



W.P. No.4156 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2024

DELIVERED ON: 27.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.4156 of 2015

1.The Management
E.d.1370 Vanavarayanallur Milk
Producers' Cooperative Society,
Vanavarayanallur,
Udhiyur Via, Kangayam Taluk,
Tiruppur District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem-7.

2.S.Palanisamy.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the award dated 20.11.2014 made in I.D.No.172 of 2009 passed by the 1st respondent and quash the same.

For Petitioner	:	Mr.N.Manokaran
For Respondents R1	:	Court
R2	:	Mr.S.Umapathy



ORDER

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This writ petition has been filed by the management challenging the award passed by the 1st respondent in I.D.No.172 of 2009.

2.The brief facts of the case of the second respondent are as follows:

The 2nd respondent was working as a Milkman in the Society namely the petitioner herein since 14.09.1983. According to the petitioner, the 2nd respondent was in the habit of falsely recording high density in the milk, supplied by the members and thereby caused loss to the society. The petitioner management has issued a show cause notice to the 2nd respondent dated 02.06.2007 and the 2nd respondent has given explanation on 22.06.2007.

3. The petitioner management sent a rejoinder letter dated 12.07.2007 to the 2nd respondent. The petitioner management contends that they were getting around 1000 litres of milk per day from its members, later, due to the mischief caused by the 2nd respondent, the quantity has gone down to 25 litres per day.



4. The petitioner management, after drastic reduction of 25 litres per day, issued an Office Note dated 29.08.2008 to the 2nd respondent and the Secretary of the Society to make arrangements to increase the procurement of milk to 500 litres per day, on or before 15.10.2008.

5. According to the petitioner management, the 2nd respondent was not able to procure more than 200 litres per day, due to which the petitioner management has to face a huge financial constraint. The petitioner management has relieved the 2nd respondent on 14.02.2009 in pursuance to the resolution passed by the Society. The 2nd respondent challenged the same by raising a dispute before the Labour Court at Salem vide I.D.No.172 of 2009.

6. The 2nd respondent has examined himself as WW1 and marked Ex.W1 and Ex.W2. The Secretary of the petitioner management was examined as M.W1 and marked Ex.M1 to Ex.M8. The Labour Court has passed an award dated 20.11.2014 by setting aside the order of termination and issued direction to reinstate the 2nd respondent with continuity in service with 60 % back wages. Challenging the same, the present writ petition.



7. The learned counsel for the 2nd respondent would plead that the management did not follow Section 25F of Industrial Disputes Act, 1947 by giving notice before passing the final order and therefore, the removal of service of the 2nd respondent from the petitioner Society is in gross violation.

8. According to the learned counsel for the second respondent, the non-compliance of Section 25F vitiates the entire proceedings of the management dated 14.02.2009. According to the learned counsel for the 2nd respondent, the order passed by the Tribunal is in accordance with law and therefore, warrants no interference.

9. Learned counsel appearing for the petitioner relied upon a judgment in the case of ***Rashtrasant Tukdoji Maharaj Technical Education Sanstha, Nagpur vs. Prashant Manikrao Kubitkar*** reported in ***2018 12 SCC 294***, the relevant paragraph is extracted hereunder:

“2.The respondent workman had worked under the appellant for a period of two years and three months whereafter he was terminated on 1-6-1994. Judicial opinion has been consistent that if the termination is found to be contrary to Sections 25-F and 25-G of the Industrial



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Disputes Act, 1947, reinstatement in service is not the rule but an exception and ordinarily grant of compensation would meet the ends of justice.”

Though the Hon'ble Supreme Court has reiterated that Section 25F is not mandatory but there is a guiding factor that the workmen could be compensated adequately rather than of reinstatement. However, it depends from case to case based on its service conditions.

10. Learned counsel for the second respondent relied upon a judgment in the case of ***Ranbir Singh vs. Executive Engineer, P.W.D.*** reported in ***CDJ 2021 SC 647***, the relevant paragraph is extracted hereunder:

4. It is true that in the Ajay Pal Singh (supra), the Bench of this Court, by judgment rendered in the year 2015, took the view that, when the termination is effected of service of a daily wager, there must be compliance of Section 25F. This Court, in fact, went on also to note that unlike a private body, in the case of a public body, while it may be open to resort to retrenchment of the workmen on the score that there is non-compliance of Articles 14 and 16 in the appointment, in which case, in the order terminating the services, this must be alluded to, it would



still not absolve the public authority from complying with the provisions of Section 25F of the Act and, should it contravene Section 25F, it would amount to an unfair trade practice. We do notice, this judgment has been reiterated in a subsequent judgment also in Durgapur Casual Workers Union and others v. Food Corporation of India and others (2015) 5 SCC 786.

