



W.P.No.28124 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	7/12/2023
Delivered on	10/6/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.28124 of 2015

a n d

M.P.No.1 of 2015

The Management
Institute for Financial Management
and Research (IFRM)
rep. By its Registrar
Kothari Road
Chennai 600 034.

...

Petitioner

Vs

1. The Presiding Officer
III Additional Labour Court
Chennai.

2. S. Rajendran (deceased)

3. R. Jaya

4. R. Rajasekar

5. R. Raja

6. R. Saravanan

...

Respondents

(R.R.3 to 6 are substituted as Lrs of deceased
R.2 as per order dated 17/11/2023 in
W.M.P.No.18482 of 2023 in W.P.No.28124 of 2015 by DNRJ)



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Prayer: Petition filed under Article 226 of the Constitution of India

for the issuance of a writ of certiorari to call for the records in relation to the Award dated 3/2/2015 passed in I.D.No.34 of 2013 by the first respondent/III Additional Labour Court, Chennai and consequently, quash the same as illegal and arbitrary.

For petitioner ... Mr.S.Mahesh Kumar

For respondents ... Labour Court – R.1

Mr.K.Balaji
for R.R.3 to 6

ORDER

This writ petition is filed by the petitioner/Research Institute seeking to quash the Award dated 3/2/2015 passed in I.D.No.34 of 2013 by the first respondent/III Additional Labour Court, Chennai.

2. The facts in brief which are required to be considered in this writ petition are as under:-

The petitioner Society was registered under Societies Registration Act and it is not a profitable organisation and was recognised as a Social



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Science Research Institute by the Department of Scientific Industrial Research, Government of India.

3. The second respondent was appointed as a Driver on temporary basis on 29/1/1992 for a period of six months. On 17/8/1992, he was made permanent. On 12/11/1997, second respondent was indulged in physical tussle with a staff member. A memo was issued to him for which the second respondent tendered apology. Several complaints have been received against the second respondent. On 24/2/2008, a written complaint was received against him for which also second respondent tendered apology. On 27/4/2010, charge memo was also issued against him and he was suspended for two weeks.

4. The second respondent was driving 'Ford Ikon' car bearing Registration No.TN-01-8421 which was purchased in the year 2003. As the car became old and started developing repairs, the petitioner Society has decided to sell the car. The second respondent was given fifteen days notice dated 26/7/2012 as per the terms of the appointment letter informing that he will be relieved soon after the car was sold. However, the second respondent sent replies requesting the petitioner to reconsider



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their decision to sell the car. Finally, the petitioner Society passed an administrative order on 14/9/2012 and sold the car on 1/10/2012. The second respondent's accounts were settled.

5. The second respondent has raised an Industrial Dispute before the Conciliation Officer under Section 2 A (1) of the Industrial Disputes Act, 1947. A failure report was submitted under Section 12 (4) of the Act. The second respondent had filed I.D.No.34 of 2013 before the III Additional Labour Court, Chennai for setting aside the termination order and for reinstatement with continuity of service and back wages. After conducting an enquiry, labour Court concerned has allowed I.D.No.34 of 2013, directing the petitioner Society to reinstate the petitioner and pay 50% of the back wages from 10/8/2012 and also imposed cost of Rs.3,000/-. Aggrieved by the same, present writ petition is filed.

6. Heard Mr.S.Mahesh Kumar, learned counsel for the petitioner and Mr.K.Balaji, learned counsel for the respondents 3 to 6.

7. It is submitted by the learned counsel for the petitioner that labour Court has failed to consider that the petitioner Institution is not an



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Industry as defined under 2 (j) of the Act, erroneously held that procedure contemplated under 25 G of the Industrial Disputes Act have not been followed. The Tribunal has failed to consider that the procedure of termination was followed as per the appointment letter. Labour Court has erroneously ordered 50% of the back wages and continuity of service.

8. The first respondent/labour Court, while considering the Industrial Dispute No.34 of 2013 has formulated two issues, viz.,

- (i). Whether the petitioner was terminated in accordance with law?
- (ii). Whether the petitioner is entitled for the relief as prayed for?

9. One of the contentions raised by the petitioner Institution is that the petitioner is not an 'Industry' as defined under 2 (j) of the Industrial Disputes Act.

10. Section 2 (j) of the Industrial Disputes Act, 1947 runs as under:-

“Industry” means any business, trade,



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undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen”.

11. According to the petitioner Institution, it is not an Establishment and it is only an Institution, a non profit organisation and therefore, is not an Industry.

12. I have perused the observation made by the labour Court in respect of finding that the petitioner Organisation is an Industry. Admittedly, the petitioner Institution has employed three persons as Drivers. The petitioner falls under the definition of undertaking thereby remotely falls within the definition of Industry as defined under Section 2 (j) of the Act. On considering the test that is required to be considered to see whether an organisation is an Industry or not, it is clear that it falls within the definition of an Industry, thereby, the provisions of Industrial Dispute, 1947 are attracted.



