



W.P.Nos.24902 of 2018 and 26667 & 31891 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.03.2025

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

W.P.Nos.24902 of 2018 and 26667 & 31891 of 2019

and

W.M.P. Nos.28940 of 2018, 32140 of 2019, 3688 of 2020, 4264 of 2022 & 554 of 2023

The Management of Nivin Leather,
(Formerly A.M.Leather),
Represented by its Proprietor Mr.M.RA.Mani
A.D.R.Complex, 2nd Floor,
No.9, Veerasamy Street, Periyamedu,
Chennai – 600 003.

...Petitioner in all W.P's.

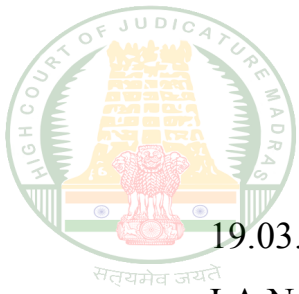
Vs.

R.Muthu ...Respondent in W.P.Nos.24902 of 2018 & 31891 of 2019

R.Shanti ...Respondent in W.P.No.26667 of 2019

PRAYER in W.P.No.24902 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the award dated 01.08.2018 passed by the Ist Additional Labour Court, Chennai in I.D.No.201 of 2013 and quash the same.

PRAYER in W.P.No.26667 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the order dated



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19.03.2019 passed by the IInd Additional Labour Court, Chennai in I.A.No.1 of 2019 in I.D.No.198 of 2013 and quash the same.

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PRAYER in W.P.No.31891 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the order dated 19.10.2019 passed by the Ist Additional Labour Court, Chennai in I.A.No.4 of 2019 in C.P.No.60 of 2019 and quash the same.

In all W.P's.:

For Petitioner : Mr.N.R.R.Arun Natarajan

For Respondent : Mr.K.V.Ananthakrushnan

COMMON ORDER

Since the issue involved in all these Writ petitions are one and the same, they are disposed of by this common order.

2. For brevity, the petitioner in all these writ petitions are hereinafter referred to as the 'management' and the respondent in all these writ petitions are hereinafter referred to as the 'workmen'.

3. The short facts necessary for disposal of these Writ petitions are as follows:



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3.1. It is the case of the management that, it is a proprietorship firm established in the year 2003 and it is engaged in the manufacture and export of Leather Garments and is covered under the provisions of ESI and PF from the year 2016. From 2003 till 2016, the management employed less than ten (10) employees. The Tailoring work in the management was outsourced and was done on job work basis and after 2016, the management employed 25 employees, who were engaged in sorting and loading of leather garments and the stitching of leather garments continued to be executed on job work basis and no tailoring work was performed at the management premises. Whiles, alleging oral termination from service by the management without conducting any enquiry, the workman in W.P.No.24902 of 2018 initiated conciliation proceedings and as the same ended in failure, the workman raised an industrial dispute in I.D.No.201 of 2013 before the I Additional Labour Court, Chennai. The Labour Court, vide its award dated 01.08.2018, ordered reinstatement with continuity of service along with full backwages and all other attendant benefits. Challenging the same, the management has filed W.P.No.24902 of 2018.



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3.2. Pending the same, the workman therein filed a petition under

Section 33(C)(2) of the Industrial Disputes Act in C.P.No.60 of 2019 claiming a sum of Rs.1,45,000/-, in which, the management filed I.A.No.4 of 2019 seeking to issue subpoena to the Branch Service Manager, Reliance General Insurance Company. However, the Labour Court, vide order dated 19.10.2019 dismissed the said I.A. Challenging the same, the Management has filed W.P.No.31891 of 2019.

3.3. Similarly, upon failure of conciliation proceedings, one R.Shanti raised an industrial dispute in I.D.No.198 of 2013 before the II Additional Labour court, Chennai, in which, the management filed I.A.No.1 of 2019 to issue subpoena to examine the witness mentioned in the petition i.e., the Branch Service Manager, Reliance General Insurance Company to issue clarification on the genuineness of the two postal covers marked as Ex.W.4 and W5 produced by one Muthu in I.D.No.198 of 2013 and the Labour Court, vide its order dated 19.03.2019 dismissed the said IA. Challenging the same, the management has come up with W.P.No.26667 of 2019.



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4. Learned counsel for the management submitted that alleging that

they were in continuous employment of the management and all of a sudden in the year 2012 they were orally terminated from service by the management, the workmen herein raised industrial disputes in I.D.Nos.201 & 198 of 2013 respectively and the same are not maintainable as against the management for the sole reason that, there is no employer-employee relationship between the management and the workmen. However, without considering any of the above said facts, the labour court had allowed the dispute raised by the workman in W.P.No.24902 of 2018 and ordered reinstatement with continuity of service and all other attendant benefits and along with full backwages and had miserably failed to consider the fact that the workman therein was gainfully employed under one Selvaraj during the non employment period, which was also revealed through the RTI Application filed by the management and thereby, he is not entitled to any backwages. It is the further submission of the learned counsel that without establishing employer-employee relation, the claim petition filed by the workman in W.P.No.31891 of 2019 u/s 33(C)(2) claiming wages is not maintainable, as the existence of pre-existing right has not been established. Further, he also submitted that the workman in W.P.No.26667 of 2019 was