11. The judgment relied upon by the second respondent in the case of ***K.V.Anil Mithra and Another vs. Sree Sankaracharya University of Sanskrit and Another*** reported in ***2021 SCC OnLine SC 982***, the Hon'ble Supreme Court has held as follows:

“30.It is not open for us to examine the nature of employment offered to the workman and the manner he had served the employer is beyond the terms of reference made by the appropriate Government dated 8th April, 2003 and the fact is that if the service of the workman has been terminated, it will be termed to be a retrenchment under Section 2(oo) of the Act provided it does not fall under any of those expressly excluded under the section. In every retrenchment, the employer is not under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act but in a case where the workman has been in continuous service



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for more than 240 days in the preceding 12 months before the alleged date of termination as contemplated under Section 25B, the employer is under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act 1947.

31.The consistent view of this Court is that such non-observance has been termed to be void ab initio bad and consequence in the ordinary course has to follow by reinstatement with consequential benefits but it is not held to be automatic and what alternative relief the workman is entitled for on account of non-observance of mandatory requirement of Section 25F of the Act 1947 is open to be considered by the Tribunal/Courts in the facts and circumstances of each case.

32.What appropriate relief the workman may be entitled for regarding non-compliance of Section 25F of the Act 1947 has been considered by this Court in Bharat Sanchar Nigam Limited v. Bhurumal 9. The relevant paras are as under:—

33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a



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regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

*34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given*



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monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

12. The only point for consideration to the Court is whether the petitioner management has complied with Section 25F of Industrial Disputes Act, 1947. Section 25F of the Industrial Disputes Act, 1947 is reads as



follows:

“25F. Conditions precedent to retrenchment of 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 by notification in the Official Gazette]”

13. A perusal of Section 25F makes it mandatory for the petitioner management to put the respondent on notice and its non-compliance vitiates the entire process. The petitioner management is unable to show that there



was an opportunity given to the 2nd respondent before passing final order by way of resolution dated 14.02.2009. Therefore, the writ petition filed by the management is dismissed and the order passed by the Tribunal is affirmed.

14. In view of the judgment relied upon by the second respondent, it is crystal clear that the service conditions of the second respondent employee plays a significant role and the Presiding Officer, Labour Court has found that no statutory one month notice was given under Section 25F of the Industrial Disputes Act, 1947. The second respondent was employed on 14.09.1983. The findings given by the first respondent/Presiding Officer, Labour Court is extracted hereunder:

Mdhy; kDjhuh; 14.9.1983y; gzpF;F Nrh;e;Js;shh;. mNj rkak; rq;f nrayhsuhd jpU.n[fjP];tud; 7.2.1992-yjhd; gzpapy; Nrh;e;Js;shh;. rq;f gzpFis xUtNu nra;J nfhs;s KbAk; vd;W fUJk; gl;rj;jpy;. rq;f nrayhsh; jpU.n[fjP];tud;-ia tpl mjpgf mDgtk; cs;s mtUf;F gy tUlq;fs; Kd;Ng gzpapy; Nrh;e;j kDjhuii Nkw;gb gzpia nra;a nrhy;yp rq;f nrayhsuijhd; gzpapyUe;J tpLtpj;J ,Uf;f Ntz;Lk;. Kdjhu; kPJ ve;jtpj Fw;wr;rhl;Lk; ,y;yhky; rq;fj;jpd; epjpepiyikia fhuzk; fhl;b gzpapyUe;J tpLtpj;jpUg;gJ rl;lg;gb rhpahdJ my;y.



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15. In view of the undisputed fact and the judgment cited supra, this Court has no hesitation in dismissing the Writ Petition filed by the petitioner Management and consequentially the order passed by the first respondent/Presiding Officer, Labour Court is confirmed with a further direction that the petitioner Management shall comply with the orders of the first respondent/ Presiding Officer, Labour Court within a period of 12 weeks from the date of receipt of a copy of this order.

16. With the above directions, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

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The Presiding Officer,
Labour Court,
Salem-7.



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N. SENTHILKUMAR, J.

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