



W.P.No.23460 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.01.2025
CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.23460 of 2009
and M.P.No.1 of 2009

The Management of Genau Extrusions Ltd.,
rep.by.Managing Director,
Site No.1, SIPCOT Industrial Complex,
Phase II, Hosur – 635 126.

...

Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.A.Wilson

3.The Management
Sri Moohambigai Contract Service,
13/37-2, Thenkannikottai Road,
Santhi Nagar, Hosur – 635 109.

...

Respondents

PRAYER : This writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records relating to the Award dated 17.12.2008 in I.D.No.485/2002 of the I Respondent, quash the Award.

For Petitioner	: Mr.K.Rangesh for Mr.Jayaraman & Associates
Respondent No.1	: Labour Court
For Respondent No.2	: Mr.S.V.Navin Prabhu for Mr.K.V.Shanmuganathan
For Respondent No.3	: No appearance



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ORDER

The writ petition is filed challenging the Award of the Labour Court dated 17.12.2008 made in ID No.485 of 2002. By the said Award, the claim petition filed by the Workman under section 2-A (2) of the I.D.Act was allowed and the Workman was granted the reliefs of reinstatement with back wages and continuity of service and other monetary benefits besides cost of Rs.1000/-.

2.The case of the Workman is that he was employed in the Second respondent management, even though through the first respondent Contractor, on 28.06.2001. As a matter of fact, in August 2001, when he was working as the machine operator, he also suffered an injury in his right hand fore finger and the claim was also made with Employee State Insurance Corporation by mentioning him, as if, he is the employee of the second respondent management. While so, thereafter in the year 2002, with effect from 10.07.2002, suddenly, he was non employed and hence, he raised a dispute. Conciliation failed. Thereafter, the claim petition is filed.

3.The claim petition was resisted by the respondent contractor who filed a petition specifically admitting that the Workman is their Workman



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and not that of the second respondent management. It is also further stated that the contractor is willing to offer employment to the petitioner in some other company. The claim is also resisted by the second respondent management on the ground that the Workman was never employed by them and he is the employee of the contractor. When the contractor is willing to offer employment in some other company, the petitioner has not accepted the same.

4.On the strength of the said pleadings, when the Labour Court took up the matter for inquiry, the Workman examined himself as PW1 and Exs.P1 to P7 were Marked. On behalf of the Respondents, two witnesses, namely one N.Murali and R.Velappan were examined and Exs.R1 to R18 were marked.

5.The Labour Court considered the case of the parties and first considered Exs. R4, R5 and R6, with reference to the claim made for the injury with the Employee State Insurance Corporation and found that since in the relevant column, it was not even specifically mentioned that the second respondent is a principal employer, the petitioner should be deemed



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to be their employee. The Labour Court, thereafter, found that the licence for engaging the contractor was later in point of time that is only on 21.06.2002, whereas the engagement is in the year 2001. The Labour Court also found that the employer's code number in Ex.R4 seems to have been interpolated, therefore, for all the reasons disbelieved the case of the management and held that the petitioner is a direct employee under the second respondent management and ordered reinstatement with back wages and continuity of service and other monetary benefits. Aggrieved by the same, the management is before this Court.

6.Mr.K.Ranges, learned counsel appearing on behalf of the Management would submit that firstly, in this case, it can be seen that except for the claim made in the ESI Corporation, every other document, which is on record, categorically shows that the Workman was employed only by the first respondent contractor. The order of appointment is given only by the Contractor. Even the resume submitted by the Workman clearly records and undertakes that he was the employee only on the contractor. A perusal of the muster roll, it is clear that the wages are paid only by the contractor. The employer has also produced the agreement between the contractor and the



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management for supply of labour. In view thereof, when the management has categorically and clearly proved that the petitioner was only the employee under the contractor, the relief, if any given, should be given only as against the first respondent and not against the second respondent that is the petitioner management. While the Employee State Insurance Corporation Form is duly produced, merely because the code number was overwritten, the Labour Court unnecessarily suspected the petitioner Management. As far as the accident claim report is concerned, the E.S.I. Acts stands on a different footing and it holds the principal employer is liable for both payment of contribution and also getting in the employee all the benefits, with liberty to the principal employer to collect the contribution from the contractor. Merely because, in the accident report form, the name of the second respondent was mentioned, that by itself is not a conclusive proof that the Workman is employed under the second respondent management directly. Therefore, he would submit that this court should interfere in the matter and set aside the impugned award.

