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W.P.No.33010 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.33010 of 2013
and M.P.No.01 of 2013

The Management of Greaves Cotton Ltd
Southern Regional Office
Lakshmi Chambers
No.30 Anna Salai
Little Mount, Saidapet
Chennai 600 015.
Rep. by its Senior Manager – Pers. & Admn.

...Petitioner

Vs

1. The Presiding Officer
I Additional Labour Court
Chennai
2. T. Amudha
3. T. Suryakumar
4. T. Sugumar

...Respondents



W.P.No.33010 of 2013

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the 1st respondent in ID No.410 of 2004 and quash its award dated 03.08.2013.

For Petitioner : Mr.P.Raghunathan
For Respondents :
For R1 : Labour Court
For R2 to R4 : No Appearance

ORDER

This writ petition is filed against the order passed by the Tribunal in ID.No.410 of 2004.

2. The writ petitioner is the management of Greaves Cotton Limited, Southern Region and having their office at Lakshmi Chambers, Little Mount, Saidapet, Chennai 600 015. They are having office at various locations across the country and they are engaged in various engineering products. According to the petitioner, they used to oversee the materials, which is stationed at various places and dispatch the materials including high value cheques and



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other things from the Southern Region to the petitioner's factory at Aurangabad.

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3. According to the petitioner, one Mr.Jayachandran was designated as Purchase Officer on the rolls of the petitioner's factory at Aurangabad. He was making payments to the independent contractor on his own, under whom, the deceased Thirumoorthy was employed to carry out independent courier service. The said Thirumoorthy was not directly employed and he is not their workmen. The employment of the Thirumoorthy was purely independent and he was working under Mr.Jayachandran. Therefore, the deceased Thirumoorthy is not an employee of the petitioner or working on daily basis.

4. The petitioner contended that the service of Thirumoorthy was terminated by Mr.Jayachandran. According to the petitioner, the said Jayachandran utilised the services of Thirumoorthy and therefore, the said Thirumoorthy raised an Industrial Dispute before the Conciliation Officer, alleging that he was in the employment of the petitioner from 25.05.1990 as a courier service man. According to the petitioner, the said Thirumoorthy has



contended that he was paid daily wages and also travelling allowance on daily basis for his service and that he was terminated from service on 12.12.2004.

5. The petitioner referred to a letter dated 08.03.1997 issued by the said Jayachandran to the petitioner showing the details of the payment of Rs.20 per day towards service charges. However, the letter does not disclose any reference to the said Thirumoorthy as a workmen. The said Thirumoorthy raised ID.No.410 of 2004, in which, the petitioner has categorically stated that the said Thirumoorthy only acting as an independent professional courier to Mr.Jayachandran and as such, there is no employer or employee relationship between them. During the course of adjudication before the I Additional Labour Court, Chennai, the said Thirumoorthy was examined as W.W.1 and Exs.W1 to W32 were marked. All these documents would only show that the services of the said Thirumoorthy was utilised by the said Jayachandran and as contended by the petitioner, there is no employee or employer relationship. It is found from the records that the respondents 2 to 4 are the legal heirs of the said Thirumoorthy, who passed away on 21.08.2010.



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6. According to the petitioner, the said Thirumoorthy died and the respondents 2 to 4 are the legal heirs. The only point which was raised before the Tribunal to consider was whether the said Thirumoorthy was a workmen as contemplated under Section 2(s) of the Industrial Dispute Act or not. The said Thirumoorthy was examined as W.W.1 and Exs.W.1 to W.32 were marked and on the side of the petitioner's management Exs.M.1 to M.3 were marked. Ex.M.1 relates to the wage register for the years 1997, 1998, 2002 and 2004 and Ex.M.2 dated 05.03.2004 is the copy of the Advocate Notice of the workman to the petitioner herein and Ex.M.3 dated 15.03.2004 is the copy of reply notice by the petitioner herein. Though the said Thirumoorthy has marked several documents to show that he had received payment, according to the petitioner, all these payments under several categories were not made by the petitioner's management and it is only towards service charges, the said amounts were paid and Thirumoorthy was only engaged by the said Jayachandran. The question of employment as defined under Section 2(s) of the Industrial Disputes Act as workman, cannot be taken into consideration. However, the Tribunal made its



award by stating that the deceased Thirumoorthy was aged about 54 years on 01.06.2009 and the last drawn pay salary of the said Thirumoorthy was Rs.60/- per day and therefore, the Tribunal has concluded that a sum of Rs.3,00,000/- as compensation could be awarded.

7. The learned counsel for the petitioner fairly submits that the respondent herein levelled very serious allegations against the management, which according to them is not substantiated and it is a kind of humiliation faced by the management and therefore, such allegation in the nature of victimization is not true. In the absence of any material to substantiate that the said Thirumoorthy was victimized or to establish that he was a workman with the petitioner management, the management would have taken a different view before the Tribunal itself.

8. From the submissions, it is clear that except the allegations made by the said Thirumoorthy that he was subjected to humiliation and he was terminated, there is no evidence to prove that he was a workmen under the



petitioner. The petitioner herein has challenged the order of the Tribunal before this Court. This Court feels that in the absence of any such material to establish that the said Thirumoorthy was victimized or employed under the Petitioner, as contemplated under Section 2(s) of the Industrial Disputes Act, the said order of the Tribunal dated 03.08.2013 cannot be sustained and accordingly it is quashed. However, it is seen that the Thirumoorthy's services have been utilised by the Jayachandran as an independent contractor and indirectly availed by the petitioner's management.

9. The learned counsel for the petitioner submitted that as per the order of this Court in M.P.No.1 of 2013, there was a conditional stay to deposit a sum of Rs.3,00,000/-. As directed by the Tribunal in I.D.No.410 of 2004 and the same was deposited with the State Bank of India, vide Demand Draft No.734064 dated 17.12.2013.

10. The respondent 2 to 4 are hereby directed to withdraw the same with accrued interest, as the petitioner management has deposited the same.

11. With the above observation, the writ petition is dismissed. No Costs.



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Consequently, connected miscellaneous petition is also closed.

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Index: Yes/No
Speaking/Non-speaking Order
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To
The Presiding Officer
I Additional Labour Court
Chennai

N.SENTHILKUMAR, J.

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