



W.P.Nos.27908/2012 & 27706/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.27908/2012 & 27706/2011

P.Arul Vendan

... Petitioner in W.P.No.27908/2012

1.The Management of
Nilkamal Crates and Bins Ltd.,
No.77/78, Nilkamal House
Road No.13/14, M.I.D.Andheri (East)
Mumbai 400 093.

2.The Zonal Office
Nilkamal Crates & Bins Ltd.,
No.9/10, 1st Floort, Akshaya Plaza
54/55, Harris Road, Pudupet
Chennai 600 002.

... Petitioners in W.P.No.27706/2011

Vs.

1.The Presiding Officer
1st Additional Labour Court
City Civil Court Buildings
Chennai 600 104.



W.P.Nos.27908/2012 & 27706/2011

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2.The Management

Nilkamal Crates and Bins Ltd.,
No.77/78, Nilkamal House
Road No.13/14, M.I.D.C.Andheri (East)
Mumbai 400 093.

3.The Zonal Office

Nilkamal Crates and Bins Ltd.,
No.9/10 1st Floor Akshaya Plaza
54/55, Harris Road Pudupet
Chennai 600 002.

...Respondents in W.P.No.27908/2012

1.P.Arul Vendan

(P.Arul Vendan the first respondent in
the cause title amended as per order
dated 18.08.2014 in M.P.No.1/2014
in W.P.No.27706/2011)

2.The Presiding Officer

1st Additional Labour Court
Chennai 600 104.

...Respondents in W.P.No.27706/2011

Prayer in W.P.No.27908/2012: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records and papers from the file of the first respondent in I.D.No.378/2007 and quash the impugned award made therein dated 18.07.2011 in so far as the first respondent has denied the petitioner's claim for back wages and all other attendant benefits.



W.P.Nos.27908/2012 & 27706/2011

Prayer in W.P.No.27706/2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned award of the second respondent (the 1st Additional Labour Court, Chennai) dated 18.07.2007 made in ID.No.378/2007 and quash the same as illegal unsustainable and unenforceable.

For Petitioner in
W.P.No.27908/2012 : Mr.S.Kumaraswamy

For Petitioner in
W.P.No.27706/2011 : Mr.B.Manoharan

For Respondents
in W.P.No.27908/2012: Mr.B.Manoharan for R2
R3-Died
R2-Labour Court

For Respondents
in W.P.No.27706/2011: Mr.S.Kumaraswamy for R1
R2- Labour Court

COMMON ORDER

These Writ Petitions are filed by the Management and Workman respectively, against the award in ID.No.378 of 2007 dated 18.07.2011. By the said award, the Labour Court directed reinstatement of the workman with all continuity of service and service benefits and with 25% back wages.



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2. The case of the workman is that he was employed in the respondent Management on 26.03.2001 as Cab Driver. While so, with effect from 18.12.2006 without any notice in writing or without any order whatsoever, he has been non-employed and ordered to not report for work. Under the circumstances, he raised the dispute and upon failure of the conciliation, the present petition is filed claiming reinstatement with full back wages.

3. The case of the Management is that there is no employee-employer relationship with the workman. The workman who is a Driver, had come and worked in the Management as a cab driver on one or two days when they temporarily engaged a cab from one Muthu Cabs which is functioning from the Ground Floor of the premises. Apart from that there was no employer-employee relationship and therefore, the workman is not entitled to the said relief.



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4. In the said back ground, to consider the matter further it is useful to see the following evidence on record. On 12.02.2007 vide **Ex.W.5**, the workman had raised dispute by categorically mentioning that he was engaged from 26.03.2001 and was disengaged in the month of December-2006. To the said dispute, the following stand was taken by the respondent Management in the portion of the order which reads as follows:

“இந்த மனுவில் குறிப்பிட்ட நபர் தற்காலிக ஒப்பந்த முறையில் (1-2 days Assignments) பணிபாற்றி இருக்கலாம் என்றும், அப்படி பணிபாற்றி இருக்கும்பட்சத்தில் அதற்குரிய ஊதியத் தொகையை உடனுக்குடன் பட்டுவாடா செய்யப்பட்டது என்பதை இதன் மூலம் தெரிவித்துக் கொள்கிறோம்.”

