



W.P.Nos.24773 & 24774 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 23.02.2024

ORDER PRONOUNCED ON : 15.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.Nos.24773 & 24774 of 2018
and W.M.P.Nos.28802 of 2018 & 21090 of 2019

W.P.No.24773 of 2018

The Management of MRF Limited,
Represented by its Manager,
Post Box No.5285,
Thiruvottiyur High Road,
Thiruvottiyur,
Chennai – 600 019.

... Petitioner

/Vs./

1.K.Vijayakumar

2.K.D.Packirisamy

... Respondents

W.P.No.24774 of 2018

The Management of MRF Limited,
Represented by its Manager,
Post Box No.5285,
Thiruvottiyur High Road,
Thiruvottiyur,
Chennai – 600 019.

... Petitioner



W.P.Nos.24773 & 24774 of 2018

/Vs./

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1.P.Selvaraj

2.K.D.Packirisamy

... Respondents

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the III Additional Labour Court, Chennai and quash the impugned Award dated 02.04.2018 made in I.D.Nos.115 & 116 of 2002 respectively.

For Petitioner : Mr.M.Vijayan for
(in both W.P.Nos.) M/s.King and Partridge

For R1 : Mr.V.Prakash, Senior Counsel for
(in both W.P.Nos.) Mr.K.Sudalaikannu

For R2 : M/s.M.R.Dharanichander
(in both W.P.Nos.)

* * * * *

COMMON ORDER

These Writ Petitions are filed to call for the records on the file of the III Additional Labour Court, Chennai and quash the impugned Award dated 02.04.2018 made in I.D.Nos.115 & 116 of 2002 respectively.

2.These writ petitions raise a common issues hence, both the writ



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petitions are taken up together and disposed by this common order.

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3.The Management will be referred to as the petitioner, the 1st respondent in both W.P.Nos. Will be referred to as workmen and the 2nd respondent as Contractor.

4.The petitioner is a Company registered under the Indian Companies Act, 1956 and it is engaged in the manufacture of Tyres, Tubes, Flaps and Vulcanizing materials. Apart from having permanent employees for attending manufacturing operations, for other jobs several contractors were engaged. The petitioner is a registered principal employer and the second respondent is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970. The workmen were engaged by the Contractor. When the contract of the Contractor with the petitioner came to an end, the Contractor decided to retrench some of the workers engaged by him and accordingly terminated the engagement of the workmen vide letter dated 14.04.2001 with an intimation that one month wages and retrenchment



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compensation will be paid in accordance with law. Despite the above offer, the workmen declined to accept the same and raised a dispute against their termination and the same was registered in I.D.Nos.115 of 2002 and 116 of 2002. In the I.D.s' the petitioner filed a detailed counter statement stating inter alia that the workmen were engaged only by the Contractor. The petitioner's main contention was that the workmen were Contract Labourers engaged by the Contractor and therefore there was no employer and employee relationship between the petitioner and the workmen. The Contractor also filed a counter admitting that the workmen were engaged by him as Contract Labourers and as the agreement between him and the petitioner came to an end, for want of prospects in getting future orders, he, vide letter dated 14.04.2001 terminated the services of the workmen.

5.Before the Labour Court 14 documents were filed on the side of the petitioner herein and 12 documents were filed on the side of the workmen. The workmen examined themselves as W.W.1 and two witnesses were examined on the side of the petitioner herein. The Labour Court on the basis of the entire materials on record vide award dated 02.04.2018 allowed the



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industrial dispute by setting aside the oral termination of the workmen and further directed the petitioner to reinstate them in service with continuity of service, full backwages and all other attendant benefits. Aggrieved by the Award of the Labour Court, the petitioner has filed the above writ petition.

6.Elaborate arguments were submitted by the learned counsels and several Judgments were produced in support of their respective cases. From the arguments advanced and the submissions made by the respective learned counsels the core issue that surfaces for consideration is whether the workmen are direct employees of the petitioner or Contract Employees of the Contractor, if so, to what relief they are entitled.

