



W.P.Nos.21786, 21791, 21793, 21796 & 21797 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.21786, 21791, 21793, 21796 & 21797 of 2019

and

WMP.Nos.20996, 20997, 20999, 21002 & 21003 of 2019

W.P.Nos.21786 of 2019

The Management of
Sri Srinivasa Gas Service
No.7/3H, Karupparayan Kovil Street
Anupparpalayam
Tiruppur District.

... Petitioner

Vs.

S.Simson

...Respondent

Prayer in W.P.No.21786 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified, calling for the records



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of the Labour Court herein passed final award in ID.No.22 of 2015 dated 01.12.2018 in favour of the respondent is illegal and quash the same and consequently direction to remand back to the Labour Court to conduct the fresh trial.

For Petitioner in
all W.P.Nos. : Mr.M.Abishek
for Mr.K.Rajendraprasad

For Respondents
in all W.P.Nos. : Notice served – No appearance

COMMON ORDER

All these Writ Petitions are connected to each other and as such they are taken up and disposed of by the common order.

2. The Management has filed these Writ Petitions calling into question the awards passed by the Labour Court in the individual claim petitions preferred by the Workmen.

3. The brief facts leading to the filing of these Writ Petitions are



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that the petitioner Management is a Gas Agency. The five workmen involved in these Writ Petitions were working as Gas Delivery Personnel. They joined in the service of the petitioner Management in the year 2012. It is the case of the Management that the workmen were paid on the basis of the number of cylinders delivered by them at the rate of Rs.1.25 paise per cylinder. While so, alleging that they were orally terminated from service with effect from 05.07.2014, the Workmen raised the dispute and upon the failure of conciliation, they filed the claim petitions. The claims were resisted by the Management. It is their case that since the said persons were paid on piece rate basis, they will not come within the definition of the Workmen under the provisions of the Industrial Disputes Act. It is their further case that they never orally terminated the Workmen. The Workmen had collected amounts from the Domestic Consumers after supply of the cylinder, but did not come and pay the amount to the Agency and as such they had misappropriated the amount. Upon being confronted, they indulged in illegal strike and did not come for work on their own and the Management did not terminate their services.



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4. Before the Labour Court, on behalf of the Workmen side, the concerned Workmen were examined as W.W.1 and exhibits in the form of the identity cards, the registration of the vehicle by the transport department and the failure report were marked. On behalf of the Management side no oral evidence was let in but a copy of the reply filed by the Management and a copy of the letter which is said to have been sent to the Management were marked as exhibits.

5. The Labour Court, considered the case of the parties and found that though the Management is alleging misappropriation, absolutely no evidence oral or documentary was let in on behalf of the Management and as such the said charge remains unproved. Even with reference to resorting to the illegal strike, except Ex.M.2 letter, no other evidence was is let in and held that the version of the Management remained unproved.

6. On the other hand, the Workmen had let in evidence that they were performing the work as cylinder delivery personnel and they were orally



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terminated from service and that the termination is illegal. The Labour Court also rejected the contention of the Management that they are not Workmen.

On the said findings, the Labour Court directed reinstatement of the Workmen into service with continuity and other benefits. However, restricted the back wages only to the sum of Rs.40,000/-. Aggrieved by the same, the Management has filed these Writ Petitions.

7. Heard Mr.M.Abishek, the learned counsel appearing on behalf of the petitioner Management.

8. Even though notices were served, the Workmen did not appear before this Court. The contention of the learned counsel appearing on behalf of the petitioner Management is that firstly it can be seen that these workmen had put in only 2 years of service and even pending dispute, the Management has raised a specific plea that they have joined the services of Gas Agencies and otherwise gainfully employed, which is completely overlooked by the Labour Court while ordering reinstatement into service. Even before this Court, he would submit that they have categorically



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mentioned in the affidavit that the workmen are otherwise gainfully employed which is not resisted by the said Workmen. He would further submit that even pursuant to the award, the Workmen did not even report to the petitioner Management claiming for work. The learned counsel would further submit that the Labour Court erred in holding them as Workmen as they are only paid on piece rate basis. He would further submit that when the Management has produced *Ex.M.2* claiming that the Workmen resorted to illegal strike and when it is in the form of an admission by the Workmen concerned, no further evidence was needed on behalf the Management to prove that it was the Workmen who indulged in illegal strike and thereafter did not come for work on their own and therefore the finding of the Labour Court is erroneous in law.

