

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL Nos. 881, 1287, 1288, 1292, 1295, 1302, 1303, 1466, 1467, 1468, 1469, 1483, 1486, 1498, 1520, 1542, 1666 and 1674 of 2013

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COMMON JUDGMENT: (per the Hon'ble Sri Justice A.Ramalingeswara Rao)
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All these appeals are being disposed of by this common judgment, in view of the common point of law and facts involved in them. All these appeals are directed against the identical orders of the learned Single Judge passed in W.P.Nos.7919 of 2001 and batch dated 23.08.2012 and W.P.Nos.8182 of 2001 and batch dated 30.08.2012.

2. The first respondents in all these appeals were appointed in various capacities in the appellant's plant at Karimnagar during the year 1991-1992 and they were removed from service in the year 1996. There was no written order of appointment or removal. Challenging the removal, they raised industrial dispute before the Industrial Tribunal-cum-Labour Court (for short, Labour Court), Godavari Khani and the Labour Court dismissed their petitions by various Awards dated 10.10.2000. Challenging the Awards of the Labour court, they filed separate Writ Petitions stating that the appellant herein did not comply with the provisions of the Industrial Disputes Act, 1947 (for short, the Act), more particularly, Section 25 FFF. The learned Single Judge opined that the appellant herein has not followed the procedure prescribed under Section 25 F of the Act and held that the Labour Court did not take that aspect into account. The learned Single Judge felt that the writ petitioners are entitled for reinstatement into service, but, since the unit where they were working was not in existence, he awarded compensation of Rs.60,000/- to each of them. Challenging the same, the present Writ Appeals were preferred by the appellant.

3. This Court, while admitting the Writ Appeals, granted interim stay of order of the learned Single Judge subject to condition of the appellant depositing 50% of the amount awarded by the learned Single Judge. It is submitted by the learned counsel for the appellant that pursuant to the said interim order, the appellant deposited 50% of the amount.

4. The learned counsel for the appellant submitted that the unit was closed with effect from 12.09.1996 due to non-availability of the raw material and since there was no work, the services of the writ petitioners, who were working as daily wage workers, were dispensed with. He also submitted that the workmen did not work continuously and they were disengaged on 06.09.1995. Initially, the workmen filed Writ Petition No.20524 of 1995 and the same was dismissed on 12.09.1996. The learned counsel for the writ petitioners, on the other hand, vehemently contended that the unit was closed for financial losses and it was not on account of unavoidable circumstances. He justified the order passed by the learned Single Judge.

5. We have noticed that the workmen and their counsel were absent when their cases were taken up for disposal by the Labour Court and the Labour Court passed the Awards based on the material available on record. The learned Single Judge accepted the statement of the first respondent before him that the unit was closed and there was no work to the writ petitioners. The learned Single Judge had not adverted to Section 25 FFF of the Act, on which reliance was placed by the learned counsel for the writ petitioners. The learned Single Judge has awarded compensation in view of the closure of the unit and no basis was shown for awarding the amount of Rs.60,000/- payable to each of the writ petitioners.

6. The relevant portion of Section 25 FFF of the Act reads as follows:

“ 25-FFF. Compensation to workmen in case of closing down of undertakings. - (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that the prior payment of compensation to the workman shall be a condition precedent to the closure of any undertaking.

Provided further that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25-F shall not exceed his average pay for three months.

Explanation. - An undertaking which is closed down by reason merely of -

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on;

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section...”

7. It is the admitted case of the workmen (writ petitioners), as could be seen from the averments made in the Writ Petitions, that Section 25 FFF is applicable to the facts of the case. The point raised by the learned counsel for the first respondent in the present appeals that the unit was not closed for unavoidable circumstances was not raised before the learned Single Judge. We are not inclined to permit the learned counsel for first respondents to argue the same for the first time before us in the appeals. A perusal of Section 25 FFF of the Act shows that in case of closure of an undertaking, the workmen are entitled for three months average pay. Even if we take the average pay of the workmen at

the time of retrenchment in 1995-96 into consideration, it would not be more than Rs.10,000/-. However, pursuant to the order passed by this Court while admitting the Writ Appeals, the appellant deposited 50% of the amount awarded by the learned Single Judge and the learned counsel for the appellant fairly submits that the appellant would be satisfied if the order of the learned Single Judge is modified by allowing the workmen to withdraw the said amount.

8. In view of the consent expressed by the learned counsel for the appellant, all these Writ Appeals are partly allowed granting retrenchment compensation @ Rs.30,000/- per workman (writ petitioners) and they are allowed to withdraw the amount deposited by the appellant without furnishing any security. The order of the learned Single Judge is modified accordingly. There shall be no order as to costs. Miscellaneous petitions pending in these appeals, if any, shall stand disposed of.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO, J

Date: 10.03.2015
TJMR