



W.P. No. 17264 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 03.03.2025

PRONOUNCED ON : 30.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P. No. 17264 of 2020

and

W.M.P. No. 21344 of 2020 and

W.M.P. Nos. 300, 302, 303 and 304 of 2022

The Managing Director,
Murudeshwar Ceramics Ltd.,
No.143, Elayangudy Road,
Devampuram Village,
Thirunallar Commune,
Karaikal.

... Petitioner

Vs.

R.Sandhirakasu,
No.41, Main Road, Thennagudi,
Sellur (P.O.)
Thirunnallar Commune,
Karaikal.

.... Respondent

Prayer in W.P.No.17264 of 2020

To issue a Writ of Certiorari, calling for the records of the Industrial Tribunal, Puducherry in ID(L) No. 53 of 2017 and quash its award dated 19.02.2020 and pass such further or other orders as this Hon'ble court may deem fit and necessary in the circumstances of the case.



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Prayer in W.M.P. No. 21344 of 2020

To grant Interim Stay of operation of the impugned award of the Industrial award of the Industrial Tribunal, Puducherry in ID (L) No.53 of 2017, dated 19.02.2020, pending disposal of the Writ Petition and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.M.P. No. 300 of 2022

To vacate the interim stay granted on 03.12.2020 in WMP No. 21344 of 2020 in W.P.No.17264 of 2020.

Prayer in W.M.P. No. 302 of 2022

To pay the arrears of 17-B wages from the date of Award (19.02.2020) till date amounting to Rs. 1,90,000/- within eight weeks.

Prayer in W.M.P. No. 303 of 2022

To continue to pay 17-B wages from today (24.12.2021) Rs.9,500/- per month being the last drawn wages before the 5th every succeeding calendar month till the disposal of the writ petition and further proceeding in Court.

Prayer in W.M.P. No. 304 of 2022

To pay the arrears of backwages from the date of dismissal (10.12.2015) till the date of the Award (19.02.2020) amounting to approximately Rs.4,20,000/- within eight weeks.

Appearance of Parties:

For Petitioner : Mr.Anand Gopalan, Advocate
For M/s.T.S.Gopalan & Co.

For Respondent : M/s.Balan Haridas and Kamatchi Sundaresan, Advocates



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JUDGMENT

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Heard.

2. The petitioner, being the management, has filed the present writ petition challenging the award passed by the Industrial Tribunal, Puducherry, in I.D.(L) No.53 of 2017, dated 19.02.2020. By the said award, the Tribunal held that the non-employment of the contesting respondent was unjustified and accordingly directed the management to reinstate him with full back wages from 10.12.2015 along with all consequential monetary benefits.

3. The writ petition was admitted on 03.12.2020. Pending disposal of the writ petition, in W.M.P. No. 21344 of 2020, this Court directed the petitioner to deposit a sum of Rs.2,00,000/-, representing 50% of the back wages, before the Tribunal within a period of four weeks, and granted interim stay subject to that condition. After service of notice, the contesting respondent filed four separate miscellaneous petitions seeking various reliefs, on which no orders have been passed thus far. The respondent also filed an additional affidavit denying the petitioner's allegation that he was employed in a private company as a contract labourer. He further stated that he was dependent on the support of his brother,



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was not gainfully employed, and that although his wife was working, their child was receiving free education.

4. The case of the petitioner is that it is a public limited company operating a ceramic factory at Karaikal engaged in the manufacture of various types of tiles. The contesting respondent, an ITI diploma holder, was initially engaged as an apprentice through sponsorship by the Government of Puducherry. Upon completion of his apprenticeship, he was issued a certificate dated 11.03.2008. Thereafter, he was deputed to work in the petitioner's factory through a contractor, namely, M/s. Mukunda Enterprises. According to the respondent, he was denied entry into the factory premises on 10.10.2015 and again on 01.12.2016. The respondent contended that the denial of employment was an act of victimization by the management in retaliation for the evidence he had given in a case filed by one of his colleagues.

5. The respondent raised an industrial dispute before the Government Labour Officer, Karaikal, by his letter dated 05.12.2016. The petitioner management filed a reply dated 31.01.2017, contending that the respondent was not their employee, having been engaged only as an apprentice earlier, and that no employer-employee relationship existed thereafter. The management further



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stated that they had engaged several contractors, and that the respondent had

been employed by one such contractor, namely, M/s. Mukunda Enterprises. As

the Conciliation Officer was unable to bring about a settlement, he submitted a

failure report to the Government of Puducherry by his report dated 13.09.2017.

6. By G.O.Rt.No.157, Labour Department, dated 17.10.2017, the Government of Puducherry referred the dispute for adjudication to the Labour Court, Puducherry. The terms of reference annexed to the order, made under Section 10(1) read with Section 2A of the Industrial Disputes Act, are as follows:—

“(a)Whether the dispute raised by the petitioner Thiru P.Sandhirakasu, Karaikal against the management of M/s. Murudeshwar Ceramics Ltd, Karaikal over re-instatement with back wages is justified or not? If justified, what relief he is entitled to? If justified, what relief he is entitled to?