9. I have considered the said submissions made by the learned counsel for the petitioner and perused the material records of the case.

10. At the outset with reference to the plea taken on the maintainability is concerned, I am of the view that the law in this regard that



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whether a person is Workmen or not within the definition of the Industrial Disputes Act has since been settled will not be dependant upon the manner in which the emoluments are paid and therefore the contention in this regard stands rejected. As far as the question whether the Workmen absented from work on their own on account of misappropriation and illegal strike or whether they are orally terminated is concerned, the Labour Court considered the evidence which is let in on behalf of both sides. The Labour Court found that firstly, there was no iota of evidence with reference to misappropriation. In any event when misappropriation is alleged, then the Management ought to have taken steps either to conduct domestic enquiry or to plead the charge in detail in the counter and ought to have let in evidence in that regard.

11. On the contrary, it is the case of the Management that the workmen had voluntarily stopped reporting for work. In that regard, the Labour Court had considered the overall evidence which is let in on behalf of the Workmen and found that even though the premises is said to have been under CCTV surveillance, the footages were not produced and no FIR has been registered with reference to the said strike or no other documentary or



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oral evidence was produced in this regard except Ex.M.2. The Labour Court further found that the Management did not issue any notice regarding unauthorised absence or requiring them to report for work. Considering the totality of the circumstances, it concluded that the Workmen were only orally terminated and I do not see the said findings as perverse or without any evidence.

12. When the Labour Court in exercise of its power under section 11-A has appraised the evidence and decided the issue in favour of the workmen, I do not see any error to interfere in the matter. As far as the relief which is granted to the Workmen is concerned, I am inclined to interfere with the award of the Labour Court on the following grounds.

13. Firstly, it can be seen that it is the claim of the Workmen that they were working from the year 2012 and they were terminated in the year 2014. It is the specific case of the Management that upon the oral cessation of work, they have joined the services of other Gas Agencies and gainfully employed. The Workmen had not chosen to even claim the benefits of the



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reinstatement, after the award was passed in their favour. They have not appeared before this Court also. All these cumulative circumstances only buttress that after the termination they have moved on and gainfully employed elsewhere. In that view of the matter, instead of reinstatement with back wages, I am of the view that awarding compensation would be more appropriate. Now further time has also gone by when these Writ Petitions are pending from the year 2019. In view thereof, I am inclined to interfere with relief granted by the Labour Court with reference to reinstatement with continuity of service. Even before this Court the Workmen had not appeared and contested the matter.

14. I am of the view that in lieu of reinstatement, compensation can be awarded considering the plea made by the Management that the Workmen had been in service only for a period of 2 years. I am of the view that awarding a sum of Rs.30,000/- each to the Workmen would be a fair compensation to them. The said sum shall be paid within a period of 8 weeks from the date of receipt of the copy of the order failing which it will be payable with further interest at the rate of 9% per annum from today.



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15. In view thereof, these Writ Petitions are allowed on the following terms;

1) the awards passed in the ID.Nos.22, 18, 17, 20 & 23 of 2015 are upheld in as much as they hold that the workmen have been orally terminated by the petitioner Management;

2) the awards are interfered and set aside in as much as the relief of reinstatement with restricted back wages granted to the Workmen and instead a compensation of Rs.30,000/- each shall be paid by the petitioner Management to the respondent workmen. The said sum of Rs.30,000/- each shall be paid within a period of 8 weeks from the date of receipt of the copy of the order, failing which the sum will be payable with further interest at 9% per annum from today.

No Costs. Consequently, connected Miscellaneous Petitions are closed.

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Neutral Citation : No
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D.BHARATHA CHAKRAVARTHY, J.

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