



W.P.No.17083 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 05.02.2024

ORDER PRONOUNCED ON : 05.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.17083 of 2023
and W.M.P.No.16257 & 30818 of 2023

M/s.NVH India Auto Parts Private Limited,
Plot No.B-67 & 68, SIPCOT Industrial Partk,
Irungattukotai,
Sriperumbudur – 602 117,
Kancheepuram District,
Rep. by its Manager – HR,
Mr.Manikandan.

... Petitioner

/Vs./

G.Purushothaman

... Respondent

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 Award dated 23.05.2022 passed by the Hon'ble Labour Court, Kancheepuram in I.D.No.107 of 2018 and to quash the same.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.V.Prakash, Senior Counsel for
for M/s.K.Sudalaikannu



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ORDER

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This writ petition is filed to call for the records relating to the Award dated 23.05.2022 passed by the Hon'ble Labour Court, Kancheepuram in I.D.No.107 of 2018 and to quash the same.

2.The petitioner is a Private Limited Company and is engaged in the business of manufacture of interior Auto components. The respondent joined the services of the petitioner Company on 06.11.2006 as a Senior Operator in the Production Department. Thereafter the respondent was promoted as “Line Leader” in the supervisory capacity and continued in the same position till his termination on 28.02.2014.

3.It was the petitioner's case that the respondent was a habitual absentee and in the year 2013 he was absented for 108.5 days without any proper explanation and permission. The petitioner issued a show cause notice on 20.08.2013 to the respondent seeking his explanation for the misconduct of continuous absence. The respondent submitted his reply on 28.08.2013 attributing his ill-health and his relative's death as reasons for his absence. The petitioner stated that in the year 2013, the performance of the respondent was found to be very poor which resulted in



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improprieties in the timely delivery of the petitioner company's goods to its consumers. Therefore a letter was sent on 12.12.2013 calling for an explanation from the respondent in regard to the decrease in the quality of BA-ISO Pad which were 112 in number and also on the subsequent loss to the Company. The respondent submitted a reply on 17.12.2013, which was found to be vague and unsatisfactory. The petitioner therefore, passed a termination order on 20.08.2013 along with the Cheque which was returned by the respondent and therefore, the same was once again sent on 18.03.2014. Thereafter, the respondent sent a reply on 26.03.2014 questioning the termination order and returned the cheque. The respondent later raised a dispute which was initially registered as I.D.No.346 of 2014 before the Principal Labour Court, Chennai and thereafter, transferred to the Labour Court, Kancheepuram and registered as I.D.No.107 of 2018. The Labour Court passed the impugned award on 23.05.2022, directing the reinstatement of the respondent with backwages and other benefits. Aggrieved by the award passed by the Labour Court, the petitioner has filed the above writ petition.

4.The learned counsel for the petitioner submitted that the Labour Court failed to note that the respondent was promoted as Line Leader and was paid a sum of Rs.33,000/- per month and as such the respondent did not fall under the definition of



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workman given under Section 2(s) of the I.D. Act. According to the learned counsel the roll of Line Leader was to supervise the workmen, to train them and to ensure that they performed the work as mandated by the guidelines of the petitioner company. In short the contention of the petitioner was that the respondent worked in Supervisory capacity and therefore, the Labour Court erred in entertaining the dispute. The learned counsel further submitted that the Labour Court failed to independently decide the question of backwages. According to the counsel, in the absence of any proof that the respondent was not gainfully employed, the Labour Court ought not to have awarded full backwages.

5.The learned counsel for the respondent on the other hand submitted that the respondent though designated as Line Leader was actually doing the job of line Operator and therefore, the respondent was a workman as defined under 2 (s) of the I.D. Act. The learned counsel further submitted that as the Labour Court gave a well-considered finding on the status of the respondent, this Court exercising jurisdictional under Article 226 of the Constitution of India should not interfere with the factual finding, moreso, when no perversity was established in arriving at the finding.



6.I have heard both the learned counsels and I have perused the entire materials on record.

7.Before considering the issue raised by the respective learned counsels, the law on the subject issue is referred to. One of the earliest Judgments on the point is found in the case of *Ananda Bazar Patrika (P) Ltd. Vs. The Workmen* reported in *1970 (3) SCC 248*, wherein the Hon'ble Supreme Court held that the answer to the question whether a person was employed in a supervisory capacity or clerical capacity would depend upon the main and principal work/duties carried out by him i.e. whether the duties were clerical or supervisory. The Hon'ble Supreme Court held that if the principal work was only clerical in nature, even though the person incidentally carried on some supervisory work, he would still be considered only as a Workman and not as a Supervisor. Useful reference in this regard can also be made to the Judgment of the Hon'ble Supreme Court in the case of *D.P.Maheshwari Vs. Delhi Admn. & Others* reported in *1983 (4) SCC 293*; and *National Engineering Industries Limited Vs. Shri Shri Kishan Bhageria* reported in *AIR 1988 SC 329*. The Hon'ble Supreme Court considered the aforesaid Judgment, and held that the functionality test could be adopted to determine whether the work of the person was supervisory or clerical. Keeping in view the statement of law laid down in the above Judgments, it is to be seen if on the facts of the present case, the respondent was



employed in a clerical capacity or supervisory capacity.