7.It is the workmen's case that they were called for interview by the petitioner and in pursuance of the same they were appointed on 27.06.1991 and 26.07.1993 respectively. At the time of appointment they were informed that they would be employed by the petitioner, but their salary would be paid through the Contractor, one Mr.Parasuraman. The workmen were qualified Industrial Training Institute (I.T.I.) certified Motor Mechanics and they were



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assigned to the Generator Division and given the job of operation and maintenance of the generators. It was stated by the workmen that there were 18 other workmen in the Generator Division including them and that prior to the appointment of these 18 workmen, the operation and maintenance works in the Generator Division were done by permanent workers of the petitioner herein. The further case of the workmen was that right from the day of their appointment they were assigned work by the petitioner/Management, but only the wages were paid through the Contractor, Parasuraman. Even after the death of the Contractor, Parasuraman the pay-slip, attendance register and the Wage Registers and other documents were maintained by the petitioner, in the name of the Contractor, Parasuraman. According to the workmen, even though they were treated as contract labourers, they were actually the direct employees of the petitioner/Management and the Contractor had no role whatsoever except to be a conduit for payment of wages. It was the workmen's further case that they were doing work integral to the manufacturing process of the petitioner and were being supervised by the Supervisors of the petitioner. Even their Salary Register, Attendance Register etc., were maintained by the Supervisors of the petitioner and hence



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the Contractor was a mere name lender and did not have any role to play except for being an intermediary for payment of wages. The workmen further stated that there was no genuine contract between the petitioner and the Contractor and the Contractor was used only to cloud the direct relationship between the petitioner and the workmen. On 18.01.2001 and 14.04.2001 respectively, when they reported for duty they were informed that they were terminated from the services of the petitioner and they were denied entry into the premises. Challenging the oral termination they raised the disputes which were registered in I.D.Nos.115 & 116 of 2002.

8.The second respondent filed counter to the claim petition stating that he was a contractor and that he had valid licence as per the Contract Labour (Abolition and Regulation) Act. The Contractor stated that he had entered into an agreement with the petitioner for supply of man power to D.G. Operations, Canteen Services and Shifting of machinery's etc.. in the petitioner's factory at Thiruvottiyur, Chennai – 600 019 and entered into an agreement in this regard. The second respondent appointed two persons to



supervise the contract employees engaged by him to execute the work as per the agreement with the petitioner. The petitioner used to pay the amount to him for the man power supplied by him based on the total bill amount claimed by him. The Contractor further stated that from his father's days they had contract with the petitioner for engaging man power in the petitioner company. It was the further case of the Contractor that the termination of the workmen was only for the purpose of reorganising the business. As some of the workers were found to be surplus, he decided to retrench some of the workers. The contention of the workers that the termination was oral and without notice was denied by the Contractor. The Contractor further denied that the contract was only sham and further contended that there was a valid license issued by the Inspector of Factories to him. The Contractor denied the non-compliance of Section 25 (F) of the I.D. Act.

9.The petitioner in his counter submitted that the workmen were only Contract Workers and were engaged by the Contractor. It was stated that the petitioner was a registered principal employer under the Contract Labour (Regulation & Abolition) Act, 1970 and the contractors were also licensed



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contractors under the said Act. The second respondent was one such contractor, who had an agreement with the petitioner for maintenance of D.G. Operations, Canteen services & Shifting of machinery etc. in the petitioner's factory.

10. According to the petitioner, the workmen were neither appointed nor terminated by the petitioner as they were contract labourers engaged by the Contractor. The petitioner denied that there was any employer and employee relationship between the petitioner and the workmen. The petitioner denied all the contentions of the workmen and replicated the contentions of the Contractor.

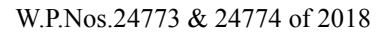
11. The Labour Court on an appreciation of the entire evidence on record both oral and documentary concluded that the petitioner was the principal employer of the workmen and that their services were terminated by the petitioner. On such conclusion, the Labour Court allowed the I.D. granting the relief of reinstatement, continuity of service with full backwages and all other attendant benefits.



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12. The learned counsel for the petitioner raised two preliminary issues one that there was total non-application of mind by the Labour Court as it mixed up the documents filed by the Contractor with those of the petitioner's documents. The learned counsel submitted that the documents M1, M2, M3, M4, M7 and M10 were actually produced by the Contractor but were referred to as the documents of the petitioner. The learned counsel submitted that the Contractor's documents were actually marked as R series and the petitioner's documents were marked as M series, but in the award the Labour Court mixed up both the documents and considered them as that of the petitioners. The learned counsel therefore submitted that on this short point the matter should be remanded to the Labour Court for fresh consideration. In my view, in the absence of any prejudice and in the light of the fact that the Contractor was sailing with the petitioner the mistake in referring to the documents as the documents of the petitioner is not so significant as to direct a remand of the matter.



