



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2017
(Reserved on 27.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) No.949 of 2017

M.Venkateshwaran

... Petitioner

vs.

1)The Chairman,
Centre for Monitoring Indian Economy Pvt. Ltd.,
HO:11, Apple Heritage,
No.54-C, Andheri-Kurla Road,
Andheri (East), Mumbai-400 093.

2)The Field Information Officer,
Centre for Monitoring Indian Economy Pvt. Ltd.,
No.49, Aftab Arcade, TB Main Road,
Madurai-625 010.

... Respondents

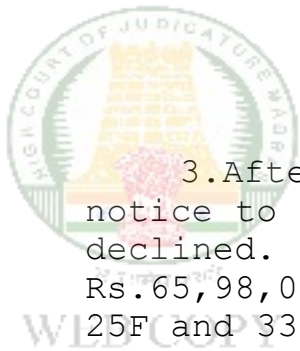
Prayer:Petition filed under Article 227 of the Constitution of India, to call for the records of the order dated 05.12.2016 in unnumbered C.P.No. ----- of 2016, A.No.1350/18.08.2016 & 19.09.2016 on the file of the Labour Court, Madurai, be set aside and be pleased for direction to take over the said claim petition on the file of the Labour Court for further course of action.

For Petitioners : Mr.V.Muniasamy

ORDER

The application claiming Rs.65,98,000/- as damages towards loss of earning and sufferings before the Labour Court has been rejected holding that the application claiming compensation without any pre-existing right is not maintainable. Aggrieved by the said order, the present revision is filed.

2.The case of the revision petitioner is that he was employed under the respondent company as per the contract agreement dated 04.07.2013. As per the agreement, the period of contract is 3 years. While so, without observing the provision in Section 25F of the Industrial Disputes Act, on 26.02.2016 the petitioner was restrained from continuing his routine work by the respondents. he was informed orally that he is not permitted to continue his employment.



3. After waiting for a month, the revision petitioner issued a notice to 1st respondent claiming compensation, but his request was declined. Hence, the claim petition for compensation of Rs. 65,98,000/- under various heads was filed under Sections 11, 25F and 33-C-2 of the Industrial Disputes Act.

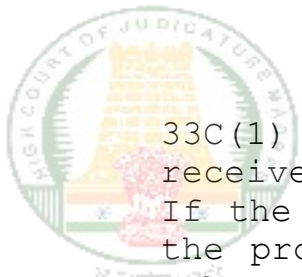
4. According to the revision petitioner, the Labour Court instead of admitting the petition had rejected it, ignoring the fact that pre-existing right is accrued to him under Section 25F of the Industrial Disputes Act which is contrary to the dictum laid down by the Hon'ble Supreme Court in the case of **U.P. Electric Supply Co Ltd., vs. R.K. Shukla** reported in **AIR 1970 SC 237**.

5. It is further contended by the revision petitioner that there is no dispute over his entitlement to claim compensation since the entitlement towards compensation accrues from Section 25F of the Industrial Disputes Act which entitles the petitioner to claim compensation.

6. The basic fallacy in the submission of the revision petitioner is that he being a contract employee for a specific term and for a specific purpose, whether his disengagement amounts to retrenchment itself is a question of law and fact which has to be ascertained only after proper adjudication. While so, without adjudicating that issue, the revision petitioner has pre-supposed that there is no dispute in the entitlement of his claim for compensation. He has totally misunderstood the abovesaid judgment rendered by the Supreme Court.

7. In AIR 1970 SC 237 (supra), the Apex Court has categorically held that the question of retrenchment cannot be decided by the Labour Court and it can only compute compensation claimed to be payable to workman when retrenchment is conceded. For clarity, the relevant portion of the Apex Court judgment is extracted hereunder:-

15. The legislative intention disclosed by ss. 33 C(1) and 33-C(2) is fairly clear. Under s. 33-C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Ch. V-A, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover of the money due to him. Where the workman who is entitled to receive from the employer any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may under s. 33-C-(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33-C(2) is wider than s. 33C(1). Matters which do not fall within the terms of s.



33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of s. 33C(2). If the liability arises from an award, settlement or under the provisions of Ch. V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim under s. 33-C(2) before the Labour Court. Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon a reference, it would be straining the language of section 33C(2) to hold that the question whether there has been retrenchment may be decided by the, Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by virtue of s. 25FF no liability to pay compensation has arisen the Labour Court will be competent to decide the question. In such a case the question is one of computation and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested.''

8. Here is a case, the retrenchment itself is not conceded or adjudicated. Adjudication of the fact whether the revision petitioner was retrenched or his non engagement amounts to termination of contract is matter to be decided by the Tribunal concerned upon a reference. The Labour Court lacks jurisdiction to entertain the matter relating to retrenchment. Paying any compensation due to retrenchment is a consequential relief which will follow after the adjudication of the dispute of retrenchment. Clubbing the relief of compensation assuming that he was retrenched contrary to law is like filing execution petition along with the suit filed for recovery of money without any decree. The rejection of petition by the Labour Court is legally correct.

Hence, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (ADMIN)

/True Copy/



nbi

To

The Labour Court,
Madurai

+1 cc to Mr.V.MUNIASAMY, Advocate SR.No. 55659

order made in
CRP (PD) (MD) No.949 of 2017
05.05.2017

SMA/MSA/SAR-4/11.05.2017:2P/3C