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8. The respondent's specific case in the claim petition was that he was employed only in a clerical capacity and even after his promotion as Line Leader, he continued to do the job of an Operator. The respondent specifically referred to the hierarchy of persons above him and stated that there was a Supervisor, a Senior Engineer and finally the head of the Department. It was the specific case of the respondent that the Supervisor allocated the work to the workers and sanctioned leave to the workers. The respondent reiterated that he had no authority or say in any matter and continued to carry out the duties of a machine operator. As against the specific stand of the respondent, the Management in its counter to the claim petition generally denied the statements of the respondent without specifically denying the hierarchy of the persons above the respondent and his contention that he had no authority to allocate work and the Supervisor alone allocated work and also sanctioned his leave. The pleadings of the petitioner read with the deposition of MW1, its HR Manager that the respondent was discharging the work of a machine operator clearly proves that the respondent was employed in clerical capacity. It is further seen that the petitioner relied on Ex.M2 to Ex.M4, in support of its contention that the respondent was employed as a supervisor. The said documents were the gate passes issued to the contract workers



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in which the respondent had signed as a Supervisor. The Labour

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Court did not accept the documents as it found that there were other evidences on record which did not support the petitioner's case. The labour Court therefore found that Ex.M2 and Ex.M4 were insufficient to conclude that the respondent was doing supervisory work. The labour Court relying on the admission of M.W.1 and Ex.W.6, show cause notice issued by the petitioner to the respondent held that the respondent was covered by the definition of the workman under Section 2(s) of the I.D. Act. The labour Court on proper appreciation of the evidence on record rendered the factual findings. I therefore, find no justifiable reasons for interfering with the factual findings of the labour Court, more so, when no error apparent or perversity is established.

9.On the scope of interference under Article 226, in the factual findings of the labour Court, worthy reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *Shama Prashant Raje vs Ganpatrao & Ors.* reported in *AIR 2000 SC 3094*, wherein the Hon'ble Supreme Court held that “Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the



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High Court, therefore, is supervisory and not appellate. Consequently [Article 226](#) is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made.” The same has been reiterated in the Judgment in *Maharashtra Academy of Engineering and Educational Research vs. State of Maharashtra* reported in *(2001) 10 SCC 166*. The aforesaid judgments were referred to by this Court in the case of *Management of Bata India Ltd., and another Vs. Presiding Officer, Industrial Tribunal, Tamil Nadu and others* reported in *((2010) 2 LLJ 175*. From a reading of the above Judgments, it is clear that the power of this Court under Article 226 of the Constitution of India in issuing writ of Certiorari is restricted to cases where there are manifest errors in the impugned order, the order is contrary to the provisions of law, the order has been passed without jurisdiction and in cases where the authority, while passing orders has taken into consideration certain extraneous matters which are not relevant or in cases where the authority has failed to take into consideration certain relevant factors. As the findings of the Labour Court is not vitiated by any of the aforesaid infirmities, the findings are confirmed.

10.The other issue relates to the payment of full backwages. The Hon'ble



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Supreme Court in the case of *Deepali gundu Surwase Vs. Kranti Junior Adhyapak*

Mahavidyalaya (D.Ed.) and Others reported in (2013) 10 SCC 324, held that when

the termination is found to be invalid and illegal backwages can be awarded. In the aforesaid Judgment the Hon'ble Supreme Court followed the judgment in the case of

Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., reported in 1979 (2) SCC 80, wherein the Hon'ble Supreme Court held that

“Ordinarily, therefore. a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz ., to resist the workman's demand for revision of wages. the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.”

11.It is pertinent to note here that there is a specific averment by the respondent in the claim petition that he was not gainfully employed ever since his termination and his last drawn salary was Rs.33,000/-. The said averment was not denied by the petitioner in the counter to the claim petition. I therefore find that in the absence of



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basic pleading the said submission of the learned counsel for the petitioner cannot be countenanced and the same is rejected.

12.For all the above reasons, I find no merits in the writ petition and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

05.04.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

1.The Labour Court,
Kancheepuram.

2.M/s.NVH India Auto Parts Private Limited,
Plot No.B-67 & 68, SIPCOT Industrial Park,
Irungattukotai,
Sriperumbudur – 602 117,
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Rep. by its Manager – HR,
Mr.Manikandan.



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N.MALA, J.

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**PRE-DELIVERY ORDER IN
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