14. The learned counsel for the respondents on the other hand relied on the Judgment of this Court in 2013 SCC Online Mad 701 as confirmed by the Division Bench of this Court in W.A.No.907 of 2013 to contend that the Labour Court had jurisdiction to enter into the question of sham and nominal nature of the contract. In the Judgment of the learned Single Judge in paragraph No.34 it was held as follows:

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employee relationship. More particularly, the workmen had discharged the initial burden cast upon them by examining WW-15 and marking several documents through the said witness. In the absence of any objections raised by the Management for the evidence of WW-15, or the document marked through him, the petitioner Management would be precluded to now contend that the Labour Court had no jurisdiction to adjudicate into the question as to who is the true employer. In fact, no such objection appears to have been raised before the Labour Court to state that in a dispute raised under Section 2A(2), the Court cannot go into the question and find out as to who is the real employer and the party should be directed to raise a separate dispute. Having not done so before the Labour Court, it appears to be a case, where the petitioner Management accepted the scope and jurisdiction of the Labour Court and proceeded to contest the matter on merits. The learned counsel for the petitioner submitted that the finding of the Labour Court that non-compliance of the provisions of the Contract Labour Act would automatically lead to the inference that the contract was sham, is an incorrect and perverse finding. It is true that mere non-compliance of the provisions of the Contract Labour Act would not by itself make a contract sham, yet



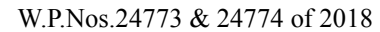
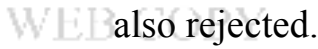
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in the facts of the present case, the Labour Court was constrained to render such a finding on cumulative consideration of Exhibits W51 to W104. Admittedly, the Management did not object of these documents nor its veracity. In such a scenario, the non-compliance of the Contract Labour Act is an indicative factor that the contract is sham. Therefore, on facts it cannot be stated that such a finding of the Labour Court was perverse.”

15.Before an issue is raised a pleading is necessary. In the present case in the counter to the claim petition, the petitioner has not whispered about the jurisdiction of the Labour Court to enter into the sham and nominal nature of the contract in a dispute raised under Section 2 (A) (2) of the I.D. Act. I therefore find that the above case squarely applies to the facts of these cases.

16.It is further pertinent to note that the Hon'ble Division Bench of this Court upheld the Judgment of the learned Single Judge and therefore it is clear that the Labour Court had jurisdiction to examine the issue as to whether the contract was sham and nominal while considering the question



as to who was the true employer. Therefore, the second preliminary issue is also rejected.

17. It is now to be considered if the finding of the Labour Court on the sham and nominal nature of the contract between the petitioner and the Contractor is valid and sustainable. The Labour Court after considering the evidence on record and after referring to the Judgments and the legal principles enunciated therein returned a categorical finding that the workmen were appointed by the petitioner and not by the Contractor. That there was no employee and employer relationship between the Contractor and the workmen and hence the termination of the workmen was an act of the petitioner only. In support of its findings the Labour Court relied on Ex.R5, the xerox copy of the details of the salary increments, grade, muster roll, wages for the Department of Diesel Generator, Canteen boiler, waste heat boiler operators by the workmen and found that the documents supported the case of the workmen that they were inducted into the services on 27.06.1991 and 26.07.1993 respectively as claimed by them. The Labour Court found fault with the petitioner as well as the contractor for not producing the



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agreement for the period prior to 2003 to establish that the workmen were

employed by the erst while contractor Late Parasuraman. It is pertinent to

note here that the Late Parasuraman was the father of the second respondent

and it is stated by the petitioner that it was the said Parasuraman, who was a

Contractor who engaged the workmen in the year 1991 and 1993

respectively. The Labour Court considered the documents Ex.M3, M6 to

M11 and M14 relied on by the Contractor, in support of his case that the

workmen were his employees and allotted to the services of the petitioner.

