

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO. 8845 OF 2001

M.S. Jain,
Proprietor,
M/s. Kiran Road Lines,
81, Mc. Nicholas Road,
Chetpet, Chennai 31. .. Petitioner

-Vs-

1. The Presiding Officer,
First Additional Labour Court,
Chennai.

2. M. Thiagarajan, .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.R. Mahadevan

For Respondent-2 : Mr.Balan Haridas

:O R D E R

The present writ petition has been filed by the Management for
quashing the award dated 20.10.2000 in I.D.No.1177 of 1991.

2. Petitioner was the proprietor of a common carrier known as
M/s. Kiran Road Lines. Respondent No.2 had raised a dispute before the first
respondent, which was numbered as I.D.No.1177 of 1991, relating to termination
of his services without complying with the provisions contained in Section 25F
of the Industrial Disputes Act. Respondent No.2 claimed in the said claim
petition that he was working as a mechanic and was drawing a salary of
Rs.2000/- per month.

3. In the counter affidavit filed on behalf of the present
petitioner it was indicated that the present respondent No.2 was working as a
Foreman. It was further stated that since such person was employed in a
supervisory capacity drawing wages more than Rs.1600/- per month, he was not a
workman and as such the dispute raised under the Industrial Disputes Act was
not maintainable. It was further stated that the petitioner did not have any

mechanic shop and the claimant was not working as maintenance mechanic. It was further indicated that after the termination order dated 23.9.1991 was issued, a lawyer notice had been sent by the present respondent No.2 where upon the present petitioner withdrew the letter of termination and indicated his willingness to take back the present respondent No.2 into service. However, the present respondent No.2 did not rejoin duty, but sent false letters making allegation that he was prevented from joining duty. The Labour Court came to the conclusion that the present respondent No.2 being a mechanic was a workman and he should be reinstated in service with full backwages. The aforesaid award being impugned in the present writ petition.

4. The main contention of the counsel for the petitioner is to the effect that though oral and documentary evidence had been adduced on behalf of the present petitioner indicating that respondent No.2 was engaged

in supervisory capacity draw an Rs.1600/- and as such was not a workman, such materials on record have been either lost over by the Labour Court or not considered at all.

5. Learned counsel for the respondent No.2 has submitted that the Labour Court had referred to the evidence adduced on behalf of the petitioner and after consideration of the relevant materials, had come to a particular conclusion which is not available to be challenged under the writ jurisdiction.

6. It is true that the High Court while deciding a writ of Certiorari, does not sit as an appellate authority. Where the Labour Court considering the materials on record and come to a particular conclusion, such a conclusion is not available to be challenged in a writ petition if such conclusion is based on all relevant materials on record. The writ of certiorari is not available to be invoked to correct errors of fact. The High Court while considering the writ of certiorari is required to consider not the decision of the lower forum on merit, but the decision making process, that is to say whether the lower forum has proceeded in accordance with law while reaching a particular conclusion.

7. Keeping in view the aforesaid limited scope for interference in such matters, the award of the Labour Court is to be considered.

8. Section 2(s) defines the expression "workman". The relevant portion of the definition is extracted hereunder :-

"2(s) "workman" means any person (including the apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, but does not include any such person -

...

...

(iii) who is employed mainly in a managerial or administrative capacity; or
(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly on a managerial nature.□

9. A perusal of the aforesaid definition makes it clear that a person who is employed mainly in a managerial capacity is not included within the meaning of □workman□. Similarly, a person who being employed in a supervisory capacity is drawing wages exceeding Rs.1600/- per month is also not to be considered as a workman.

10. In the present case, the petitioner in the counter has stated that the claimant was working as a Foreman and was engaged in the supervisory capacity. There is no dispute that the claimant was drawing Rs.2,000/- per month. Keeping in view the claim of the claimant and the statement made in the counter, the main question which has to be decided is as to whether the claimant was a workman or not. More particularly, it was required to be examined as to whether the claimant was employed in a supervisory capacity.

11. The award passed by the Labour Court indicates that it had framed two issues to the following effect :-

- 1. Whether the petition filed by the petitioner has to be allowed ?
- 2. What is the relief to which the petitioner is entitled ?

12. A perusal of the aforesaid issues framed by the Labour Court would indicate that the Labour Court has not framed a specific issue on the substantial question to be decided by it. To say the least, the issues framed by the Labour Court are most general in nature which do not pin-point precisely the question required to be decided. Two issues framed by the Labour Court rather relate to the relief, which has to be granted only after the conclusions are arrived at regarding the main question to be decided. There cannot be any dispute that the main issue which should have been framed relates to the question as to whether the claimant was a workman or not and for the aforesaid purpose, it was to be found out whether he was engaged in the supervisory capacity or not, since he was admittedly drawing more than Rs.20 00/- per month.

13. I would not have laid any importance on this defect if the Labour Court would have referred to all the relevant materials on record to come to a conclusion even though a specific issue had not been framed. However, I find that even though on the side of the petitioner four witnesses were examined and several documents were filed, which had some bearing on the question as to whether the claimant was a workman or not, it appears that the Labour Court has merely glossed over such matter and has not even referred to various documents on record.

14. The entire discussion relating to oral evidence on the

side of the present petitioner seems to be contained in paragraph 9 of the award. In the aforesaid paragraph even without bothering to notice what such witnesses have stated, the Labour Court had remarked

□. . . From the cross-examination of MW1 and MW3 (Accountant), it is evident that the petitioner has been doing only vehicle maintenance work. From the evidence of MW2 it is evident that the petitioner did not have any managerial or supervisory nature of duties.□

The aforesaid conclusion of the Tribunal does not seems to have any co-relation with the evidence of the actual witnesses. Even though I have gone through the entire evidence of such witnesses, I have not found anything in their statements which supports, even remotely, such conclusion of the Labour Court. It is of course true that the Labour Court has pointed out that there is no documents on the side of the management to show that the claimant was working as a supervisor/ foreman/manager. However, the same logic is also applicable to the evidence of the claimant, from which side no categorical document has been produced to indicate that in fact he was appointed as a mechanic. Apart from the fact that oral evidence adduced on behalf of the owner has been just brushed aside, I find several documents produced on behalf of the management have been ignored.

15. A perusal of the award passed by the Labour Court makes it amply clear that the award has been passed in a most slipshod manner without going into the relevant materials on record produced on either side. Since the Labour Court has not considered all the relevant materials on record, the ultimate conclusion reached by the Labour Court cannot be upheld as there is total non-application of mind to the relevant materials on record and it has jumped into certain conclusions without any basis.

16. For the aforesaid reasons, the award passed by the Labour Court is quashed and the matter is remanded back to the Labour Court. The Labour Court is directed to frame a specific issue as to whether the claimant was a workman and whether he was engaged in a supervisory capacity. If the parties so desire, they could be permitted to adduce further evidence and thereafter the matter shall be decided by the Labour Court on the basis of the existing materials on record and also on the further materials to be produced on either side. The entire process should be completed within a period of four months from the date of receipt of the order. The fact that the matter is remanded to the Labour Court should not be considered as an expression of any conclusion in the matter and the matter has to be decided afresh in accordance with law.

17. In the result, the writ petition is allowed to the extent indicated above and the award passed by the Labour Court is quashed and the matter is remanded. No costs.

28-11-2003

Index : Yes

Internet : Yes

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To

1. The Presiding Officer,
First Additional Labour Court,
Chennai.

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