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W.A.1449 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2024

DELIVERED ON : 26.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

and

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A. No.1449 of 2023

S.Sathiskumar

..Appellant/Petitioner

Vs

1. The Secretary to Government
Labour Welfare and Skill Development
Secretariat, Chennai.
2. The Senior General Manager
Simplex Infrastructures Ltd.,
Simple House
27, Shakespere Sarani
Kolkatta -700017
3.The Deputy Manager,
Simplex Infrastructure Ltd.,
Heavitree Comple, 1st Floor, Unit-C
47,Spurtank Road, Chetpet,
Chennai-600031

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause XV of the Letters Patent Act, as against
the order dated 19.01.2023 in W.P.No.996 of 2023.

For petitioner : Mr. A.S.Palanisamy

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For respondents :

for R1

:Mr.T.Cheziyan, Govt.Advocate

For R2 and R2

:Ms.Varsha K.S. for Mr.Thriyambak J.Kannan

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JUDGMENT

Per J.NISHA BANU, J.

This writ appeal is filed challenging the dismissal order dated 19.01.2023 passed in W.P.No.996 of 2023, whereby, the petitioner's prayer for a direction to the 2nd respondent-The Senior General Manager, Simplex Infrastructures Ltd, Kolkatta, to disburse his due salary with interest was negated on a finding that recovery of salary from a private company can never be made amenable to writ jurisdiction.

2. The learned Single Judge, in paragraph 6, held as follows:-

“ 6. In the considered view of this Court, recovery of salary from a private company can never be made amenable to writ jurisdiction. It is true that a writ can be issued even as against the private body, provided that the private body is performing a public function. In the present case, the non~payment of salary by the 2nd respondent to the petitioner can at no stretch be called as a public duty.”

3. The facts of the case is that the appellant was appointed in the 2nd



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respondent private company as Deputy Manager (Construction). Kolkatta, vide appointment order dated 31.12.2016. According to the appellant, his services was regularized w.e.f. 28.12.2017 by his employer concern by letter dated June 2018.

4. The case of the appellant is that he was transferred from Kolkatta to various places and transferred to Tirunelveli and his services was regularized w.e.f. 28.12.2017. But his salary for 18 months to the tune of Rs.12,72,100/- was not paid. In this regard he made several representations to the 2nd respondent, but his salary was not disbursed. Therefore, the petitioner filed Writ Petition No.996 of 2023 before this Court for a direction to the 2nd respondent to disburse the entire arrears of salary with interest.

5. The learned Single Judge dismissed the Writ petition holding non-payment of salary by the 2nd respondent to the writ petitioner can at no stretch be called as a public duty and that the writ petitioner knocked the doors of a wrong court.

6. The learned counsel for the appellant would submit that salary of an employee amounts to property under Article 300A and the appellant rights cannot be diminished or withered. Referring to judgments in the case of (i) **V.Ganesan Vs.**



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State Bank of India (W.P.No.4386/1997 dated 21.11.1987) and (ii) Zee Telefilms

Ltd and another vs Union of India and others reported in 2005 (4) SCC 649, the learned counsel submits that the 2nd respondent employer has clearly violated Article 21 of Constitution of India.

7. The learned counsel for the appellant also pointed out that the term “authority” used in Article 226 must receive a liberal meaning and Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. He would further submit that Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. The learned counsel submits that the above said observations have been repeated and reiterated in numerous judgments of Honourable Supreme Court and particularly in the case reported in (2020) 14 SCC 449 [MARWARI BALIKA VIDYALAYA VS. ASHA SRIVASTAVA AND OTHERS], the Honourable Supreme Court laid down the law which is a procedural safeguard in favour of employee.



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8. Per contra, the learned Government Advocate appearing for the 1st respondent submitted that the Appellant was engaged in the work of Private company and the said company was privately managed and therefore writ application is not maintainable. However, it is open to the appellant to institute an appropriate petition for seeking relief claimed in the writ petition.

9. The learned counsel for respondents 2 and 3 would submit that the 2nd respondent does not perform any public duty which would make it amenable to writ jurisdiction since the 2nd respondent activities cannot be stated to be intrinsically public in nature and the order passed by the learned Single Judge does not require any intervention.

10. Heard both sides and perused the records.

11. Under the impugned judgment, the learned Single Judge dismissed the writ petition at the threshold. In the instant case, the 2nd respondent services is neither a 'State' under Article 12 of the Constitution, nor is, it discharging functions which will bring it within the ambit of public duty making it amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India. As a



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result, the writ petition was dismissed by the learned Single Judge. The strenuous attempt made by the learned counsel for the appellant would go to show that the he would bring it within the ambit of the expression 'other authority' appearing in Article 226 of the Constitution and making 2nd respondent amenable to the writ jurisdiction.

12. It would be necessary to keep in mind that while dealing with the issue as to whether the respondent-employer performs public functions or discharges public duty which makes it amenable to writ jurisdiction under Article 226 of the Constitution of India, it is apparent in the present case that there is no pervasive governmental control over the functioning of 2nd respondent.

13. It is true that Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. Under Article 226, writs can be issued to 'any person or authority'. It can be issued “for the enforcement of any of the fundamental rights and for any other purpose”. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the



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Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law. If the rights are purely of a private character, no mandamus could issue.

14. For the reasons stated above, we, thus, do not find any infirmity in a well considered order of the learned Single Judge. The appeal, being devoid of any merits, is, accordingly, dismissed. No costs.

Index:Yes/No
Internet :Yes/No

[J.N.B.,J.] [P.D.B.,J.]
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nvsri

J.NISHA BANU,J.

and

P.DHANABAL, J.

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To:

1. The Secretary to Government

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Secretariat, Chennai.

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