7.Per Contra, the learned Counsel appearing for the Workmen would submit that it is categorically mentioned in the E S I claim form that M/s.



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Genau Extrusions Ltd., the second respondent is only the employer. It can be seen that the petitioner was working as a machine operator at the time of accident. Therefore, it cannot be stated that he is a contract labour. Even a perusal of the contract, it can be seen that it is only the loadman or the casual employee, who are employed through the contractor. Therefore, when the Labour Court has appraised the evidence and come to the conclusion by lifting the veil and finding that the Workman was only the direct employee under the second respondent management, this court need not interfere.

8.I have considered the rival submissions made on either side and perused the material records of the case.

9.It is true that even as a principal employer, Form 16 can be filed and the accident report has to be submitted. But however, at the same time, it can be seen that it was not expressly mentioned that the second respondent is filing the claim petition as a principal employer. Secondly, it can be seen that the second respondent and the first respondent have themselves filed the Memorandum of Agreement between them, which is dated 01.09.2000. The relevant clause 3 and clause 4 are extracted hereunder:



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“3.That the second part will supply workman to carry out loading a unloading, material handling, packing and cleaning the works;

4.That the Second Party is required to provide casual labourers on evening working days as required by the First Party as and when the need arises. It is the sole responsibility of the Second Party to ensure that the casual labourers are present in the required number every day to ensure the smooth functioning of the factory. However, the First Party reserves the right to increase or decrease the manpower depending upon the requirement from time to time.”

10.Thus it can be seen that the very contract was only to supply workmen to carry out loading and unloading, material handling, packing and cleaning the works. The second contingency is to provide casual labourers as and when need arises. It can be seen that the Workman in the instant case is neither a casual labourer, who was employed on need basis nor was he a loading, unloading or material handling man. But on the other hand, the Workman was the machine operator and even the injury happened while he was working in the machine involved in the manufacturing process. That is



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the second circumstance, which this court considered.

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11.The next circumstances, which I consider are counter statements filed by both respondents 1 and 2, which are identical lines. While the contractor as well as the management say that the Workman is employed only under the contractor and that he was employed with effect from 28.06.2001 and that he was deputed to the second respondent management along with other contract workers and that he was paying a sum of Rs.1950/- , the reason which is said for non employment is that the second respondent management had informed that there is not enough work even to their regular employees and therefore, the petitioner was deputed to ----- Company at Hosur. The blank was never even filled up. In the counter affidavit, it is mentioned as some other company in Hosur. Therefore, that also shows the after thought on the part of the respondents 1 and 2 in coming up with their case. In view thereof, when their very agreement shows that the contract employment is only for loading, unloading and casual labourers and when there is ample evidence on record that the Workman was a machine operator involved in the manufacturing process, then I do not find any error whatsoever in the Labour Court lifting the veil and finding that the workman



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was as a matter of fact employed directly by the second respondent management.

12.Now, coming to the question of relief that is to be granted to the Workman, the Labour Court didn't consider the other aspects. It can be seen that the Workman joined service in the year 2001 and he was non employed in July 2002. The period of service is about 13 months and the period of litigation is huge. Even pending this writ petition, it is submitted by the Learned Counsel for the petitioner that the Workman did not even claim any employment or 17 B wages.

13.Considering the overall facts and circumstances of the case and considering the efflux of time and the period of employment and the period of litigation, I am of the view that this is a fit case where compensation in lieu of reinstatement with back wages can be granted instead of reinstatement with back wages and continuity of service. In view thereof, considering the fact that the petitioner was receiving a salary of Rs.1950/- per month, considering the judgement of the Honourable Supreme Court of India in O.P.Bhandari and the later judgement whereunder approximately 39



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months of pay and some compensation towards future employment could also be added, I am of the view that a total compensation of Rs.2,00,000/- shall be payable to the Workman/second respondent herein by the Petitioner/management herein.

14.In view thereof, this writ petition is partly allowed on the following terms;

(i).The award of the Labour Court dated 17.12.2008 made in ID No.485 of 2002 shall stand confirmed in as much as it finds that the Second respondent Workman is directly employed under the petitioner management;

(ii).However, the award is modified in as much as the relief that is granted to the Workman. Instead of reinstatement with back wages and continuity of service, a compensation of Rs.2,00,000/- is awarded;

(iii).The petitioner management shall pay the said sum within a period of eight weeks from the date of receipt / production of the website uploaded copy of this order without waiting for the certified copy of the order.



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WEB COPY (iv).No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/no
Internet : Yes/no
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