



WEB COPY



W.P.No.9219 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/3/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.9219 of 2015

a n d

M.P.No.1 of 2015

The Management
Lotus Footwear Enterprises Limited
rep. By its Authorised Signatory
38 SIPCOT Industries
Mangal Village
Cheyyar Taluk
Thiruvannamalai District. ... Petitioner

Vs

1. The Presiding Officer
Principal Labour Court
Vellore.
2. Mr.A.Manohar Anand ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records connected with I.D.No.79 of 2013 on the file of the first respondent, Principal Labour Court, Vellore and to quash the award dated 18/8/2014.

For petitioner ... Mr.Manohar Gupta



W.P.No.9219 of 2015

for Mr.M.Kandasamy

WEB COPY

For respondents

...

R.1 – Labour Court

R.2 - No appearance

ORDER

This writ petition is filed challenging the impugned order, dated 18/8/2014 passed by the labour Court in I.D.No.79 of 2013.

2. The second respondent was appointed as a Manager of the Lotus Footwear Enterprises Limited. Based on his experience, he was appointed as a Manager in the Maintenance Department vide Appointment Letter dated 5/7/2010 with a monthly salary of Rs.13,751/-. He was responsible for sanctioning leave to his subordinates, approve over time, indents materials from stores, manpower planning for his Department and allocating the works to his subordinates to ensure the tasks assigned to him are carried out on time and accurately. He was responsible for maintenance of Machines, Preventive Maintenance, Periodical Maintenance and Break Down Maintenance. Two Engineers and two Assistants were employed under the second respondent. He has empowered to raise the Purchase Request to procure new machines.



W.P.No.9219 of 2015

3. The second respondent submitted his resignation on 4/4/2012.

When the resignation was under process, he remained absent unauthorisedly with effect from 19/4/2012. A charge memo was given to him on 3/5/2012 calling upon his explanation. No reply was received from him. A show cause notice was sent on 14/5/2012. Though reply was submitted by the second respondent, it was not satisfactory. Finally, the second respondent was terminated from service with effect from 5/6/2012.

4. Aggrieved by his termination, the second respondent has raised an Industrial Dispute, however, the Conciliation Proceedings were failed. The second respondent has filed I.D.No.79 of 2013 on the file of the first respondent Labour Court. The petitioner Management has opposed the relief sought for in the said Industrial Dispute. After enquiry, the said I.D.No.79 of 2013 was allowed, directing the Management to reinstate the second respondent with 30% backwages from the date of dismissal. Aggrieved by the same, present writ petition is filed.

5. Heard Mr.Manohar Gupta, learned counsel for the petitioner.



W.P.No.9219 of 2015

There is no appearance on behalf of the second respondent.

WEB COPY

6. It is submitted by the learned counsel for the petitioner that the second respondent is not a workman, as defined under Section 2 (s) of the Industrial Disputes Act. He was appointed as a Manager and his duties and responsibilities are also of the managerial cadre, thereby, he is an employer and not an employee

7. The definition of 2 (s) of the Industrial Disputes Act, including explanations are extracted hereunder:-

“"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a



WEB COPY



W.P.No.9219 of 2015

consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i)who is subject to the Air Force Act, 1950 ([45 of 1950](#)), or the Army Act, 1950 ([46 of 1950](#)), or the Navy Act, 1957 ([62 of 1957](#)); or

(ii)who is employed in the police service or as an officer or other employee of a prison, or

(iii)who is employed mainly in a managerial or administrative capacity, or

(iv)who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.] “

8. From the materials available on record, it could be deduced that before the Labour Court, the second respondent has submitted that though the designation of the second respondent is a Manager, still he was not



W.P.No.9219 of 2015

given duties or responsibilities of a Manager and that he was allowed to work like any other employee.

9. The Labour Court in the impugned order has discussed about the evidence of second respondent before the labour Court as W.W.1, stating that he has sanctioned leave of one Mohanakumar, Assistant and granted permission of leave by another Assistant by name Kalaiselvan and that he has granted permission of leave taken by his Assistant Manikandan. The second respondent has also deposed that he has affixed his signature as person incharge during the shifting of stocks of the Company to various locations.

10. Further, as per the records, the second respondent has sent various e-mails to various Companies on behalf of the Management, he has sent several Purchase Orders on behalf of the Management for purchase of spare orders, peripherals on various machines, he has also affixed his signature on various forms as Manager.

11. He has independently made Purchase Orders on behalf of the



W.P.No.9219 of 2015

Management. He has also sanctioned leave and granted permission for his Subordinates. In spite of these clear distinctions of work, the labour Court has perversely concluded that the works done by the second respondent are categorised as the works of the workman and concluded that the petitioner is a Manager to a workman. Therefore, these acts done by the second respondent during the course of his employment demonstrates that his nature of duties are managerial in nature.