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13. The next question that falls for consideration is whether the petitioner organisation can summarily terminate the second respondent.

14. There is no dispute that the second respondent has been employed as a Driver to drive Ford Ikon car belong to the petitioner Management. He joined the services on 29/1/1992 and worked until 10/8/2012 and denied the employment thereafter. It is also an admitted fact that while denying the employment, he was not given any show cause notice, no enquiry was conducted.

15. It is the contention of the petitioner organisation that procedure as agreed by the second respondent in the appointment order has been followed. However, it has to be seen that since the second respondent is a workman as defined under the Industrial Disputes Act, he cannot be terminated/retrenched without following the procedure contemplated under Section 25 F of the Industrial Disputes Act.

16. Section 25 F of the Industrial Disputes Act, runs as under:-

Conditions precedent to retrenchment of



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workmen – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a). the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b). the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c). notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government



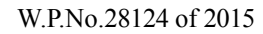
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by notification in the Official Gazette).”

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17. If a person who has been in continuous service not less than one year shall not be retrenched until he was given one month notice in writing, indicating the second respondent for retrenchment and that he was paid at the time of retrenchment, compensation equivalent to 15 days of less pay for every completed years of continuous service. The second respondent has admittedly worked for 20 years with the petitioner organisation. One month notice as required under Section 25 F of the Act has not been given. The compensation for 20 years of service at the rate of 15 days pay for each year of work was also not given to the second respondent. Therefore, the procedure followed by the petitioner in retrenching the second respondent is contrary to Section 25 F of the Industrial Disputes Act.

18. It is the contention of the learned counsel for the petitioner that the petitioner is driving Ford Ikon car and the said car has become old and on account of continuous repairs, they have decided to sell the car and ultimately sold the car thereby, according to the petitioner organisation, there is no work for the second respondent and hence, his



19. Admittedly, the petitioner Institution is having three cars including Ford Ikon. The second respondent is the senior most Driver amongst three drivers. As per Section 25 G of the Industrial Disputes Act, in case if any of the Drivers are required to be retrenched, the junior most Driver in the Institution has to be retrenched first. However, in the contrary, the second respondent who is the senior most amongst the Drivers was retrenched. Therefore, the petitioner Institution has violated Section 25 G of the Act and if really the Institution does not require services of one of the Drivers, the Institution should have retrenched one of the junior most Drivers and not the second respondent. Therefore, the termination of the second respondent is erroneous and contrary to the provisions of the Industrial Disputes Act.

<https://www.mhc.tn.gov.in/judis>



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21. The second respondent has sought for reinstatement, continuity of service and backwages. As per the record, the second respondent/Driver has passed away. In his place LRS were brought on record as respondents 3 to 6 that means one of the orders of the labour Court of reinstating the second respondent as Driver has become infructuous.

22. The labour Court has granted 50% of the backwages from 10/8/2012 until the date of order. The law in respect of grant of back wages is very much settled in an authority of the Hon'ble Apex Court, in ***THE MANAGEMENT OF REGIONAL CHIEF ENGINEER P.H.E.D, RANCHI Vs. THEIR WORKMEN, REP. BY THE DISTRICT SECRETARY***, (Civil Appeal No.9832 of 2018), wherein at paragraph 11, it has been held thus:-

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to



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the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.”

23. In another decision in ***THE MANAGER, ATOMIC ENERGY EMPLOYEES CONSUMER COOPERATIVE STORES LTD., SHOPPING CENTRE, KALPAKKAM Vs. 1. A.L.CHIDAMBARAM AND 2. THE PRESIDING OFFICER, PRINCIPAL LABOUR COURT, CHENNAI, (W.A.Nos.1759 and 1760 of 2014)***, wherein at paragraph 21, it is held thus:-

“21. With the development of law by judicial interpretations and judicial pronouncements, the traditional view that backwages and other benefits is consequential to quashing of termination order as unlawful, has been metamorphosed in to the recent



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view that quashing / setting aside the termination order as unlawful does not lead to grant of backwages and other incidental backwages automatically.”

24. It is submitted by the learned counsel for the petitioner Management that the second respondent was running auto which was purchased in the name of his son. The second respondent has never mentioned that he is not having gainful employment from the date of his termination/retrenchment i.e., from 10/8/2012. Therefore, there is no clarity as to whether the second respondent was gainfully employed or not. In such cases, granting of wages is not automatic. Further the labour Court has granted 50% of the backwages payable from 10/8/2012 and this Court is of the opinion that granting of 50% of backwages in the circumstances of the case are reasonable. In view of the discussion made above, the petitioner Institution has failed to make out the case to interfere with the impugned order passed by the first respondent in I.D.No.34 of 2013.

25. In the result, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.



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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Presiding Officer
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Chennai.

Dr.D.NAGARJUN,J

mvs.



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Pre-delivery order made in
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