the respondent raised a contention that the petitioner shall not fall under the definition of 'workman'. Hence the 2(A) petition itself is not maintainable.

4. However the learned counsel for the petitioner submitted that whatever



WP.No.22533 of 2012

may be the designation given to the petitioner, the nature of the work executed to him would assume more relevance and that would establish that he is a workman. Even according to the petitioner he was working with the computer by conveniently placing himself in one place without having the necessity to roam around. So the above document would show that there is no reversal of his position to any interior /inferior post as he had suffered some accident. Unless the petitioner comes under the definition of '*workman*' he cannot file a 2(A) petition if at all the petitioner is aggrieved.

5. In the impugned order dated 08.02.2011, the 1st respondent has rejected the petitioner stating that the petitioner does not fall under the definition of '*workman*'. The 1st respondent could have given a failure report instead of recording a finding as to whether the petitioner is a workman or not. The said fact has to be decided by the labour Court if the parties contest on the said point by relying on the materials produced before him. Hence the matter is remitted back to the file of the 1st respondent to consider the dispute raised by the petitioner in the above angle and submit a failure report if at all he is not satisfied with both the status and the consequences of the dispute for the appreciation of the labour Court.



WP.No.22533 of 2012

6. In view of the above stated reasons, this Writ Petition is **disposed** and the matter is remanded back to the file of the 1st respondent to consider and pass appropriate orders within a period of three weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed, if any.

30.09.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

jrs



WP.No.22533 of 2012

To

1. The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd ,
Pallavan Illam, Anna Salai,
Chennai 600 002.

2. The Additional Commissioner of Labour,
D.M.S.Complex, VI Floor,
Teynampet, Chennai 600 006.



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WP.No.22533 of 2012

R.N.MANJULA, J.

jrs

W.P.No.22535 of 2012

30.09.2024