



W.P.No.214 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.04.2025

CORAM :

THE HONOURABLE **MR. JUSTICE M. DHANDAPANI**

W.P.No.214 of 2019

and

WMP.No.234 of 2019

The Management of
Birla Carbon India Pvt. Limited,
Formerly known as Hi-Tech Carbon Ltd.,
Sipcot Industrial Complex, Pappankuppam Village,
Guymmidipoondi – 601 201,
Rep. by its Authorised Signatory

...Petitioner

Vs.

1. Mahesh
2. The Management of
M/s. Kutty Brothers,
Rep. by its Manager,
No.11/562, Vanagaram,
Ambattur, Chennai – 600 052.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records of the First
Additional Labour Court, Chennai, in I.D.No.99 of 2012 and quash its
Award dated 31.08.2018.



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For Petitioner : Mr.Anand Gopalan
for M/s.Agam Legal Advocates

For Respondents : Mr.S.Gopi, for R1
: Mr.O.Raman, for R2

ORDER

This Writ petition has been filed seeking quashment of the award of the First Additional Labour Court, Chennai dated 31.08.2018 made in I.D.No.99 of 2011, ordering for reinstatement of the 1st respondent with continuity of service, backwages and all other attendant benefits

2. It is the case of the petitioner that it is a company registered under the Contract Labour (Regulation and Appeal) Act as a principal employer and engaged in the manufacture of Carbon Block and power generation. Apart from having around 200 permanent employees, the petitioner used to engage independent contractors for certain activities like housekeeping, gardening, loading, unloading and fabrication. The petitioner utilized the services of one M/s.Quality Engineering Fabricators for maintenance work. The 1st respondent was one of the contract labourers who was deployed in

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the premises of the petitioner by the said Quality Engineering Fabricators.

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The petitioner, as a principal employer, paid the ESI Contributions in respect of the 1st respondent, and the petitioner used to deduct the payment made towards the contributions from the bill payable to the Quality Engineering Fabricators. On 31.07.2004, the contract with the Quality Engineering Fabricators came to an end and all the employees including the 1st respondent were disengaged. Thereafter, in the year 2006, the 2nd respondent was awarded with the contract for maintenance activities after the contract awarded to the Quality Engineering Fabricators came to an end. It is the further case of the petitioner that, during November, 2006, the 1st respondent approached the 2nd respondent and requested them to engage him in the maintenance activities with the petitioner factory as he was conversant with the same. Accordingly, the 2nd respondent engaged the 1st respondent and he was deployed again in the premises of the petitioner company. The 1st respondent was paid ESI and PF by the 2nd respondent and he was also borne on the rolls of the 2nd respondent. While so, the petitioner came to understand from the 2nd respondent that the 1st respondent did not offer himself for work from January, 2011, without any intimation. While



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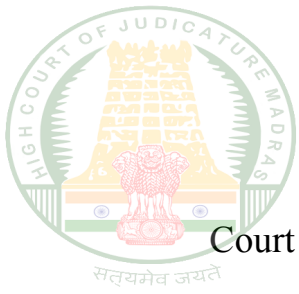
so, the 1st respondent raised a conciliation proceedings before the Assistant Commissioner of Labour (Conciliation) alleging that he was denied employment by the petitioner and the 2nd respondent from April, 2011 and that the denial would amount to oral termination. On the failure of conciliation, the 1st respondent raised an Industrial Dispute in I.D.No.99 of 2012 before the I Additional Labour Court, Chennai alleging that he was appointed in the petitioner concern as Welder in the year 1998, however, all of a sudden, the services of the 1st respondent was transferred to the 2nd respondent concern without any prior notice and that when the 1st respondent objected to the transfer and expressed his non-willingness to work for the 2nd respondent company, the petitioner assured to take back the 1st respondent in future and also assured that his service will be protected and he will be promoted and that the 1st respondent was working for the 2nd respondent as a Fitter from the year 2006, however, in April, 2011, the 1st respondent was denied access to the factory and he was informed that he had been removed from service. The Labour Court, after examination of oral and documentary evidence on record, by Award dated 31.08.2018, held that the 1st respondent was in continuous employment in the precincts of the



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petitioner and accordingly, directed reinstatement of the 1st respondent with continuity of service and to pay backwages and all other attendant benefits from the date of termination of service till the date of reinstatement. Challenging the same, the petitioner company has filed this writ petition.

