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W.A.No.3499 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.3499 of 2023 and
CMP.No.28584 of 2023**

The Management,
Sri Venkateswara Gas Agency,
by its Proprietor S.Mahapandiyan,
M.N.R.Argate, Krishna Nagar,
Vellore.

... Appellant

Vs.

1.The Presiding Officer,
Principal Labour Court,
Vellore.

2.Raghu

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent against
the order dated 19.07.2023 passed by this Court in W.P.No.26774/2014.

For Appellant : Mr.P.Chandrasekar

For Respondent : R1-Court
Mr.S.T.Varadarajalu for R2



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J U D G M E N T

(Judgment of the Court was made by J.NISHA BANU,J.)

Challenging the order of the learned Single Judge made in W.P.No.26774 of 2014, in confirming reinstatement of the respondent, this writ appeal has been filed.

2. Brief facts required for consideration of this appeal are as follows:

2.1. The appellant is a Management and the 2nd respondent is an employee. The 2nd respondent claimed that he was employed as a Gas Delivery Boy in the appellant Management from 06.01.2000 on a monthly salary of Rs.1,500/-. Thereafter, he was terminated from his service, when he sought for extra wage of bonus and other coverage under the ESI and PF Act. The 2nd respondent raised Industrial Dispute in I.D.No.41/2013, wherein the Labour Court vide order dated 26.08.2014, granted reinstatement to the 2nd respondent. Challenging the same, the appellant/Management has filed W.P.No.26774/2014. This Court, by order dated 19.07.2023, modified the award to pay a sum of



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Rs.1,00,000/- as compensation to the 2nd respondent, since the appellant Company is not in existence. Aggrieved by the said order, the appellant Management has preferred this Writ Appeal.

3. The learned counsel appearing for the appellant submitted that the 2nd respondent was not an employee under the appellant Management. He was not paid any wages as claimed by him and further, there was no employer - employee relationship. Further, the 2nd respondent has not produced any documentary evidence/originals before the Labour Court to establish the same. The documents Exs.A2 to A9, which were relied on by the Labour Court were all xerox copies, which ought not to have been accepted as evidence. The learned counsel further submitted that the learned Single judge also recorded a finding that the workman had produced the original identity card, but the same does not contain the photo of the 2nd respondent. Therefore, neither the Labour Court nor the learned Single Judge without properly appreciating the said material facts had passed the orders.



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4. The learned counsel appearing for the 2nd respondent submitted that the 2nd respondent produced his Identity card and various consumer cards in order to prove that he was working under the appellant Management and delivered gas cylinder to the consumers. At the time of cross examination of the 2nd respondent, he produced the original identity card. Though it is the claim of the appellant that the 2nd respondent had never worked under them, the Management failed to substantiate the said contention by any evidence. Therefore, the Labour court considering all those aspects has rightly reinstated the 2nd respondent in service and the same was also confirmed by the learned Single Judge before this Court.

5. Heard both sides and perused the records.

6. The appellant had contended that without approaching the Conciliation Officer, the 2nd respondent had directly filed a petition under Section 2A(2) of the Industrial Disputes Act before the Labour Court. However, the records shows that the 2nd respondent approached Labour Officer, Vellore, who in turn, issued notice to the appellant Management but the same was returned 'unserved' which was also marked by the 2nd



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respondent before the Labour Court. The Labour Court concluded that there was no conciliation and submitted his failure report to the Government. Thereafter, the 2nd respondent had filed the I.D on receipt of the failure report. Therefore, the contention of the appellant in this regard, cannot be countenanced.

7. Though it is claimed by the appellant that the Labour Court had miserably committed an error by marking Exs.A2 to A9, as they are xerox in nature, the appellant has failed to substantiate the said contention by any documentary evidence. When the Management failed to prove their case, this Court is of the considered opinion that the award of reinstatement granted to the 2nd respondent need not be interfered with. Since, the appellant Company is no more in existence and had closed down the business, the Writ Court has modified the award directing the appellant to pay a sum of Rs.1,00,000/- to the 2nd respondent instead of reinstatement. We do not find any illegality or infirmity to interfere with the order passed by the Writ Court.



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8. Accordingly, the Writ Appeal is dismissed. No costs.

Consequently connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)
22.07.2024

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To
The Presiding Officer,
Principal Labour Court,
Vellore.

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