12. The learned counsel appearing for the petitioner has submitted an authority reported in **2005 (3) LLN – 191 (A.K.PATEL Vs. INDIAN HOTELS COMPANY, LTD)**, wherein at paragraph Nos.16 to 18,. it has been held thus:-

“16. In so far as the two cases before the Court are concerned, it is apparent from the evidence which has come on the record that the Petitioner in Writ Petition 57 of 2002 was recruited as a Senior Engineer. In the hierarchy of service, there was below the Senior Engineer, a rung of other officials including the Sectional Engineer, the Shift Engineer



WEB COPY



W.P.No.9219 of 2015

and below the Shift Engineer, the workmen who were required to discharge their duties. The Petitioner was in Grade 9 of the service. The service grades spanned from Grade-1 to Grade-12 and it was an admitted position that the wages of the Petitioner were never settled by agreements with the Union. He was not a member of any Union. The facts on the record demonstrate that while carrying out the project work at New Delhi, the Petitioner was required to oversee the work of contractors engaged by the Company and to ensure that the short comings which were detected in the performance of the construction work were rectified in accordance with the specifications of the employer. On his transfer to Mumbai, the Petitioner was assigned work in the Maintenance Department. As an Engineer, he was vested with the duty of supervision over employees subordinate to him and of overseeing their work. The cross-examination of the Petitioner shows that the actual work of testing



WEB COPY



W.P.No.9219 of 2015

in areas such as the Fire Hydrant, the Boiler, and the water softening plant was carried out by operators. The Petitioner deposed that wherever there were faults, he had to issue instructions and that actual operators would then proceed to rectify the faults. This evidence is consistent with the evidence of two witnesses who deposed on behalf of the management. The witnesses for the management, more particularly the Chief Engineer, stated that the Petitioner was not required to carry out any manual or clerical work. His work was to ensure that the machines were in order and if anything was found to be remiss, to get the work corrected by the Maintenance Staff or by the employees of the Contractor. The Log Books which were produced on record showed that the Petitioner had issued instructions to his subordinates and that the deficiencies were rectified in accordance with those instructions. The employee in question, had the power to recommend leave applications. Leave



WEB COPY



W.P.No.9219 of 2015

has been held in decided cases to be a relevant factor relating to the exercise of supervisory functions. That is because a supervisor has to oversee the work of others and this necessarily involves a decision on whether an employee who has applied for leave should be spared in a department at a given point of time. The finding which has been arrived at by the Labour Court and confirmed by the Industrial Court is in accordance with the settled principles of law which have been **laid down by** the Supreme court and by this Court.

17. In so far as the Petitioner in the companion Writ Petition is concerned, in the course of his cross-examination, he admitted in terms that he was working as Shift Engineer. The Petitioner admitted that he had several workmen who worked in his shift whenever he was assigned as a shift in charge. He explained their duties to these workmen. The



WEB COPY



W.P.No.9219 of 2015

Petitioner had the authority to indent the material required for maintenance during the course of his duties. The Petitioner recommended leave applications. In the case of this petitioner as well, the evidence which has come on the record shows that the nature of the work which he was assigned in the Maintenance Department was inter alia in connection with Laundry, Fire Fighting and Monsoon protection services. The Log Books in which the Petitioner had given instructions to his subordinates were produced on the record. During the course of the cross-examination of the Chief Engineer, efforts were made to show that the Petitioner was injured in the course of an accident in the Laundry and that he had checked the sprinkler alarm. However, this, in my view, does not displace the overwhelming evidence to the effect that the primary nature of duties was supervisory. The primary and dominant nature of the duties of the Petitioner was not manual or



WEB COPY



W.P.No.9219 of 2015

technical. On the contrary, the clear admissions of the Petitioner in the course of cross-examination show that the work which was done by him was of a supervisory nature.

18. While considering this case, it would be necessary for the Court to bear in mind the fundamental principle that in exercising this jurisdiction which is of a supervisory nature, the Court would not be justified in interfering where the decisions of the Labour Court and of the Industrial Court in appeal are based on evidence and there is no jurisdictional error or perversity. The limitations on the exercise of this jurisdiction are well settled by the decisions of the Supreme Court in [Syed Yakoob v. K.S. Radhakrishnan](#), , [Surya Dev Rai v. Ram Chander Rai](#), and specifically in the context of a case under [Section 2\(s\)](#), in [Birla Corporation Ltd. v. Rajeshwar Mahato](#), . The findings of the Courts below to the effect that the



WEB COPY



W.P.No.9219 of 2015

Petitioners were not workmen were based on evidence and consistent with the law laid down by the Supreme Court.”

13. The other aspect is that as per 2 (s) of the Industrial Disputes Act, 1947 if an employee who is under supervisor capacity draws wages exceeding Rs.10,000/- p.m., he is not a workman. Admittedly, the petitioner was appointed as Manager with a salary of Rs.13,571/-, for which there is no dispute. Ex.M.5 filed before the labour Court is a salary slip to show that the second respondent has drawn Rs.16,243.45 as the salary for the month of April 2005. In such a view of the matter, it can be safely concluded that the petitioner is not a workman.

14. As discussed above, the second respondent's designation is a Manager and his nature of duties were also on managerial in nature, thereby, the contention of the second respondent that he is only a workman cannot be accepted.

15. In view of the above, this Court is of the firm view that the



W.P.No.9219 of 2015

duties assigned and discharged by the second respondent would clearly go to show that he is not a workman but a Manager. The second respondent, during the course of enquiry, does not specifically mentioned that what was the works that other workman are being discharged in order to compare his nature of work.

16. In such a view of the matter, finding of the labour Court that the petitioner is a workman is erroneous and consequently, finding of the labour Court in the impugned order directing the petitioner to reinstate the second respondent into service with backwages of 30% from the date of dismissal required to be set aside.

17. Accordingly, this writ petition is allowed and the Award dated 18/8/2014 passed by the Principal Labour Court, Vellore in I.D.No.79 of 2013 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

22/3/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No



W.P.No.9219 of 2015

To

WEB COPY

1. The Presiding Officer
Principal Labour Court
Vellore.

Dr.D.NAGARJUN,J



WEB COPY



W.P.No.9219 of 2015

mvs.

W.P.No.9219 of 2015

22/3/2024