



WEB COPY



W.P.No.18083 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D.NAGARJUN

W.P. No.18083 of 2024
and
W.M.P.No.19881 of 2024

K.Kumar

... Petitioner

Versus

1. The Management of
M/s. Leaap International Pvt. Ltd,
No.46, 1st Floor, Orient Court,
Rajaji Road,
Chennai 600 001.

2. The Management of
M/s. Leaap RoRo Pvt Ltd.,
No.53-55, 1st Floor, Orient Court,
Rajaji Road,
Chennai 600 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of certiorari calling for the records relating to the Orders of I Additional Labour Court, Chennai dated 31.01.2024 passed in to issue a Writ in the nature of certiorari after calling for the records relating to the



W.P.No.18083 of 2024

orders of the I Additional Labour Court, Chennai dated 31.01.2024 passed in I.A.Nos.6,7 and 8 of 2023 of 2023 in I.D.No.142 of 2015 and to quash the above orders.

For petitioner : Mr.O.Raman

ORDER

This Writ Petition is filed seeking for issuance of certiorari to quash the orders passed by I Additional Labour Court, Chennai in I.A.Nos.7, 8 and 9 of 2023 in I.D.No.142 of 2015 dated 31.01.2024.

2. At the outset, it is worth pointing out that one N.Suresh, whose case is akin to the petitioner's, filed a writ petition being W.P.No.12055 of 2024 challenging the orders passed in I.A.Nos.8, 9 & 10 of 2023 in I.D.No.111 of 2015 and the said writ petition was dismissed by this Court *vide* order dated 30.04.2024. For ease of reference and at the cost of verbosity, the entire order is worth extracting:



WEB COPY



W.P.No.18083 of 2024

“2. The facts as per the affidavit enclosed to petition are that the petitioner and on 29 others were engaged as Drivers in the respondent business of transportation of cargo for its various customers. First respondent is registered under the provisions of the Companies Act, 1956, whereas second respondent is proprietary concern in which wife of the Director of the first respondent is the proprietrix of the second respondent concern. First respondent has two whole time Directors. First respondent has business dealings with second respondent proprietary concern and both the respondents are one and the same and emergence of second respondent has entity is only to evade the tax and other statutory obligations. Second respondent operates the vehicles owned by the first respondent and transport the cargo to the customers of the first respondent and follows the directions of the first respondent. The second respondent is the one who functions under the control of the first respondent. The petitioner and 29 others are the workers as defined under 2(h) of the Motor Transport Workers Act, 1961. The Drivers of the first respondent were not issued any appointment orders and were not covered any statutory obligations such as ESI and PF.

3. The petitioner has challenged his termination orders dated 15.09.2014 before the first Additional Labour Court, Chennai under I.D.No.111 of 2015 during the course of said enquiry, petitioner and others have filed number of Interlocutory Applications on 29.12.2023 for reopening and recalling of evidence of P.W.1.



Another Interlocutory Application was filed for seeking certain documents from the respondents. The said petitions were contested by respondents and finally the Labour Court has dismissed all the Interlocutory Applications in I.A.Nos.8, 9 and 10 of 2023 in I.D.Nos.111 of 2015 by way of impugned orders. Aggrieved by the same, the present Writ Petition is filed.

4. Heard both sides and perused the records.

5. Learned counsel for the petitioner has filed a copy of the Letter No.9732/Aa7/2018 from the District Registrar (Admin) Chennai along with Tamil version and GST Particulars of the second respondent and learned counsel for the first respondent has filed a copy of the Labour Court orders in I.A.Nos.8,9 and 10 of 2023 in I.D.No.111 of 2015, dated 31.01.2024 and in I.A.Nos.11, 12 and 13 of 2024 in I.D.No.111 of 2015, dated 13.03.2024.

6. In respect of documents filed by the petitioner in this Court on 26.04.2024, it is submitted by the learned counsel for the respondent that these documents ie., Letter No.9732/Aa7/2018 from the District Registrar (Admin) Chennai and GST Particulars of the second respondent were not filed before the Labour Court and thereby submitted that these documents cannot be considered while appreciating the issue as to whether orders passed by the Trial Court can be interfered or not.

7. It is true that this petitions is filed



seeking to issue of Writ of Certiorari, therefore, the correctness or otherwise of the impugned orders will have to be considered. That means, while appreciating the impugned orders, this Court will consider all the facts relevant including the documents before the Labour Court. It is submitted that the two documents filed before this Court by the petitioner are nor filed before the Labour Court during the course of enquiry of I.A.Nos.8, 9 and 10 of 2023. It is submitted by the learned counsel for the petitioner that under Article 226 of Constitution of India, this Court has got ample power to examine and consider any document for doing sustainable justice. It is true that this Court under Article 226 of Constitution of India can consider any document for doing substantial justice. However, this Writ Petition is filed specifically for issuance of Writ of certiorari by the petitioner questioning the orders passed by the Labour Court, therefore, in order to give fair opportunity the only aspect that falls for consideration is whether basing on the material available before the Trial Court, the Labour Court has passed the impugned orders properly or not.

