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W.P No.26025 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM

THE HONOURABLE MR. JUSTICE **P.DHANABAL**

W.P.No.26025 of 2012
and MP.No.1 of 2012

Management,
M/s.Lakshmi Nathan Turning Works
Old No.9/1, New No.93,
West Street, Avvai Nagar,
Choolaimedu,
Chennai – 600 094.

.. Petitioner

Vs.

1.Presiding Officer,
II Additional Labour Court,
High Court Campus,
Chennai.

2.D.Janarthan Rao

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the concerned records from the 1st respondent, quash the award passed by the 1st respondent dated 21.07.2009 in I.D.No.746 of 2001.

For Petitioner : M/s.Balan Haridas

For Respondents : R1 – Court
Mr.T.Gowthaman for R2.



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ORDER

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This writ petition has been preferred as against the order passed in I.D.No.746 of 2001 on the file of the Presiding Officer, II Additional Labour Court, Chennai, dated 21.07.2009.

2. According to the petitioner, the petitioner was running a lathe shop under the name and style of “Lakshmi Nathan turning Works”. He was the sole proprietor. He along with his two sons was working, and they wanted some outside help, therefore, they gave a small advertisement in 'Daily Thanthi' on 03.11.1996 inviting suitable person for turner work. Based on the advertisement, the 2nd respondent was employed as a turner as part time worker. The 2nd respondent took out a LIC policy and requested the petitioner to pay the premium, promising to refund the premium paid by the petitioner. Thereafter, the 2nd respondent did not repay the premium amount, which was demanded by the petitioner. In order to avoid the payment, he stopped his work, and thereafter he raised an Industrial Dispute before the Conciliation Officer as if his service was terminated orally on 28.03.2001. During the conciliation proceedings, the petitioner offered to provide work to the 2nd respondent, but he did not accept and sought backwages. Though the



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petitioner was willing to give work to the 2nd respondent, he willfully refused to do the work. The 2nd respondent had been working regularly with Sungov Enterprises, Redhills Road, Chennai, and he was covered under the ESI Act. His coverage number is 51-11704778. The 2nd respondent, being covered under ESI Act, during the period from 08.1.1996 to 16.07.2000, had availed himself of the treatment provided by the ESI hospital about 25 times.

2.1 Before the Labour Court, on the side of the petitioner administration, two witnesses were examined and marked 11 exhibits. On the side of the 2nd respondent workmen, two witnesses were examined and marked four exhibits. The Labour Court, without considering the evidences in a proper perspective, allowed the Industrial Dispute and directed the Petitioner Management to reinstate the 2nd respondent with continuity of service, backwages and all other attendant benefits. Aggrieved by the said order, the present writ petition has been filed by the Petitioner Management.

3. The learned counsel appearing for the petitioner would submit that the 2nd respondent was working under the petitioner's



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management as a part-time worker and he took a LIC policy, with the premium being paid by the petitioner at the request of the refund of the premium. Later, when the petitioner demanded the repayment of the premium amount, the 2nd respondent stopped work and absented himself from duty. In fact, the 2nd respondent had been working on the regular basis with Sungov Enterprises, Redhills Road, Chennai and he is covered by the ESI Act and he took treatment in the ESI hospital during the period from 8.1.1996 to 16.07.2000. While so, in order to evade the repayment of the LIC premium, he raised an Industrial Dispute, alleging that the petitioner terminated him orally on 28.03.2001. Even during the conciliation proceedings, the petitioner was ready to provide work to the 2nd respondent, but he refused, and this was also recorded in the conciliation proceedings. Since the 2nd respondent was working full-time worker with Sungov Enterprises, Chennai, he was unable to work as a full-time worker under the petitioner. In the meanwhile, he filed industrial dispute in I.D. No.746 of 2001, where the respondent himself admitted that during the conciliation proceedings, employment was offered but he did not come for work, and he also admitted the treatment taken before the ESI hospital under the coverage of Sungov Enterprises. The Labour Court has not considered the above said aspects and



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erroneously allowed the petition and ordered for reinstatement of the petitioner with backwages, continuity of services and all other attendant benefits. Therefore, the order passed by the Labour Court is liable to be set aside.