(b) To compute the relief, if any, awarded in terms of money, if it can be so computed.”

7. Upon receipt of the order of reference from the Government, the Industrial Tribunal, Puducherry, took up the dispute as I.D.(L) No.53 of 2017 and issued notices to the parties. The respondent filed a claim statement dated 07.11.2017, contending that he was an employee of the management and that the management, with an intent to deny him his legitimate dues, had falsely



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labeled him as a contract employee. He further asserted that he was initially trained as an apprentice in the trade of diesel vehicle and polishing plant mechanic, and thereafter had been continuously working in the said post. The management filed a statement of objections, the same being undated.

8. Before the Industrial Tribunal, the respondent examined himself as PW1 and marked 20 documents on his side as Exhibits P1 to P20. On behalf of the petitioner management, one Mr. P.C. Dilip was examined as RW1, and 30 documents were filed and marked as Exhibits R1 to R30. Upon analyzing the materials on record, the Tribunal concluded that the respondent had been engaged as a diesel mechanic and polishing plant mechanic for over seven years. Even according to the records produced, he was shown as an employee of the petitioner management. The Tribunal further noted that various ESI records and PF contributions reflected that the respondent was a direct employee of the company.

9. In Para 11 of the impugned award, it was recorded as follows: -

“Thus an analyzing the oral evidence of PW1 and the documents such as Ex.P10 to P13, P16 and P17, this court was able to come to the conclusion that, this petitioner proved his continuous employment under the respondent company.”



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WEB 10. After a thorough analysis of the documents filed by both sides, the

Tribunal, in paragraph 15 of its award, recorded a detailed finding, which reads as follows:—

“As per Ex.R1, the respondent has entered into contract with Mukunda Enterprises on 29.07.2009 only, but it has paid ESI & EPF contribution as per Ex.R8 to the petitioner from 01.04.2009 itself i.e. even before entering into contract, the so called Mukunda Enterprises has paid ESI & EPF contribution to this petitioner. No explanation was offered by the respondent why it has paid such contribution from 01.04.2009, in the absence of contract during 01.04.2009. It shows Ex.R1 is a sham and nominal document. Further, it has given wages details for the period from August 2009 to December 2009 as per Ex.R11 to R29. Though, it has paid ESI & EPF contribution from 01.04.2009 to 31.03.2010. It has failed to give the wage details for the period 01.04.2009 to 31.07.2009 and no explanation was given for its failure to give the details of salary for the remaining period i.e. from 01.08.2009 to 31.03.2010. Thus the respondent has filed the intermittent period details only. It has not provided complete details of salary for the year 2009 and 2010. Thus the respondent has filed the intermittent period details only. It has not provided complete details of salary for the year 2009 and 2010. Further, as per Ex.R10 it has given details of wages and contribution for the period from January 2015 to October 2015. Further it has given Pay Particulars for the period from January 2015 to October 2015, through the document Ex.R30. On overall perusal of Ex.R2 to R30, it is found that the respondent has given some details for the year 2009 and 2015 only. It has not given the details for the year 2010 to 2014. It has not given any explanation for its failure. It shows that the payment of wages by M/s.Mukunda Enterprises, as alleged in the counter pleading is nothing but utterlie. It shows that the contract / agreement between the respondent company and Mukunda Enterprises as



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sham and camouflage. As per the Ex.R1 the respondent company has contract / agreement with Mukunda Enterprises from 29.07.2009 itself, but it has obtained the license of contract on 28.03.2012 (as per Ex.R3) only and that too for 2 years and 7 months only. It shows that the respondent company has agreement with unlicensed contractor M/s. Mukunda Enterprises. Further, the so called contractor M/s. Mukunda Enterprises has not renewed its contract between the periods 01.11.2013 to 18.03.2015. It has renewed its contract on 19.03.2015 as per Ex.R4. The respondent / company has not given any explanation regarding its contract with an unlicensed contractor during the period 2013 to 2015. It would go to show that Ex.R1 and R2 are nothing but sham and camouflage agreement. Thus analyzing Ex.R1 to R4, in all angle, it is found that the above said licenses and agreement are sham and camouflage only. Therefore, this court was unable to come to the conclusion that as per the contract this petitioner was employed under the contractor by name M/s. Mukunda Enterprises. Further RW1 has not produced any document regarding the payment of wages by M/s. Mukunda Enterprises from the period 10.03.2008 to 29.07.2009. In addition to that, the Respondent has failed to produce the documents related the payment of wages by M/s. Mukunda Enterprises for the years 2010 to 2014. Thus on analyzing the above said documents in various angle it is found that this petitioner was an employee under the respondent company and not under the contractor by name M/s. Mukunda Enterprises. On perusal of Ex. P2, it is found that this petitioner was denied job in the respondent company as he had adduced evidence before the court of law against the respondent company, which is an arbitrary exercise by the management and therefore, it is found that this petitioner was entitled for reinstatement.”