8. This petitioner has challenged his termination before the Labour Court against the respondent in I.D.No.111 of 2015. During the course of enquiry, the petitioner sought for recalling witnesses after reopening of case and to call for certain documents from the respondent but said petitions were dismissed. It is submitted by the learned counsel for the petitioner that the Labour Court has failed to analyze that the one of the Interlocutory Application is filed for production of documents from the respondent which would



WEB COPY



W.P.No.18083 of 2024

reveal that both respondents are one and the same and that both of them carrying on the business with the same logo and sign. The Labour Court has failed to consider that the batta paid to the Drivers is not included in the term wages. It is further submitted that Labour Court ought to have considered both the respondents will falls under the provisions of the Motor Transport Workers Act, 1961 and are bound to maintain Registers as prescribed the rules. It is also submitted that the comment of the Labour Court that the petitioner did not specify which respondent has to produce the document is unwarranted. It is submitted further the comment of the Labour Court that the balance sheet and profit and loss accounts of the respondent are available in the public domain is concerned the petitioner will have to run pillar to post for obtaining those documents. It is further submitted that the Labour Court has erroneously held that the income tax return and balance sheet of the respondents are privileged documents of the respondents, thereby respondents cannot be compelled to produce those documents.

9. I.A.No.8 of 2023 is filed under Section 11 of the Industrial Dispute Act to reopen the evidence of the respondents. I.A.No.9 of 2023 is filed under Section 11 of the Industrial Dispute to recall M.W.1 in I.D.No.111 of 2015. I.A.No.10 is filed under Section 11 of the Industrial Dispute Act directing the respondents to produce certain documents. As per the dates of the event filed by the respondents which is not in dispute from the petitioner, it is clear that in the month of September 2015 Industrial Dispute was raised. Subsequently, counter has been filed by the



WEB COPY



W.P.No.18083 of 2024

respondents. Petitioner was examined on 18.04.2016. Cross examination of the petitioner was completed on 24.06.2016. On 01.05.2018 management witness was examined. He was examined in 13 hearings. Then the evidence of the second respondent was closed.

10. On going through the above it is clear that the dispute started in the year 2015 and Industrial Dipute.No.111 of 2015 is still pending. On analyzing the reason for such a long pendency before the Labour Court it is clear that the petitioner has taken number of opportunities to produce oral and documentary evidence. Many a times, the evidence of the petitioner was closed and again the said evidence got reopened. Sometimes respondent evidence is closed and petitioner moved an application to reopen the same.

11. On going through the dates and events it is clear that the case was posted for arguments on 26.26.06.2019, after closure of evidence of petitioners and respondents, petitioner filed Interlocutory Application to reopen and for recall the evidence of WW1 and the same was dismissed. Again on 24.09.2019, I.A was filed for reopen and recall of petitioner evidence and they were allowed. After recording of evidence on 28.01.2020 the matter was posted for arguments. At the argument stage the petitioner has filed IA to reopen and recall the evidence and the same was allowed. After reopening and re-examination the matter was again posted for arguments on 22.09.2021. The petitioners has failed to argue the matter on which the petitioner argument were closed with a direction to file written argument.



WEB COPY



W.P.No.18083 of 2024

Again on 29.12.2023, the petitioner has filed Interlocutory Application to reopen respondent evidence. The said application were dismissed. Subsequently, again three Interlocutory Applications were filed for reopening arguments and the said applications were dismissed. And again on 09.02.2023, the petitioner has filed three more applications for productions of documents and reopen the arguments and the said petitions were dismissed. Subsequently, petitioner and respondents argument were heard and in the meanwhile aggrieved by the orders of dismissal of I.A.Nos.11, 12 & 13 of 2024, present Writ Petition is filed.

12. On considering above it is clear that the petitioner in all has made six attempts to reopen and recall the evidence of the petitioners and respondents. The petitioner has got every right to file any number of applications and that right cannot be taken away. However it does not mean that the petitioner can go on and keep on filing the Interlocutory Applications. Literally from 26.06.2019 when the matter was posted for arguments for the first time until this time, petitions after petitions were being filed to get the matter reopened and for further evidence etc. If at all the petitioner wanted to recall the evidence of petitioner or to recall the respondent side evidence, one application should have been filed for recalling of petitioners evidence and another application should have been filed for recalling respondents side evidence. But as we see the records, the petitioners have made six successive attempts. Therefore, filing of this kind of applications is sheer abusive processes of law.



WEB COPY



W.P.No.18083 of 2024

Therefore, on this ground itself, this petition is liable to be dismissed.

13. According to the learned counsel for the petitioner for recalling of evidence and to produce certain documents the petitioner has challenged the termination order issued by the respondents. The petitioner was examined as WW1 and got marked Ex.W.1 to W.67. The respondent however not produced both oral and documentary evidence.