4. The leaned counsel appearing for the second respondent would submit that the second respondent was working under the petitioner as a turner and he was appointed as turner on 14.11.1996 till 21.03.2001. His salary was Rs.2,125/-. During that time, he was on medical leave from 21.03.2001 to 27.03.2001, but the management refused to give work, and without any enquiry proceedings, terminated the second respondent orally. Therefore, he raised an Industrial Dispute. Conciliation proceedings also failed, and thereafter he filed the Industrial Dispute.

4.1 Before the Labour Court, on the side of the second respondent, two witnesses were examined and four documents were marked. The Management also has not disputed the relationship between the parties as employee and workman. The petitioner had earlier worked under Sungov Enterprises and thereafter joined duty with the petitioner



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management. He availed himself of the benefits of ESI hospital based on their earlier coverage. Therefore, the Labour Court, after considering all the aspects, correctly allowed the writ petition, and the present writ petition is liable to be dismissed.

5. This Court heard both sides and perused the records available on record.

6. In this case, there is no dispute that the petitioner management has appointed the second respondent as a turner. According to the petitioner management, the second respondent was appointed as a part-time worker, and he worked under Sungov Enterprises as a full-time worker. Without any intimation, he was absent from work. Even during the conciliation proceedings, the management offered him employment, but the second respondent refused. According to the second respondent, he availed himself of medical leave from 21.3.2001 to 27.03.2001. After his medical leave, when he was ready to join duty, the petitioner refused to give him work and orally terminated him. Therefore, he raised Industrial Dispute.



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7. On careful perusal of the records and evidence, they revealed that during the conciliation proceedings, the petitioner offered employment to the second respondent, but he refused. In the conciliation proceedings, there is an observation by the conciliation officer that the petitioner offered to give work to the second respondent, but the second respondent demanded backwages, therefore, the conciliation proceedings failed. The said conciliation proceedings was marked as Ex.W1. From the above said document, which was marked as Exhibit W.1, it reveals that the petitioner was ready to give work to the second respondent, but the second respondent refused to work and demanded backwages.

7.1. Moreover during the cross examination, the workmen admitted that after conciliation proceedings, the petitioner issued letters dated 15.11.2001, 17.01.2001 and also offered work to the second respondent. Further, the workmen also admitted that he availed himself of the ESI hospital benefits under the coverage of Sungov Enterprises from 08.01.1996 to 16.07.2000. Therefore, the second respondent himself admitted during the industrial dispute proceedings that the petitioner offered employment and that he availed ESI facilities under the coverage of Sungov Enterprises. More over, MW.1 who is the ESI



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branch manager, stated in his evidence that the second respondent worked under Sungov Enterprises and that he had taken treatment before the ESI, which was marked as M.4. Though MW.1 admitted that they used to provide treatment for up to 9 months after the termination of service, the second respondent has not produced any documents to that effect. Therefore from the above evidences, it is clear that the 2nd respondent workmen was employed under Sungov Enterprises.

7.2. As per the evidence of MW.2, the 2nd respondent was working as part-time worker and he himself absented from duty. When the petitioner was ready to offer work to the second respondent, he refused to work and was employed under Sungov Enterprises as a full-time worker. He was working under the petitioner as part-time worker. Therefore, from a careful perusal of evidences adduced by both the parties, it clearly shows that the petitioner was ready to give employment to the worker, but the second respondent refused to work and also the petitioner probabalised the defence that the second respondent was working under Sungov Enterprises and also availed himself of ESI facilities under Sungov Enterprises, Therefore, the petitioner probablise the defence that the second respondent was employed full-time work



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under Sungov Enterprises and only worked as part time worker for the petitioner. The Labour Court failed to consider the above said aspects and ordered for reinstatement of the worker along with all other attendant benefits.

8. Moreover, the exhibits marked on the side of petitioner management in the industrial dispute clearly shows that they were ready to offer employment to the workmen, but conversely, the workmen refused to go to work. Therefore, the petitioner is not entitled to any relief through this industrial dispute. In the Labour Court order itself, it is clearly mentioned regarding the willingness of the management to provide employment, but the second respondent only refused to go to work. The Labour Court, without considering the evidences in the proper perspective, erroneously allowed the petition. Therefore, the order passed by the Labour Court is liable to set aside.

9. In view of the above discussions, this Court is of the opinion that this writ petition is to be allowed. In the result, this writ petition is allowed and the order passed by the Labour Court in I.D.No.746 of 2001 is set aside and the industrial dispute is dismissed. No costs.



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Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No.

Internet/Yes/No

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To

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

P.DHANABAL.J.

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