



WEB COPY

W.P.No.71 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.09.2024
Pronounced on	29.11.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**W.P.No.71 of 2012

No.XNC-584, Moulana Abul Kalam Azad
Cooperative Stores Ltd.,
rep.by its Special Officer,
No.12,Nacharammal Street,
Chennai.

...

Petitioner

Vs.

1.A.Perumal

2.The Presiding Officer,
I Additional Labour Court,
Chennai 600 104.

...

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARI, calling for the records relating to the Impugned Award made in I.D.No.682/99 dated 04.03.2010 on the file of I Addl. Labour Court, Chennai and quash the same.

For Petitioner : Mr.M.Thangaraju



WEB COPY



W.P.No.71 of 2012

For Respondents : Mr.A.K.R.Ravi for R1
: R2- Labour Court.

ORDER

Heard Mr.M.Thangaraju, learned Counsel for the petitioner and Mr.A.K.R.Ravi, learned counsel for the first respondent and perused the materials available on record.

2. The Writ Petition has been filed by the petitioner, Co-operative Store, challenging the award passed by the I Additional Labour Court dated 04.03.2010 in I.D.No.682/99. On an industrial dispute raised by the 1st respondent challenging the order of termination dated 04.11.1995, before the I Additional Labour Court, Chennai, the labour Court passed an award of reinstatement, along with back wages and all other attendant benefits. The petitioner / Management has filed this Writ Petition stating that there is no master and servant relationship between the 1st respondent and the petitioner / Management

3. The learned counsel for the petitioner submitted that the labour



W.P.No.71 of 2012

WEB COPY

court has omitted to frame a specific issue as to the status of the 1st respondent as a workmen with the petitioner cooperative store. It is claimed that the permanent employees of the cooperative stores such as salesman / packers some times engage outsiders, without the knowledge or permission of the employer to share their work burden and hence, the 1st respondent, might have been engaged in such an unauthorized manner.

4. The learned counsel for the 1st respondent submitted that the 1st respondent is very much an employee and he was employed in the petitioner co-operative stores in his capacity as a workman and he has proved the said fact before the labour Court.

5. On perusal of the award of the labour Court, it is seen that the labour Court has framed an issue as to whether the 1st respondent is entitled to reinstatement with continuity of service and back wages and all other attendant benefits, though the Court has not framed a specific issue as to the existence of the master and servant relationship between



W.P.No.71 of 2012

WEB COPY

the petitioner and the 1st respondent. However, the Court has adverted into the issue during the course of its discussion on the other issue and had given a finding that the 1st respondent was very much, a workman in the petitioner co-operative store.

6. The petitioner's witness, who was examined as M.W.1, has stated during his cross examination, that the 1st respondent, along with other staff of the society have been imposed with a punishment by serving a notice by the Deputy Collector and Legal Metrology, Tamil Nadu Weights and Measures Control Department, Chennai. If the 1st respondent is a stranger, the notice need not have been issued to him along with the other workmen Krishnaswamy and M.W.1-Chittibabu, who is the manager.

7. In fact, M.W.1-Chittibabu was aware of the fact that the father's name of the 1st respondent is Arjunan. The compounding notice issued by the Deputy Collector and Legal Metrology, Chennai to the 1st respondent and others has been marked as Ex. W2. The 1st respondent,



W.P.No.71 of 2012

WEB COPY

M.W.1-Chittibabu and Krishnasamy were found fault with by the Deputy Collector and Legal Metrology, Chennai, that in the petitioner co-operative store, they had distributed kerosene to the consumers without measuring it properly and there was a shortage in the kerosene purchased by a consumer from the petitioner co-operative store.

8. The above compounding notice was dated 04.11.1991. Subsequently, the proceedings have also been issued, consequent to Ex.W2 by imposing a punishment of Rs.200/- upon the 1st respondent for the above violation of the standards of measures. It is difficult to presume that a stranger had been issued with a notice for the shortage of consumer items like kerosene sold by the petitioners co-operative store along with M.W.1, who is admittedly an employee of the society.

9. The Presiding Officer of the Labour Court has appreciated the above records along with other evidence produced by the 1st respondent, especially on the admission made by M.W.1 himself and has recorded a finding that the 1st respondent was very much an employee under the



W.P.No.71 of 2012

WEB COPY

petitioner co-operative store. As the labour court has come to a conclusion about the existence of the relationship between the petitioner and the 1st respondent as that of master and servant, not in any slipshod manner, but on a fair appreciation of the materials available on record, I do not find any prejudice is caused to the petitioner due to such finding.

10. The learned counsel for the petitioner submitted that the 1st respondent cannot claim that he is the employee of the petitioner cooperative store just on the basis of the compounding notice without producing any other records to show that he is actually in employment. The 1st respondent cannot have any other records, especially when the petitioner cooperative store maintains the registers and other details of the employees. The management witness, M.W.1 has also admitted that Ex.W2 to Ex.W4 have been issued to him just because he was working in the petitioner cooperative store.

11. It is further submitted by the learned counsel for the petitioner that even if the 1st respondent is considered as an employee of the



W.P.No.71 of 2012

WEB COPY

petitioner co-operative store and claims that he has been illegally retrenched, the Court ought to have awarded compensation and not reinstatement.

12. The petitioner management also did not choose to produce any employee attendance register or salary register to show that the 1st respondent is not the employee of the petitioner. When the petitioner who holds custody of these documents has not preferred to produce the same, the Court can take only an adverse presumption against the petitioner. On getting satisfied with such materials produced by the first respondent the labour Court has rendered a positive finding as to the existence of master and servant relationship between the petitioner and the 1st respondent. So the failure on the part of the court in framing a specific issue as to the existence of a master-servant relationship would not cause any prejudice, as the Court has dealt with the above point and rendered a finding.



W.P.No.71 of 2012

WEB COPY

13. The further argument of the petitioner is that when the 1st respondent himself has claimed that he is illegally retrenched, the labour court ought not to have granted the relief of reinstatement but ought to have given compensation. The first respondent has been out of service, and he had filed the petition seeking reinstatement. The petitioner has employed the word "*retrenchment*" to denote his termination, with his given understanding. It might be the language that the petitioner might know. But that cannot be taken advantage by the management. The management had, at no point of time has stated that the service of the 1st respondent has been terminated due to retrenchment. All along the petitioner had raised the point of non-existence of any relationship as master and servant and nothing else.

14. Under such circumstances, the words employed by the 1st respondent to describe his termination cannot be given more significance for depriving him of the benefit of retrenchment but allowing him only compensation. On these aspects also, I do not find that the order of the labour Court is short-sighted or not illegal.



W.P.No.71 of 2012

WEB COPY

In the result, this Writ Petition is **dismissed**. No costs.

29 .11.2024

Index : Yes/No
Internet : Yes/No
Speaking:Non-speaking order
Neutral Citation : Yes/No

jrs



WEB COPY



W.P.No.71 of 2012

R.N.MANJULA, J.

jrs

To
The Presiding Officer,
I Additional Labour Court,
Chennai 600 104.

W.P.No.71 of 2012

29.11.2024