5. Thereafter, before the Labour Court, the counter affidavit was filed by the Management and the relevant portion of paragraph Nos.3 & 6 which reads as follows:

“...3. Therefore, question the petitioner ever given “placement” or ever worked as “Driver” in our Company does not arise at all. If at all our Company requires of a Cab, we make use of tourist cabs. May be we might have engaged a cab from one M/s.Muthu



Cabs which is right below our Company in the Ground Floor who might have sent this petitioner as their Driver. While so, at no point of time did we ever engage the petitioner. Hence, question of payment of any sum much less “Rs.5,189/-as Salary” to the petitioner as stated in the petition does not arise at all. All other allegations of the petitioner contra to this are most emphatically denied.

...6. The Respondents humbly deny all the allegations stated in Para 5 of the petition and state that never was there any relationship of employer-employee between the petitioner and our Company at all at any time. Whiles, question of any violation of principles of natural justice or that of Sec.25-F of the I.D. Act could never arise at all.”

6. In the proof affidavit filed on behalf of the Management also the following stand is taken in paragraph No.4, which reads as follows:

“...4 Since the petitioner was a part time driver, the provisions of Sec.25 of the I.D. Act or any other



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provisions therein are applicable to the petitioner. This respondent has never terminated the services of the petitioner and the question of termination also will not arise to him. As submitted earlier, the statement given before the Labour officer at the time of conciliation, and about the nature of his employment is perfectly correct, and the same is whole good even today. Hence the entire claim of the petitioner, against the respondent management is unsustainable, and he is not legally entitled to claim any benefits from them...”

7. However, on behalf of the Management when the workman was in the box as *W.W.1* cross examination was made as if his monthly salary was Rs.3,000/- per month. The relevant portion is extracted hereunder:

“எனக்கு மாதம் 3 ஆயிரம் மாதம் மாதம் கொடுத்தார்கள் என்றால் சரிதான். அந்த 3 ஆயிரத்தை தொகையாக கொடுத்தார்கள். அந்த தொகைக்கு ஒரு பேப்பரில் ஸ்டாம் ஒட்டி கையொழுத்து வாங்கிகொள்வார்கள். 2001ல் எதிர்மனுதாரர் நிறுவனம் ஒரு கார் வைத்திருந்தது. அந்த கார் மாருதி வேண் நம்பர் தெரியாது.”



8. This apart, on behalf of the workman a letter was given by the Management as if they accepted the workman as their driver for the purpose of getting a duplicate licence, which was marked as *Ex.W.1* and the relevant portion of the same is extracted hereunder:

“This is to inform you that the original driving license No.991/TN/23/1992 of our driver Mr.P.Arulvendan which was in our custody as security has found to be misplaced.

The driving license is due for renewal on 28.04.2004.”

9. This apart, the leave statements given by the Management in which the petitioner's name is mentioned and the statement regarding the increment which is given to the petitioner was also marked as *Ex.W.9 & Ex.W.10.*

10. On the contrary to show that the petitioner is not a workman on the behalf of the Management *Ex.M.2 to Ex.M.5* which are in the form of



salary register and leave books were marked to show that the petitioner name does not find place. This apart, **Ex.M.6** is marked which is the letter supposed to be given by the workman for asking the Management for obtaining duplicate licence. The said letter is written as if the petitioner is only working in the travels and also once in a while attending the work of the respondent Management. As far as the wage register and leave register are concerned, on behalf of the workman, the Management witness was cross examined to elicit that while it is admitted that there are two other employees who were actually working under the Management, their names also do not find place in the wage register. This admission is specifically there on behalf of the Management witness. As far as the letter dated 22.04.2004 is concerned, the workman had categorically admitted his signature, but however denied that the letter was not written by him.