The Labour Court rejected the documents on the other ground that the

documents related to the period after 1998. As the workmen joined on 1991

and 1993 it was incumbent on the petitioner and the Contractor to produce

the agreement of services between the Late Parasuraman and the petitioner

for the period before 1998. The petitioner had not disputed that the said

Parasuraman died in 1993 therefore, there was a gap of 5 years between

1993 and 1998 where inspite of death of Parasuraman the salary was

continued to be paid by the petitioner in the name of Late Parasuraman only.

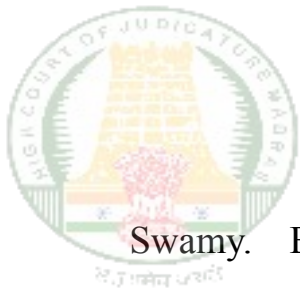
The Labour Court rightly held that the Contractor could not claim to

continue the business of his father without any legally acceptable



documents. Even the contract of service of late Parasuraman was not filed by the petitioner or the Contractor. Therefore, the contention of the Contractor that he had control over the workmen at least for a period from 1993 to 1998 cannot be countenanced.

18.The contention of the Contractor that he had employed two masteries, to over see and supervise the contract employees engaged by him to execute the work of the petitioner was rejected by the Labour Court for want of suitable supporting evidence in that behalf. The Labour Court found that even Ex.W series relied by the Contractor showed that the person who signed as a Supervisor was the Supervisor of the petitioner only and not of the Contractor. The contention of the Contractor that the petitioner settled the bills claimed by him for settling the salaries of the workmen was rejected by the Labour Court as it found that there was no iota of evidence to support the same. It is pertinent to note here that though the Contractor stopped the man power supply for D.G. Operations to the petitioner, the Contractor admitted that the petitioner carried out the D.G.Operations through the manpower supplied by one S.P. Sales and Services run by his wife Uma



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Swamy. Ex.M13, is the agreement entered between S.P.Sales and Services

and the petitioner. From Ex.M13, it is clear that the said S.P. Sales and Services was the Contractor from the year 2003. In the light of the fact that the petitioner and the Contractor failed to produce reliable documents to show that there was a genuine contract of service between the Contractor's father and the petitioner and the documents to support that the Contractor was the real employer of the workmen, the Labour Court lifted the veil to find out who was the real employer. The Labour Court applying the principles of law laid down by the Apex Court in the case of **Balwanth Rai Saluja and Another Vs. Air India Ltd. and Others** reported in **AIR ONLINE 2013 SC 652** held that the workmen were the direct employees of the petitioner for it's D.G. Operations and that their salary was paid by the petitioner in the name of the erst while Contractor Late Parasuraman and after him in the name of the Contractor K.P.P.Samy only to extract and exploit the services of the workmen, branding them as the contract labourers. The Labour Court applying the principles of the aforesaid Judgment to the facts of the case found that the workmen were appointed as Diesel Engine Operators in the petitioners company, that the generators were not claimed to



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be supplied by the Contractor, but were the properties of the petitioner. The

Labour Court hence concluded that the Contractor was not the controlling authority of the workmen, but it was the petitioner who had direct control over them and their work. In my view, the Labour Court has considered the issue in the right manner. As rightly contended by the learned counsel for the workmen this Court exercising jurisdiction under Article 226 of the Constitution of India cannot interfere with the factual findings based on evidence merely because another view is possible and moreso, when no perversity is made out.

19.The learned counsel for the petitioner submitted that the merely because no agreement was produced by the petitioner the Labour Court erred in concluding that the workmen were the contract employees of the petitioner. In my view the finding of the Labour Court is not merely based on the said aspect but is made on a conspectus of the entire facts and law and hence does not call for any interference. The Hon'ble Supreme Court in the Constitution Bench Judgment in the case of Steel Authority of India Ltd. and Others Vs. National Union Waterfront workers reported in (2001) 7 SCC 1

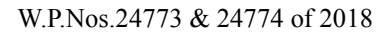


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held as follows:

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“By definition the term contract labour is a species of workman. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workman for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in [Hussainbhai Calicuts](#) case (supra) and in [Indian Petrochemicals](#)



Corporations ase (supra) etc.; if the answer is in the affirmative, the workman will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour.”

20. Even as per the Constitution Bench, the question of the Contract being a mere camouflage can be examined. The Labour Court rendered a finding of fact that the contract was a camouflage on the appreciation of the entire evidence on record and hence I find no reason to interfere with the same.