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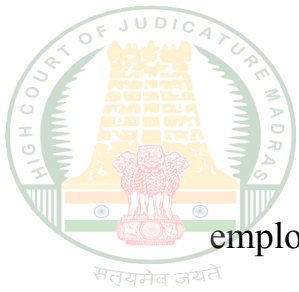


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also not employed with the management and without establishing the employer-employee relationship, the workman therein had approached the Labour Court and raised a dispute, which is erroneous. Thereby, the management filed interlocutory applications seeking to issue subpoena to the Branch Service Manager, Reliance General Insurance Company. However, the labour court, without allowing the management to establish its case, had mechanically dismissed the said applications, which is *per se* illegal. Accordingly, he prayed for appropriate orders of this Court setting aside the orders impugned in these Writ petitions and remand the matters for fresh consideration and permit the management to let in fresh evidence to prove that there exists no employer-employee relationship between the management and the workmen herein and to prove that the workman in W.P.No.24902 of 2018 has been gainfully employed during the non-employment period.

5. Per contra, the learned counsel appearing on behalf of the workmen submitted that the respective workmen were orally terminated from service in the year 2012. Though it is claimed by the management that the workman in W.P.No.24902 of 2018 was gainfully employed during the non-employment period.

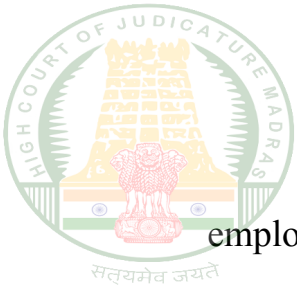


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employment period, the workman cannot be expected to sit idle and he has to earn a meagre amount to eke out his livelihood and the same cannot be said to be a gainful employment. Insofar as the workman in W.P.No.26667 of 2019 is concerned, there is no material evidencing gainful employment. Thereby, the Labour court, after careful consideration of all the above said facts, passed the present impugned orders which are speaking and reasonable orders and the same does not require any interference at the hands of this Court. Accordingly, he prayed for dismissal of these writ petitions.

6. This Court gave its careful consideration to the arguments advanced by the learned counsel on either side and perused the materials available on record.

7. The main grievance espoused by the management is that the interlocutory applications of the management have been dismissed without even affording an opportunity to the management to establish that there was no employer-employee relationship at the material point of time between the management and the workmen and that one of the workman was gainfully



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employed during the said period, which precludes him from claiming backwages.

8. Grant of opportunity to the petitioner-management to establish its case by placing necessary materials is one of the facet of principles of natural justice and deprivation of the same would definitely render the order arbitrary and perverse.

9. Insofar as W.P.No.24902 of 2018 is concerned, the dispute raised by the workman therein has been allowed in his favour, while negating the interlocutory application filed by the Management. When the management specifically avers that at the material point of time, there was no employer-employee relationship and that the workman therein was gainfully employed elsewhere, the said fact would have a bearing on the outcome of the employment of the workman therein and the Court below ought to have allowed the Management to establish its case. However, without proper appreciation of materials, the Court below had dismissed the interlocutory application and allowed the dispute in favour of the workman therein, which



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is grossly irregular, illegal and perverse and, therefore, the same deserves to be set aside.

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10. In such circumstances, this Court is of the view that an opportunity has to be given to the management to establish its claim with regard to gainful employment of the workman therein and also the issue of employer-employee relationship. Hence, this Court is inclined to interfere with the award made in I.D.No.201 of 2013. Accordingly, the award dated 01.08.2018 made in I.D.No.201 of 2013 on the file of the I Additional Labour Court, Chennai, ordering reinstatement of the workman therein with continuity of service and along with full backwages and other attendant benefits is set aside.

11. In view of the original award made in I.D.No.201 of 2013 being set aside, the subsequent computation petition does not subsist and consequently, the order dated 19.10.2019 made in I.A.No.4 of 2019 in C.P.No.60 of 2019 also stands set aside and the matter in I.D.No.201 of 2013 is remanded to the Labour Court for fresh consideration and the Labour Court is directed to permit both the management and the workmen

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to let in evidence with regard to the employer-employee relationship between the management and the workman therein and gainful employment of the workman during the non-employment period.

12. Insofar as W.P.No.26667 of 2019 is concerned, the interlocutory application has been dismissed, wherein the plea for establishment of postal covers, which were introduced by the workman in W.P.No.24902 of 2019, for which the management wanted to call the Branch Service Manager of the Insurance company. The postal cover, which was introduced by the workman therein would not be material to decide as to whether there is employer-employee relationship between the management and the workman in W.P.No.26667 of 2019. The interlocutory application taken out by the management insofar as this case is concerned, which has been dismissed, cannot be held to be erroneous as it does not in any manner advance the case of the Management with regard to employer-employee relationship. Therefore, the Labour Court rightly had dismissed the said petition, which order does not require any interference of this Court.



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WEB COPY 13. In view of the aforesaid reasoning, the writ petitions in W.P.Nos.24902 of 2018 & 31891 of 2019 stand allowed and with the aforesaid observations and directions and the writ petition in W.P.No.26667 of 2019 stands dismissed. No costs. Consequently, the connected Miscellaneous petitions are closed.

25.03.2025

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

To

1. The I Additional Labour Court,
Chennai.
2. The II Additional Labour Court,
Chennai.

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M.DHANDAPANI, J.

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