11. A perusal of the date which is written on the letter and the manner in which the letter is signed also to be taken note of. Therefore, the Labour Court after apprising all the above evidence on record had come to the conclusion that the workman was an employee of the Management and as



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such held that the non employment is illegal and ordered for reinstatement of the workman. Therefore, no exception whatsoever can be taken for the Labour Court thoroughly appreciating the above evidence, which is on record, and coming to the conclusion, which seems to be the only conclusion that can be arrived on the basis of the evidence on record. It can be seen that all along the defence of the management, though seems to suggest that the petitioner is working in the cabs and he was engaged only on sporadic days, was not categorical. In one place they seem to suggest that he was part time and in another place the counsel has cross examined him and his monthly salary was only Rs.3,000/-.

12. As a matter fact on behalf of the workman it has been categorically pleaded and he has withstood the cross examination that there was a Maruthi Van which was available with the petitioner management and no exception whatsoever can be taken for the Labour Court to read the entire evidence on record and to consider the same as correct and accordingly I find that the Labour Court was right in arriving at the finding that the workman is an employee of the management and that he is entitled to reinstatement.



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14. Arguments are also made with reference to the events pending the Writ Petitions. Both sides learned counsel would rely upon the order passed directing to pay wages as per Section *17-B of the Industrial Disputes Act*, which was passed and later modified by an order dated 09.10.2015 in Cont.P.No.706 of 2015 to pay actual wages instead of last drawn wages. It is stated that as against the order passed in the Contempt Petition a Letters Patent Appeal is also pending. It is further stated that in lieu of back wages, the workman was ordered to report for work by the letter of the management dated 24.12.2012. Thereafter, followed by the letter dated 08.01.2013, it is further stated that when the workman had written back to them stating that if the Management wants to employ him then he should be paid the current wages and not the last drawn wages. Thereafter, by an order dated 05.08.2014, he was also sought to be transferred and posted to *Jammu*. The workman did not report before the transferred place, stating initially to raise an industrial dispute and thereafter the same was withdrawn by him, as everything would be considered in these Writ Petitions.



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Petitions filed before this Court contending that except for employing the workman sporadically for one or two days as cab driver, he was never engaged. In that scenario the conduct of the management in raising the salary of the workman as Rs.12000 and transferring him that too to a far of place like *Jammu*, when the petitioner is only a driver is nothing but unfair. Therefore, I am of the view that all these subsequent developments is only to keep the workman at bay without giving him employment as per the order of the Labour Court and without paying the 17-B wages.

17. In view thereof I answer the question in favour of workman that the workman will be entitled to reinstatement with 25% back wages till the date of award and thereafter, the workman shall be paid the actual wages as if he is in continuous employment. The management is entitled to deduct the sums if any be paid and pay the balance amount.

18. In view there of these Writ Petitions are disposed of on the following terms:

1) the award of the Labour Court made in



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ID.No.378 of 2007 is confirmed and that the workman is entitled to reinstatement with 25% of the back wages from the date of non-employment in December-2006 till the date of award dated 18.07.2011, the workman will be entitled to full back wages from the date of award and the management (Writ petitioner in W.P.No.27706 of 2011) is directed to implement the award of the Labour Court by reinstating the petitioner into service with all back wages from the date of award;

2) the workman will be entitled to all continuity of service and other service benefits;

3) the management will be entitled to deduct the actual sums which are paid by virtue of 17B wages and other deposits;

4) the workman will be entitled to withdraw the 25% back wages which is deposited to the credit of the ID by the management pursuance to the interim order of this Court along with accrued interest if any.

No costs.

18.11.2024

Neutral Citation : Yes
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To

The Presiding Officer
1st Additional Labour Court
City Civil Court Buildings
Chennai 600 104.



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D.BHARATHA CHAKRAVARTHY, J.

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