11. The Tribunal also referred to the following two decisions of the Supreme Court in



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WEB COPY (a) **General Manager (OSD), Bengal Nagpur Cotton Mills v.**

Bharat Lal reported in 2011 (1) SCC 635; and

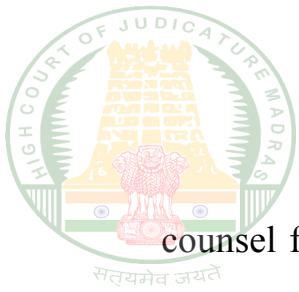
(b) International Airport Authority of India v. International

Air Cargo Workers' Union reported in 2009 (13) SCC 374

12. Thereafter, it gave the following conclusion as found in Para 19:-

“Here, in this case this court has decided that the contract between the principle employer and the contractor as sham and nominal. Further it has decided that the contract (Ex.R1 and R2) as a camouflage to deny the employment benefits to the employee/petitioner and it has further decided that this petitioner was a direct employee under the respondent / company as per Ex.P10, P13 to P17. Therefore, the benefit of the above said citation has to be necessarily be given to the petitioner.”

13. The learned counsel for the petitioner management relied upon the judgment of the Supreme Court in **Director, Steel Authority of India Ltd. v. Ispat Khadan Janta Mazdoor Union, reported in (2019) 7 SCC 440**, to contend that even if the engagement of contract labour is abolished, it would not automatically entitle any workman to claim employment under the principal employer. It was argued that in the present case, since the respondent was an employee of the contractor, he cannot seek any relief against the petitioner. The



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counsel further submitted that the mere production of an ESI card and records

of PF deductions would not, by themselves, establish an employer-employee relationship entitling the respondent to claim employment under the petitioner.

14. The learned counsel for the petitioner further relied on the judgment of the Division Bench of the Himachal Pradesh High Court in **Rakesh Sharma v. Indian Oil Corporation, LPA No.18 of 2021**, and contended that mere reliance on the appearance of a workman's name in the ESI records was not accepted as proof of employment with the principal employer. In paragraph 9 of the judgment, it was observed as follows:—

“The perusal of ESI card shows that it has been issued in the name of appellant Rakesh Kumar, but it does not reflect the name of the employer. Only the code number of the employer has been given in this card and there is no evidence on record to suggest that the code number mentioned in this card is that of Corporation. Therefore, on the strength of this document, it cannot be said that the appellant was an employee of the Corporation as in the case of contract labour also, it is the responsibility of principal employer to ensure that the labour is duly registered with the Corporation and the contribution required in terms of the Act is deposited by the employer, of course, subject to realization thereof from the contractor. The appellant has failed to show that as member of ESI Corporation, the contribution has been realized from the Corporation. Hence, in the absence of any other cogent and satisfactory evidence on record, simply on the basis of ESI card, it cannot be said that the appellant was employed by the Corporation. The appellant does not possess any cogent evidence by which it may be appreciated



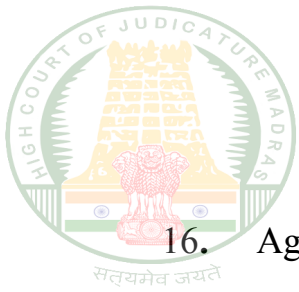
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that he was ever employed by the Corporation. He also could not prove that the Corporation had ever paid him salary. He could have moved an application before the learned Tribunal below thereby calling upon the records of the Corporation to prove the relationship of employer and employee between him and the Corporation, however, for the reasons best known to the appellant, no application was moved before the learned Tribunal below to call for the record of the Corporation”

15. The Supreme Court, in **Management of Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan**, reported in (2005) 3 SCC 193, has held that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot reappreciate or interfere with findings of fact recorded by the Labour Court in its award. The relevant observation is as follows:—

“Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon.”



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16. Again in **Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij**

Company Ltd reported in 2014 (6) SCC 434, the Supreme Court held as

follows:—

“The High Court has not applied its mind in setting aside the judgment and award of the labour court in exercise of its power of judicial review and superintendence as it is patently clear that the labour court has not committed any error of jurisdiction or passed a judgment without sufficient evidence. The impugned judgement and order of the High Court deserves to be set aside and the award and judgment of the labour court be restored.”

17. The Industrial Tribunal rightly held that the alleged contract arrangement pleaded by the management was not acceptable, and that the evidence on record was to the contrary. It was found that the contractor did not possess the requisite license to engage workers for the nature of work performed by the respondent. Further, there were instances where the salaries were paid directly to the respondent, and the Provident Fund contributions were also made by the petitioner management. In such circumstances, it is not open to the management to contend that these issues cannot be examined in a dispute raised under Section 2A of the Industrial Disputes Act. Where the real employer is the management and the dispute is against them, the industrial dispute is clearly maintainable. It was the management that failed to establish that the respondent was the employee of the contractor.



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WEB (18.P) Under the above circumstances, the writ petition is misconceived, accordingly will stand dismissed. Consequently, all WMPs will also stand dismissed. No costs. However, the Respondent is entitled to withdraw the amount in deposit with the Tribunal as per the orders of this court. For the rest of the amount and for the enforcement of the award he is at liberty to take appropriate execution proceedings.

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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The Industrial Tribunal cum Labour Court,
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DR. A.D. MARIA CLETE, J

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