14. The stamp paper under Ex.M.7, which is in agreement is not genuine stamp paper. The petitioner therefore has sought for income tax returns along with complete set of balance sheet including profit and loss account. The income for the period 2005 to 2014 registration certificate under Form II of Motor Transport Workers Act, then third document Form XII to XXII maintained under the Motor Transport Workers Act. If the documents as sought for by the petitioner are produced by the respondent no prejudice would be caused. It is submitted by the learned counsel for the petitioner even though the main application is posted for orders still for production of documents is maintainable and therefore sought for directions to the respondents to produce the documents.

15. It is submitted by the learned counsel for the respondent that the petitioners have failed to produce bank pass books and if pass books were produced it will establish that the petitioners were gainfully employed. It is submitted that the petitioners have not given any valid reason for seeking income tax records along with balance



sheet from 2005 to 2014 of the first respondent. It is submitted that profit and loss statements are available in the public domain and respondents can approach the appropriate authorities for obtaining copy of the profit and loss account statements and balance sheet.

16. It is submitted by the learned counsel for the respondents that in respect of document No.2 and 3, the forms under the Motor Transport Workers Act, the first respondent is only the owners of lorry of containers which was leased out to second respondent. Thereby the provisions of the Motor Transport Workers Act does not apply to the first respondent. It is submitted that there is no record that first respondent is maintaining forms under Motor Transport Workers Act.

17. It is submitted by the learned counsel for the second respondent that the income tax and balance sheet including the profit and loss for the year 2005 to 2014 are nothing to do with the dispute in the present case. The document sought for by the petitioner are the personal information and cannot seek the same and the income tax records can be preserved only upto to 7 years and it is no way connected to the facts of this case. In respect of document in form II of Motor Transport Workers Act is concerned, it is submitted by the second respondent that these forms for the year 2002 to 2014 were not available, therefore he is unable to produce the same.

18. The basic argument of the respondent is that the documents as sought for by



WEB COPY



W.P.No.18083 of 2024

the petitioner are not available. The document in form II of the Motor Transport Workers Act sought for by the petitioner , it is submitted by the second respondent that it was surrendered to the authorities in the month of 2019, however form XII to XXII for the year 2002 to 2014 were available hence second respondent is unable to produce the same. The respondent has filed an agreement purported to have been executed between the first and second respondent. According tot he petitioner both the first and second respondents are one and the same and the said agreement entered into between first and second respondents is not valid one and in order to prove the same, the petitioner wanted to produce certain documents from the respondent like balance sheet and profit and loss account.

19. Admittedly the first respondent is the public limited company and thereby the petitioner can obtain copies of profit and loss statements from the websites of the registrar of companies or from the Registrar of company. Most of the documents pertaining to the first respondent must be available in the public domain. There is no record that petitioner has made an attempt to obtain those documents either from the public domain or from the Registrar of the company. It is not the case of the petitioner that he has failed to succeed in that aspect, thereby he is seeking for direction to produce those document. The explanation offered by petitioner is that petitioners are very poor people and cannot manage to get those documents from the public domain is not not convincing.



20. According to the second respondent this income tax returns, balance sheet and profit and loss account for the period of 2005 to 2014 are not available with second respondent. Once the documents are not available with the second respondent, this Court cannot compel the second respondent to produce the documents which are not available. Further in order to prove that agreement between first and second respondents are sham, and not valid, the income tax return for the period 2002 to 2014 are not relevant. Further above all, the petitioner has not explained as to why the petitioner could not filed those documents seeking for documents from the day one onwards. Industrial Dispute was raised in the year 2015 and these Interlocutory Applications filed for production of the documents are filed in the year 2023. All these 8 years the petitioner has not submitted any explanation as to why he could not move these applications in these eight years.

21. In view of the above, this Court in agreement with the orders passed by the I Additional Labour Court, in I.D.No.111 of 2015 declining to call for the documents from the respondents. The very reason for reopening and recalling of MW1 is to question MW1 in respect of documents that were called for. Once the this Court has come to the conclusion that the documents sought for by the petitioner cannot be called for, case cannot be reopened and witness cannot be recalled. Accordingly, the Trial Court has rightly dismissed all the applications.

22. This Court having gone through the entire order carefully is of the opinion that



W.P.No.18083 of 2024

there is no perversity in the impugned orders passed and orders passed by the I Additional Labour Court, Chennai has passed well reasoned order and therefore cannot be intervened. Accordingly, this Writ Petition is dismissed. No costs."

3. Inasmuch as the issue involved in the instant case is the same as the one involved in W.P. No.12055 of 2024, this writ petition is also dismissed on the terms in which the said writ petition was dismissed. Connected W.M.P.is closed. No costs.

09.07.2024

vca

Index : Yes/No
Internet : Yes/No
Citation : Yes/No



WEB COPY



W.P.No.18083 of 2024

Dr.D.NAGARJUN,J.

Vca

W.P. No.18083 of 2024
and
W.M.P.No.19881 of 2024



WEB COPY



W.P.No.18083 of 2024

09.07.2024