21. The learned counsel further submitted that assuming that it is a violation of the Contract Labour Act, the Act provided only for punishment and therefore the Labour Court's direction to the petitioner to reinstate the workmen was misconceived. The said submission is misplaced and is based on a misconception of the Labour Court's Award. Reading of the entire award shows that Labour Court has taken this aspect as one of the pointer's for its conclusion.

22.The learned counsel appearing on both sides referred to several



Judgments in support of their respective contentions which are as follows:

WEB COPY **“Citations referred by the petitioner counsel**

1.Steel Authority of India Ltd. and Others Vs. National Union Waterfront Workers and Others reported in (2001) 7 SCC 1

2.The Management of Hindustan Petroleum Corporation Ltd. Vs. The Presiding Officer, 1st Labour Court, Chennai in W.P.No.30470 & 30471 of 2005 dated 20.09.2023.

3.The Management, World Vision India Vs. M.Palanisamy and another in W.P.No.36694 of 2019 dated 01.10.2020.

4.International Airport Authority of India Vs. International Air Cargo Workers' Union and Another reported in (2009) 13 SCC 374.

5.Bharat Heavy Electricals Ltd. Vs. Anil and Others reported in (2007) 1 SCC 610.

6.Bharat Heavy Electricals Ltd. Vs. Mahendra Prasad Jakhmola and Others reported in (2019) 4 S.C.R. 504.

7.Dena nath and Others Vs. National Fertilisers Ltd. and others Vs. (1992) 1 SCC 695.



Citations referred by the first respondents counsel

1. *Sentinel Rolling Shutters and Engineering Company (Pvt.) Ltd., Vs. The Commissioner of Sales Tax reported in (1978) 4 SCC 260.*

2. *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others reported in (1980) 2 SCC 593.*

3. *The Managing Director, Needle Industries Limited Ketti, The Nilgiris Vs. The Presiding Officer, Labour Court, Coimbatore and Others in W.A.No.907 of 2013 dated 04.06.2019.*

4. *The Management of Needle Industries Limited Ketti, Coonoor Taluk, The Nilgiris Vs. The Presiding Officer, Labour Court, Coimbatore and Others reported in 2013 SCC Online Mad 701.*

Citations referred by the second respondent counsel

1. *Citibank N.A. Vs. Government of India and Ors. reported in MANU/TN/7640/2018.*

2. *V.Kesavan Vs. The Presiding Officer II Additional Labour Court reported in MANU/TN/0791/2012.*

3. *Parry & Co. Ltd. Vs. P.C. Pal and Ors. reported in MANU/SC/0305/1968.*

4. *The Superintending Engineer (North) Tamil*



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nadu Generation and Distribution Corporation Limited and Ors. Vs. The Presiding Officer III Additional Labour Court and Ors. reported in MANU/TN/8277/2022.

5.General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and Ors. reported in MANU/SC/1054/2010.

6.The Management of International Travel Hosue Limited Vs. The Presiding Officer, I Additional Labour Court and Ors. reported in MANU/TN/5551/2019.

7.Managing Director, Needle Industries Limited Vs. Presiding Officer, Labour Court and Ors. reported in MANU/TN/4726/2019.”

23.I have gone through the Judgments and it is needless to say that the legal principles enunciated are not disputed. The Hon'ble Supreme Court in the Constitutional Bench Judgment in Padmasundara Rao Vs. State of Tamil Nadu reported in 2002 (3) SCC 533 held as follows:

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or



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judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

24. Relevant judgments have been referred to and hence I find no need to refer to all the Judgments cited at the bar. I am therefore of the view that there are absolutely no merits in the writ petitions and the same deserve to be dismissed.

25. Accordingly, these Writ Petitions stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stands closed.

15.04.2024

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Internet : Yes / No

Speaking Order/Non-speaking order
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To

- 1.The III Additional Labour Court,
Chennai.
- 2.The Management of MRF Limited,
Represented by its Manager,
Post Box No.5285,
Thiruvottiur High Road,
Thiruvottiur,
Chennai – 600 019.



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W.P.Nos.24773 & 24774 of 2018

N.MALA, J.

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PRE-DELIVERY ORDER IN
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