



W.P.No.34655 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

CORAM

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

W.P.No.34655 of 2012

and

MP.Nos.2 & 3 of 2013

M/s. British Airways,
Anna International Terminal,
Madras Airport,
Meenambakkam, Chennai – 600 027.

...Petitioner

Vs.

1. The Presiding Officer,
The Central Government Industrial Tribunal
cum Labour Court (CGIT),
Chennai.

2. The Secretary
Chennai Airport Contract Workers Union
No.13, 1st Street, Balaji Nagar,
Anakaputhur, Chennai – 600 070.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the award dated 11.07.2012 made by the 1st Respondent in I.D.No.74 of 2009 and quash the same.



WEB COPY



W.P.No.34655 of 2012

For Petitioner : Mr.Arjun Anand

For Respondents : R1- Labour Court
: Mr.Balan Haridas, for R2

ORDER

The petitioner has come up with the present Writ petition seeking quashment of the award passed by the 1st respondent in I.D.No.74 of 2009 dated 11.07.2012.

2. The case of the petitioner is that the petitioner company entered into a Service Agreement on 15.04.2005 with one Day 'N' Day (in short 'DND') for supply of skilled and unskilled personnel for facilities management and related functions and DND agreed to provide qualified manpower in return for the agency charges. In accordance with the agreement, one workman, namely, S.Babu was deputed by DND to the petitioner company's branch at Anna International Airport, Meenambakkam, Chennai. The said workman was no longer deputed to the airport from 03.06.2006. As DND continued to supply the agreed 12 personnel and the terms remained favourable, the petitioner did not inquire into his absence

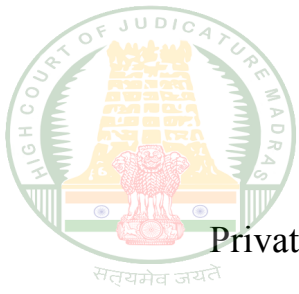


W.P.No.34655 of 2012

and it was understood that the workman had stopped reporting to DND.

WEB CO Various statutory and non-statutory forms filed by DND, has established beyond doubt that the said workman was an employee of DND and not of the Petitioner company and there is no master-servant relationship or employer-employee existed between the Petitioner company and the workman. However, the 2nd respondent union, on behalf of the said workman, raised an Industrial dispute in I.D.No.74 of 2009 before the 1st respondent. The 1st respondent passed the impugned order dated 11.07.2012 directing the reinstatement of the workman with full back wages and continuity of service. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that absolutely there is no employer-employee relationship existing between the petitioner company and the workman and he is a contract labour of Day N Day Services Private Limited, who entered into agreement with the petitioner which is evident from Ex.W2 and Exs.M7, 8 & 9 and if at all the workman intends to make any claim, the same has to be made as against the Day N Day Services



W.P.No.34655 of 2012

Private Limited and not against the petitioner. Accordingly, he prayed for allowing this Writ petition by setting aside the impugned award.

4. Per contra, the learned counsel for the 2nd respondent, which represents the workman submitted that, it is the petitioner company which issued the order of appointment in favour of the workman, wherein it is specifically mentioned that the petitioner directed the workman to work as Traffic Assistant on 01.04.1996 onwards and the same is evident from Ex.W.2. Apart from this, the petitioner also issued Airport Entry Pass and attendance was also marked by the petitioner from 1996-2005 and further a copy of Form-23 marked as Ex.M4 has been specifically prepared by the petitioner company to deny employment to the workman and the same cannot be considered as a genuine evidence. Hence, the labour court, after careful consideration of the above said facts and upon careful consideration of the materials available on record passed the present impugned award directing the petitioner to reinstate the workman with full back wages and continuity of service, which cannot be said to be erroneous and accordingly, he prayed for dismissal of this Writ petition.



W.P.No.34655 of 2012

5. Heard the learned counsel on either side and perused the material

documents placed on record.

6. It is the major contention of the petitioner company that the workman is not the employee of the petitioner company, but he was deputed through Day N Day Services Pvt. Limited and there was no employee and employer relationship existing so to entertain the dispute. It is also contended that the 1st respondent Tribunal has not verified the authenticity of the documents produced by the 2nd respondent on behalf of the workman, particularly Ex.W1 appointment order and also Ex.M1 Airport Entry pass application Form dated 20.06.2005, the antiquity of which is not as far as back as the year 1996 from which, the service of the workman said to have commenced as a Traffic Assistant.

7. The case of the 2nd respondent Union which represents the workman is that pursuant to the appointment order Ex.W1 issued by the petitioner company, the workman was appointed as Traffic Assistant and he was directly working under the petitioner company and he was paid salary by the petitioner company and also employer's contribution and the records



W.P.No.34655 of 2012

relating to his attendance and OT were maintained by the petitioner company. However, on 02.06.2006, he was orally denied employment by the petitioner company for no reason assigned without notice or notice pay or compensation before termination and he had worked for more than 240 days in a period of 12 calendar months and his termination amounts to retrenchment and the same is void abinitio.

8. However, on a perusal of the impugned award, particularly Paragraph 9 of the said award, this Court is of the view that, on consideration of both oral and documentary evidence put forth by the parties, the Tribunal, in a well considered manner, has dealt with the issue regarding the action of the Management of the petitioner company in dismissing the workman S.Babu from service and rightly held that the workman had been directly employed under the petitioner company and he was being terminated from service without complying with the provisions of Section 25-F and thereby, set aside the termination and directed reinstatement into service with continuity of service and all attendant benefits including full back wages from the date of termination.



W.P.No.34655 of 2012

WEB COPY 9. Having gone through the entire materials and the award passed by the Tribunal, this Court does not find any illegality or infirmity in the award in order to interfere with the same. However, as regards award of full back wages is concerned, though the worker is entitled to full back wages when he has been unjustly denied the right to work and the principle 'no work, no pay' does not apply, but it is settled that in order to claim back wages, a worker is required to prove by adducing evidence that he was not gainfully employed anywhere after dismissal and that there was no earning to maintain himself and his family. In the present case, there is no finding as regards non-employment of the workmen after his dismissal from service. Therefore, this Court feels it appropriate to modify the back wages to the extent of 25% instead of full back wages with continuity of service and all other attendant benefits thereof.



W.P.No.34655 of 2012

WEB COPY 10. For the reasons aforesaid, this Writ petition stands allowed in part and the award passed by the Tribunal, dated 11.07.2012 is modified to the extent of granting full back wages to 25% and in other respects, the same is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

24.02.2025

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

The Presiding Officer,
The Central Government Industrial Tribunal cum Labour Court (CGIT),
Chennai.

8/9



WEB COPY



W.P.No.34655 of 2012

M.DHANDAPANI, J.

skt

W.P.No.34655 of 2012
and
MP.Nos.2 & 3 of 2013

24.02.2025