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W.P.No.10836 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.10.2024

Coram:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No. 10836 of 2021

R.Tamilselvan

...Petitioner

Vs.

Mitsuba India Pvt., Ltd.,
No.D-8, Sipot Industrial Complex,
Gummidipoondi – 601 201
[Cause title amended vide order dated
21.10.2021 made in W.M.P.No.17200
of 2021 in W.P.No.10836 of 2021 by MSRJ]

... Respondent

Prayer :

Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari calling for the records relating to I.D.No. 435 of 2015 dated 19.02.2021 on the file of the II Additional Labour Court, Chennai and quash the same.

For Petitioner : Ms.Nithyasree for
M/s M.Naresh Babu

For Respondent : Mr.S.Shivathanu Mohan for
Mr.S.Ramasubramaniam and Associates



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ORDER

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The petitioner has filed the Writ Petition challenging the order of the Labour Court dated 19.02.2021 made in I.D.No.435 of 2015 through which, the Industrial Disputes raised by the petitioner was dismissed on the finding that the petitioner will not come under the category of workman and hence he is not entitled to raise any 2(a) dispute allowing the workman under the Industrial Disputes Act.

2. The allegation made by the petitioner in Industrial Dispute is that his officers scolded him in front of employees and that had compelled him to resign his job and infact, he was also harassed to resign his job. When he went for duty on 14.12.2012, he was not allowed to work and thereafter he gave a written complaint. Based on his written submissions, he was posted to Gummidipoondi Branch on 02.12.2013, but he was not allotted to any work there also. Subsequently, he was given with the charge memo mentioning certain false misconduct pertaining to the past dates and he was subjected to enquiry. On the conclusion of the enquiry, a report has been filed stating that charges were proved and thereafter, he was removed from service.

3. So the petitioner has raised an Industrial Dispute by stating that he was illegally terminated. However , the labour court has taken the final decision as to



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whether the petitioner is a workman or not. After having found that the petitioner was working as a senior executive officer and hence he did not fall under the purview of workman and hence he cannot raise industrial dispute.

4. However, the learned counsel for the respondent submitted that as per the organisational chart of the petitioner's establishment, the petitioner has accepted to do the jobs of bill clearing, bill stock and recycling scrap cotton and wooden cotton boxes and systemised material handling and improvement in the factory and cost saving related activities in the factory.

5. The argument of the respondent/Management before the labour court was that the petitioner was working as a workman in the reconstruction branch between the period from 2000 to 2005 and from 2005 to 2008, he was given the post of Executive Engineer and then Senior Executive Engineer at the time of his termination. Eventhough the petitioner was labelled as Senior Executive engineer, he has been performing the jobs of workmen, which were fundamental in nature. Ex.W.7, organisational chart would show the functions of the senior executive and the words of the senior executive in which the following activities are shown to be carried out by the senior executive officer.



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6. So far as bin cleaning activity is concerned, it is submitted that it is not an executive function, but the same has not been appreciated properly by the labour court. Apart from the petitioner's documents, the Management has also produced several documents to show whether the petitioner could exercise his supervisory functions and writing letters to the concerned departments to send extra man power to perform the work allotted to him. The petitioner is not a workman. If he was a workman, he will just do the works along with the other workman and he may not be in a position to write to the concerned officers to allot additional workmen to undertake the activities. If the above fact along with the nature of work carried out by the petitioner as listed in the organisational chart is seen, then, it can only be understood that even for the bin clearing activity, the petitioner can engage the workers and if there is any shortage he can write to the concerned authority to allot more workman. The above liberty given to the petitioner is not denied.

7. Apart from that, the documents on the side of the management would also show that he has the power to do the activities like cost saving activities in the factory. No doubt the above function can predominantly be done by the supervisory staff either by cutting down the cost or by dis-engaging the extra workers or by superiorising their level of performance suiting to the production in



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order to ensure that the labour charges are not wasted. Such functions would only establish the fact that the petitioner's job title senior executive officer would only align with the nature of supervisory and executive nature of functions and not a mere workman as pleaded by the petitioner.

8. The petitioner and the respondent have produced voluminous documents before the labour court. The labour court has culled out all the relevant materials in order to substantiate the fact that the petitioner had played the role of a manager many times and he has even written letters to the concerned departments by employing the words 'his subordinates' and also by employing the word 'under me'. It is quite natural that a Senior Executive Officer would have subordinates working under him and if there is any short fall in the concerned Section falling under the petitioner's management, he would only seek allotment of additional workers to complete the work of the section as required. The petitioner was not all of a sudden given the post of senior executive officer, he was originally appointed as a clerck and thereafter, he was promoted to various stages and lastly as a Senior Executive Officer. Even though the petitioner have been recruited as a workman, he has raisen up to the level of senior executive officer and he was given such responsibilities attached to the post and he is performing the same.



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9. No doubt, a person should come under the definition of workman under Section 2(s) of Industrial Disputes Act in order to raise Industrial Dispute challenging the order of dismissal. As the petitioner did not substantiate the basic fact that he fell under the category of workman, the labour court has rightly appreciated the said fact on the basis of the materials and held that the petitioner was performing supervisory nature of work and he is not entitled to maintain an Industrial Disputes before the Labour Court.

10. As the power of the labour court on the above findings have been rendered on the thorough appreciation of the facts and evidence in a proper perspective and in a comprehensive manner, I do not find any reason for interference and as the grounds raised by the petitioner lack merits, the Writ Petition is liable to be dismissed and accordingly, the same is dismissed. No costs.

28.10.2024

Index : Yes / No;
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd



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To

Mitsuba India Pvt., Ltd.,
No.D-8, Sipot Industrial Complex,
Gummidipoondi – 601 201



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R.N.MANJULA, J.

ssd

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23.10.2024