

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.22754 of 2011

P.Gopal

.... Petitioner

Vs

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

2.The Management of M/s.Transmedics India Ltd
No.6, Vasan Street, T.Nagar,
Chennai 600 017

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records of the first respondent in connection with with the impugned award dated 05.10.2010 in I.D.No.39 of 2003 and quash the same, and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, back wages and all other consequent benefits.

For Petitioner : Mr.M.Ramamoorthi

For Respondents : R1 - Court
R2 - No appearance

ORDER

This writ petition has been filed by the workman challenging the award dated 05.10.2010 passed in I.D.39 of 2003, by which the labour court declined the relief of reinstatement but awarded the relief of compensation at Rs.30,000/-.

2. The brief facts leading to the filing of this writ petition is as follows. The petitioner joined the services of the second respondent as driver on 22.11.1992 for a monthly salary of Rs.3650/-. The management terminated his services on 10.04.2002 without any notice and without paying compensation. The petitioner herein claims regularisation of his services and also enhancement of salary. The management, claiming that the economic circumstances was not good; that the vehicles belonging to the management had been sold; that there is no necessity to

keep the post of driver and hence, by issuing 30 days notice, disengaged the services of the petitioner. The notice sent by the management was not received by the workman and thereafter notice was sent by registered post with acknowledgment due.

3. The workman raised an industrial dispute in I.D.No.39 of 2003 before the labour court. Before the labour court, the management contended that there was loss in the company and the assets of the company were taken over by Industrial Development Bank of India, and therefore, the question of reinstatement does not arise.

4. The labour court, after examining the oral and documentary evidence, gave a finding that the termination of the workman was on account of retrenchment and therefore, reinstatement cannot be ordered. Whether this order is justified or not, is the issue raised in this writ petition.

5. Learned counsel for the workman would submit that the contention of the management that the vehicles have been sold, properties have been handed over and that the industry was running in loss, are manipulated statements in order to deprive the workman of his legitimate claim for damages. Learned counsel for the workman relied upon the documents filed on behalf of the management before the labour court under Ex.R6, R7, R8 and R9, which are Profit and Loss Account for the period 2002-03, 2003-04, 2004-05 and 2006-07, and contends that if the contention that the industry has been closed, is true, there is no necessity to maintain Profit and Loss Account and this itself would be an indication to show that the industry is a running industry and the theory of closure is not correct.

6. In this connection, it is necessary to look into the the provisions of Section 25F.

"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]."

7. So far as this case is concerned, it is the case of the management that 30 days notice has been issued and therefore, the retrenchment is valid. A perusal of the notice dated 10.04.2002 issued by the management would go to show that information that the management is retrenching the workman from the services of establishment as driver has been given. But, no retrenchment compensation has been sent along with the notice. The notice did not even indicate the management would be paying retrenchment compensation as per Section 25F. The notice simply say that the workman may collect his dues from the accounts department.

8. It is pertinent to note that the judgment of this Court reported in 1999 (1) LLJ 497 in "Management of Kodumudi Growers Cooperative Bank Ltd., Kodumudi -vs- Presiding Officer, Labour Court, Coimbatore and Another", squarely applies to the present case, wherein it was held that the language held in Section 25-F of the Industrial Disputes Act, 1947 clearly shows that the payment of retrenchment compensation is a condition precedent to the valid retrenchment and accordingly the amount has to be tendered along with the order of termination. It was also held that the statement made in the order of termination at the most would be construed only an offer and the same cannot be construed as sufficient compliance.

9. In the instant case also, the second respondent / management has served the letter of termination on the workman, wherein it was stated that the retrenchment compensation and other dues can be collected from the office of the second respondent by the workman. This letter could be construed only as an offer. Along with this letter, retrenchment compensation has not been paid. Therefore, applying the principle laid down in the above judgment of this Court, the act of the management cannot be construed as valid compliance to Section 25-F of the Industrial Disputes Act and therefore, the letter dated 10.04.2002 cannot be construed as a valid retrenchment, as it is not in compliance with Section 25F of the Industrial Disputes Act.

10. The next contention raised by the management is that the provisions of Section 25N would be applicable only where the strength of the establishment is more than 100, but, the management engages less than 15 employees. The said contention also cannot hold good for the reason that admittedly the second respondent company is a public limited company and no document has been filed before the labour court on behalf of the management to substantiate the closing down of the company or the disposal of the assets of the company. It is the specific case of the management that the respondent company has suspended the business operation from 01.03.2003. But it is not the case of the management that the industry itself has been closed down. The notice dated 10.04.2002 also did not indicate that the the company itself has been closed down.

11. Accordingly, this Court is of the considered opinion that as the management cannot take shelter under the provisions of 25N of the Industrial Disputes Act, and the management having failed to provide retrenchment compensation as contemplated under Section 25F of the Act, the order passed by the labour court is liable to be interfered with. The finding of the labour court that there cannot be an order for reinstatement deserves to be set aside. The award dated 05.10.2010 in I.D.No.39 of 2003 is set aside. The second respondent is directed reinstate the petitioner with continuity of service and all other attendant benefits, but without backwages. The writ petition is allowed in the above terms. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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KST

To

1. The Presiding Officer
III Additional Labour Court, Chennai.
2. The Management of M/s. Transmedics India Ltd
No.6, Vasan Street, T.Nagar, Chennai 600 017

W.P.No.22754 of 2011

MG (CO)
GN (14/12/2018)