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W.A.No. 3382 etc., batch of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

**W.A.Nos. 3382, 3383, 3384, 3388, 3391, 3392, 3393, 3394, 3396, 3397,
3412, 3414, 3415, 3416 & 3419 of 2024**

and

**C.M.P.Nos. 26270, 26272, 26274, 26278, 26350, 26367, 26368, 26369,
26375, 26384, 26388, 26465, 26471, 26476, 26484 & 26488 of 2024**

M.Sivam	...Appellant in W.A.No.3382 of 2024
K.Velayutham	...Appellant in W.A.No.3383 of 2024
S.Gnanaprakasam	...Appellant in W.A.No.3384 of 2024
R.Jothi	...Appellant in W.A.No.3388 of 2024
S.Manivannan	...Appellant in W.A.No.3391 of 2024
G.Velu	...Appellant in W.A.No.3392 of 2024
S.Saranraj	...Appellant in W.A.No.3393 of 2024
N.Venkatesan	...Appellant in W.A.No.3394 of 2024
S.Kannan	...Appellant in W.A.No.3396 of 2024
K.Perumal	...Appellant in W.A.No.3397 of 2024
M.Pushpalingam	...Appellant in W.A.No.3412 of 2024
D.Vijayakumar	...Appellant in W.A.No.3414 of 2024
R.Babu	...Appellant in W.A.No.3415 of 2024
V.Moorthy	...Appellant in W.A.No.3416 of 2024
V.Jothilingam	...Appellant in W.A.No.3419 of 2024

Vs.

1.The Management of Caterpillar India Private Limited,
Melnallathur Village & Post,
Tiruvallur - 602002
Rep. by its Authorised Signatory



2.Mr.Ramachandran,
Proprietor,
C.R.Caterers India Private Limited,
No.48/39, Rajaji Salai,
Wavoo Mansions, 4th Floor,
Chennai - 600001.

...Respondents in all writ appeals

Common Prayer: Writ Appeals filed under Clause 15 of the Letters Patent, against the common order dated 12.10.2023 made in W.P.Nos.30650, 30643, 30464, 31877, 30673, 30648, 30645, 32680, 30674, 30675, 32699, 29860, 30467, 30677 & 30709 of 2022.

For Appellants : Mr.E.Aneesh Vinayak
for G.Tamilselvi in all appeals
For Respondens : Mr.Anand Gopalan
for M/s.Agam Legal for R1 in all appeals

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge is to the order of the Writ Court dated 12.10.2023 wherein, the Writ Petition filed by the Management challenging the award of the Labour Court made in I.D.No.334 of 2015 was allowed granting monetary compensation to the workmen with a direction that the same would be payable by the Contractor namely, the 2nd respondent before this Court.



2. Before the Labour Court, the workmen claim that they were working in the canteen run in the factory which was originally owned by M/s.Hindustan Motors Ltd. The 1st respondent took over the said factory and these workers numbering about 150 who were working in the canteen were under another contractor by name M/s.Benson and Benson. After take over by the 1st respondent, the 2nd respondent became the contractor for running the canteen and these workmen were under the 2nd respondent. The license granted to the Contractor for running the canteen was cancelled by the 1st respondent and the 1st respondent thereafter, offered an exit scheme to the workers working under it in the canteen run in the factory premises. Since the workers did not opt for the exit scheme, they were asked to report for work at a different places. The workers did not chose to report at the alternate location and raised an industrial dispute, claiming that the 1st respondent is the actual employer.

3. Though it was claimed that the disengagement of the workers amounted to an oral termination, the Labour Court concluded that the workmen are actually employed by the 1st respondent, though they were working under the contractor. Therefore, they would be entitled to



reinstatement with back wages. This award made by the Labour Court was subject matter of challenge in the Writ Petition.

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4. The Writ Court, after considering the later judgment of the Hon'ble Supreme Court, particularly, one in ***Balwant Rai Saluja and Another Vs. Air India Limited and Others*** reported in ***(2014) 9 SCC 407*** where, the Hon'ble Supreme Court held that the workers in a canteen run in a factory premises would be deemed to be workers only for the purposes of the Factories Act 1948, and if they claim any other right, they must be able to establish that they are actually workers under the Management.

5. The Writ Court also referred to the observations of the Hon'ble Supreme Court in ***Bengal Nagpur Cotton Mills*** case reported in ***(2011) 1 SCC 635***, ***International Airport Authority of India*** case reported in ***(2009) 13 SCC 374*** and ***Nalco*** case reported in ***(2014) 6 SCC 756***. Going by the tests suggested by the Hon'ble Supreme Court in the above judgments, the Writ Court found that the Management of the 1st respondent has no actual control over the workers. The questions as to the appointing authority, the person who pays the salary, the person who has the authority to take



disciplinary action etc., were gone into and the Writ Court found that the workers did not satisfy any of the requirements laid down, in order to enable them to claim that they are under the control and supervision of the 1st respondent Management. On the said finding, the Writ Court allowed the Writ Petition and granted monetary compensation to the workmen payable by the 2nd respondent Contractor. Aggrieved, the workmen are on appeal.

6. We have heard Mr.E.Aneesh Vinayak, learned counsel for the appellants and Mr.Anand Gopalan, learned counsel for the 1st respondent Management.

7. Despite his sincere efforts, the learned counsel appearing for the appellants is unable to make out a ground for interference with the order of the Writ Court. Though it is a statutory canteen, it has been held that it is open to the Management to have a contractor to run the canteen and the employees in the canteen would be workmen of the contractor only and not the Management. Though in the earlier decision in *National Thermal Power Corporation Ltd. Vs. Karri Pothuraju & Others* reported in 2003 (7) SCC 384, the Hon'ble Supreme Court had taken the view that workers in



the canteen which is statutory in nature would be employees of the principal employer, that view was not accepted by the larger Bench in ***Balwant Rai Saluja's*** case referred to supra. The larger Bench of the Hon'ble Supreme Court, after considering the entire law relating to contract employment in canteens held that the workers engaged by a contractor to work in a statutory canteen of a factory would be the workers of the said factory, but only for the purposes of 1948 Act, (Factories Act, 1948), and not for other purposes. It was further held that the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

8. Even from the pleadings in the claim petition before the Labour Court, it is seen that the employees while admitting that they are working in the canteen under the contractor, had claimed that they are the employees of the principal employer by virtue of the statutory fiction. Now that the said statutory fiction no longer exists, such a claim ought not to have been entertained by the Labour Court.



9. We are therefore, unable to fault the Writ Court for having come to the conclusion that these workmen would be only employees of the contractor and they would be entitled to compensation or re-employment only from the contractor and not from the management. The Writ Court had granted monetary compensation to the workmen depending on the length of the service rendered by each one of them. Hence, we see no merit in the appeals. These Writ Appeals therefore, fail and they are accordingly, **dismissed**. Parties will bear their own costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (C.K., J.)
04.12.2024

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Internet: Yes

Index: No

Speaking order

Neutral Citation : No



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