



WEB COPY



W.P.No.5127 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.5127 of 2010

and

M.P.No.1 of 2010

R.Srinivasan

... Petitioner

Vs.

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

2.S.Gunaseelan

3.The Management of
E.I.D.Parry (India) Limited
(Now called as Parryware Glamorooms (P) Ltd.,
Ranipet 632 401.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in connected with the award dated 03.11.2009 made in I.D.No.33 of 2007 and quash the same.



WEB COPY



W.P.No.5127 of 2010

For Petitioner : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co

For Respondents : R1 – Labour Court
Mr.K.M.Ramesh
Senior Counsel
Assisted by
Mr.V.Subramani for R2
Mr.A.P.Venkatesh Prasad for R3

ORDER

This Writ Petition is filed challenging the award of the Principal Labour Court, *Vellore*, dated 03.11.2009 made in ID.No.33 of 2007. By the said award, the Workman was directed to be reinstated into service with 50% of backwages and continuity of service and all other attendant benefits.

2. Heard *Mr.P.Raghunathan*, learned counsel appearing on behalf of the petitioner and *Mr.V.Subramani*, learned counsel appearing on behalf of the second respondent Workman and *Mr.A.P.Venkatesh Prasad*, learned counsel appearing on behalf of the third respondent.



W.P.No.5127 of 2010

3. The brief factual background in which the Writ Petition arises

is that the second respondent workman was working under the petitioner who was a contractor under the third respondent. The contractor was entrusted with the labour contract and works relating to cleaning of the utensils etc., and certain other works. The Workman, *S.Gunaseelan*, was an employee under the petitioner contractor. While so, when originally he was working in the canteen, suddenly he was directed to report for work in the garden with effect from 11.05.2006. The Workman perceived this to be an ostensible non employment and therefore did not turn up for work and raised a dispute. Even before the conciliation Officer the petitioner contractor offered to take back in service. But however, a failure report was submitted and thereafter the claim petition filed by the Workman was taken on file as ID.No.33 of 2007. The claim petition was resisted by the management *inter alia* on the ground that the Workman who voluntarily stopped reporting for working under the petitioner contractor. The Labour Court took up the matter for enquiry and the Workman examined himself as *W.W.1* and ***Ex.W.1*** to ***Ex.W.14*** were marked. On behalf of the petitioner Contractor he examined himself as *M.W.1* and ***Ex.M.1*** to ***Ex.M.3*** were marked. The Labour Court thereafter considered the



W.P.No.5127 of 2010

case of the parties and held that the posting of the Workman at the garden amounted to transfer and that such transfer was *malafide* in nature and therefore held that the same amounted to non employment which is unjustified. Thereafter, the Labour Court considered the case with reference to the backwages and awarded 50% of backwages and granted the relief to the Workman accordingly, aggrieved by which the contractor is before this Court.

4. Eventhough *Mr.P.Raghunathan*, learned counsel for the management, commenced his argument in detail and with reference to each and every finding of the Labour Court, when this Court enquired about the latest position, it is represented by the learned counsel for the petitioner contractor that subsequent to the award, the Workman was reinstated into service with effect from 03.02.2010 of course without prejudice to the continuance of the Writ Petition and the Workman is also working till date without any blemish whatsoever.



W.P.No.5127 of 2010

5. In that view of the matter, the very findings with reference to the fact as to whether the posting of the Workman from kitchen to garden is a transfer or not and even if so, whether the petitioner contractor has power to transfer him or not or whether it is *malafide* or not need not be gone into in detail. After all the purpose of the industrial law is to ensure industrial peace and the Workman and management are able to gel together and the Workman is working there peacefully for the past 15 years pending the Writ Petition. In view thereof, the only question to be considered by this Court is whether the Workman would be entitled for the backwages or not.

6. I have considered the exhibits marked as **Ex.M1** and **Ex.M2** before the Authority whereby itself the petitioner contractor had even gone to the extent of agreeing that he will even reinstate the Workman in the kitchen itself. Therefore, in that view of the matter, this is not a case where the petitioner contractor can be mulcted with the backwages. Accordingly, this Writ Petition is disposed of on the following terms:

(i) *Without pronouncing on the various issues raised in the industrial dispute the ultimate direction to reinstate the Workman with continuity of service and*



all the attendant benefits by the Labour Court by its award dated 03.11.2009 in ID.No.33 of 2007 is upheld;

(ii) The fact that the Workman is already reinstated into service with effect from 03.02.2010 is recorded;

(iii) The Workman will not be entitled for the 50% of the backwages as awarded by the Labour Court from the date of his non employment till date of his reinstatement. However, the said service will be treated as a continuous service and the period will be treated as a period for the purpose of grant of gratuity but not for the purpose of the deduction of provident fund alone. For gratuity and all other benefits, the said period shall be treated as period of service and the Workman will be entitled for continuity of service and all other attendant benefits as ordered by the Labour Court.

(iv) No costs.

(v) Consequently, connected Miscellaneous Petition is closed.

08.01.2025

Neutral Citation : No
dna



WEB COPY



W.P.No.5127 of 2010

To

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



WEB COPY



W.P.No.5127 of 2010

D.BHARATHA CHAKRAVARTHY, J.
dna

W.P.No.5127 of 2010
and
M.P.No.1 of 2010

08.01.2025