3. Learned counsel for the petitioner submitted that the 1st respondent was employed with the 2nd respondent and the 1st respondent himself has admitted in the cross-examination that he was paid wages by the 2nd respondent and statutory compliances were also made by the 2nd respondent and that the 1st respondent was not interested to report for duty under the 2nd respondent. Learned counsel further submitted that a contract labourer deployed in the petitioner's premises cannot claim employment against the petitioner. He further submitted that, merely because the contract between the petitioner and the 2nd respondent was for many years, that does not entitle the 1st respondent to doubt the *bona fides* of the contract itself. Though the 1st respondent claims that he was denied employment in April, 2011, the dispute was raised only in August, 2011, and there is no proper explanation for the delay. Learned counsel also submitted that the Labour



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Court has failed to appreciate the evidence on the side of the petitioner and hence, prayed for setting aside the Award. Learned counsel, in support of his contentions, relied upon the judgment of Hon'ble Supreme Court in ***Bharat Heavy Electricals Ltd., vs. Anil and others*** reported in (2007) 1 SCC 610 and a judgment of this Court in the case of ***V.Kesavan and another v. The Presiding Officer, II Additional Labour Court, Chennai, and others*** [W.P.Nos.35842 & 35843 of 2007, dated 05.06.2012].

4. Per contra, the learned counsel appearing on behalf of the 1st respondent, by producing a copy of the ESI Card and the Attendance Register, submitted that the ESI Card of the 1st respondent has been attested by the petitioner and that the 1st respondent was employed with the petitioner as per the Attendance Register. Learned counsel further submitted that the alleged contract between the petitioner and the 2nd respondent is sham and nominal and not *bona fide*. He further submitted that the Labour Court has rightly sat over the issue and held that the petitioner and 2nd respondent have not produced sufficient evidence to prove their *bona fides* in engaging contractual labourers. Learned counsel also submitted that the



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1st respondent was continuously employed under the petitioner and the Labour Court has rightly appreciated the evidence produced by the 1st respondent and directed reinstatement of the petitioner, vide impugned order and the same does not warrants interference of this Court. Accordingly, he prayed for dismissal of this writ petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. On a perusal of the materials available on record particularly the impugned award, it is evident that the 1st respondent/workman himself in his deposition before the Labour court had admitted that, the 2nd respondent was ready to provide employment to the 1st respondent and it is the 1st respondent who was not ready to report duty due to certain health ailments. When such a statement has been given by the 1st respondent/workman himself, ordering for reinstatement that too with continuity of service, backwages and all other attendant benefits is not sustainable.



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7. At the same time, considering the issue involved and also considering the fact that the 1st respondent-workman had rendered almost 14 years of service and that the 1st respondent/workman had reached the age of superannuation and cannot also be reinstated in view of his age of superannuation, this Court, in exercise of its powers, is inclined to direct the petitioner Management to pay a lumpsum towards full quit as settlement in lieu of reinstatement as ordered by the labour court, vide impugned order dated 31.08.2018 made in I.D.No.99 of 2012.

8. Accordingly, this Court directs the petitioner-management to pay a sum of Rs.75,000/-(Rupees Seventy Five Thousand only) as settlement, in full quit in favour of the 1st respondent within a period of four weeks from the date of receipt of a copy of this order.



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WEB COPY 9. With the above modifications and directions, this Writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

The Presiding Officer,
First Additional Labour Court,
Chennai.



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M.DHANDAPANI, J.

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