

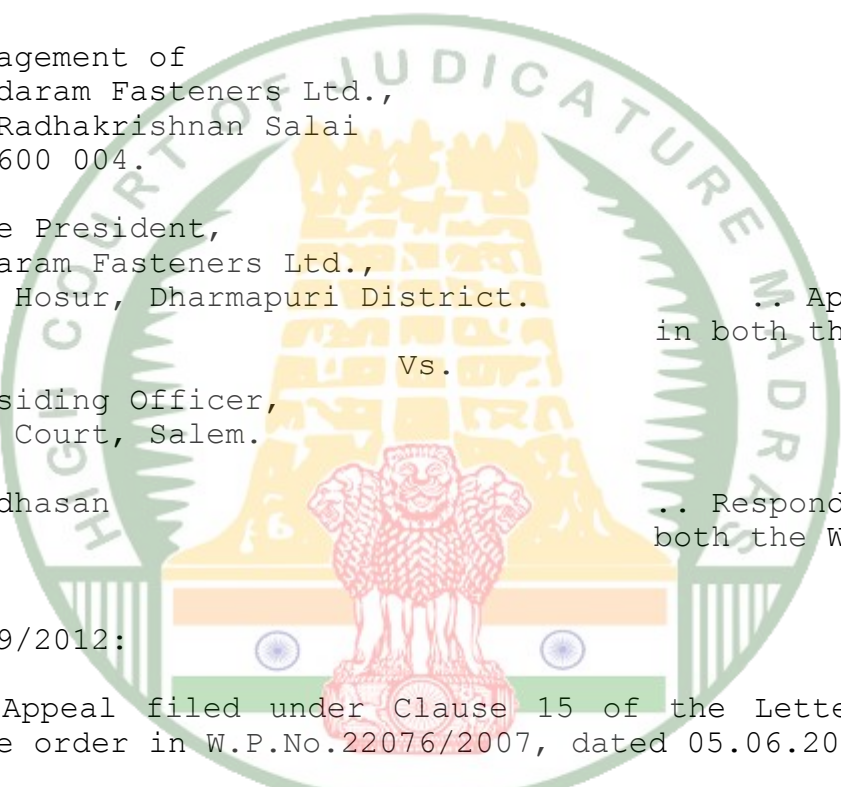
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.Nos.1549 and 1550 of 2012
C.M.P.No.1 of 2012

- 
1. The Management of
M/s.Sundaram Fasteners Ltd.,
98A, Dr.Radhakrishnan Salai
Chennai 600 004.
2. The Vice President,
M/s.Sundaram Fasteners Ltd.,
Haritha, Hosur, Dharmapuri District. ... Appellants
in both the W.As.
- Vs.
1. The Presiding Officer,
Labour Court, Salem.
2. S.Kannadhasan .. Respondents in
both the W.As.

W.A.No.1549/2012:

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order in W.P.No.22076/2007, dated 05.06.2012.

WP.No. 22076 of 2007: Writ Petition filed under Article 226 of
the Constitution of India praying for a Writ of Certiorari
calling for the records of Calling for the records of the 1st
respondent in I.D.No.209/05 and quash its award dt 2.5.2006 in
so far as it directs the petitioner to pay compensation to the
2nd respondent.

W.A.No.1550/2012:

Writ Appeal filed under Clause 15 of the Letters Patent,
against the order in W.P.No.29671/2007, dated 05.06.2012.

WP.No.29671/2007 : Petition filed under Article 226 of the
Constitution of India praying for a Writ of Certiorari calling
for the records of the 1st respondent in connection with its
award dt 2.5.2006 in I.D.No.209 of 2005 and quash the same in so

far as it as it holds that the issue of the petitioners claim for permanency cannot be considered along with that of the legality of his termination from service and in so far as it denies the relief of reinstatement with continuity of service with back wages and other consequent benefits to the petitioner.

For Appellants in : Mr.Asan,
both the W.As. for Mr.T.S.Gopalan & Co.

For 1st Respondent : Labour Court
in both the W.As.

For 2nd Respondent : Mr.V.Prakash, Senior Counsel,
in both the W.As. for Mr.K.Sudalaikannu.

COMMON JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J.)

Challenge in these writ appeals is to the common order, made in W.P.Nos.22076 and 29671 of 2007, dated 05.06.2012. W.P.No.22076 of 2012 is filed by the appellants/management, seeking to quash the Award, dated 02.05.2006, passed in I.D.No.209/2005, by the Labour Court, insofar as it directed the appellants/management to pay compensation to the 2nd respondent/workman. W.P.No.29671 of 2007 is filed by the 2nd respondent/workman seeking to quash the Award, dated 02.05.2006, passed in I.D.No.209 of 2005, by the 1st respondent/Labour court, insofar as it held that his claim for permanency could not be considered along with that of the legality of his termination from service and also denied the relief of reinstatement with continuity of service with backwages and other consequential benefits. Since both the writ petitions, one by the Management and the other by the workman, are filed against the same Award, both the writ petitions were heard together by the writ court and disposed of by a common order, dated 05.06.2012. The operative portion of the common order, dated 05.06.2012, reads as under:

"22.In the light of the above, the impugned award insofar as the petitioner is concerned is modified and the workman is entitled to get reinstatement with backwages and continuity of service and other attendant benefits. Hence, W.P.No.29671 of 2007 filed by the workman stands allowed. W.P.No.22076 of 2007 filed by the management stands dismissed. However, the parties are allowed to bear their own costs. The connected Miscellaneous Petition is closed."

Aggrieved by the above common order, the appellants/management has filed these two writ appeals.

2. Facts necessary for the disposal of the writ appeals are:

(a) The appellant/Management - M/s. Sundaram Fasteners Ltd. is engaged in the manufacture of spare parts for two wheelers and four wheelers and it has got factories at various places, namely Chennai, Hosur, Madurai and Puducherry.

(b) The 2nd respondent/workman was appointed as a trainee in the appellant/management on 14.6.1997, upto 30.6.1998 and he was paid consolidated sum of Rs.1,675/-. After 1.4.1998, another allowance of Rs.250/- was paid. Though he was designated as a trainee, he was made to work in the regular establishment. After the expiry of the initial period of training, he was not ousted from service on 30.6.1998. Again, he continued in service for a further period from 1.7.1998 till 8.7.1998. The Management has paid wages to the 2nd respondent, by voucher payment, under the head of "Conveyance Allowance". Again on 9.7.1998, he was issued with an order of appointment, appointing him as "Work Apprentice", on a consolidated sum of Rs.1,925/- per month, for a period of 12 months, ending with 31.7.1999.

(c) Prior to the second spell of appointment, a separate application was taken from the 2nd respondent-workman and on the expiry of the second period of employment, he was not ousted from employment, but continued to be paid salary, on vouchers under the head "conveyance allowance". He was given appointment order on 9.8.1999, appointing him from the said date as "Operative Trainee" on temporary basis, on a consolidated salary of Rs.2,175/-, plus other allowances of Rs.250/- per mensem, for a period of one year ending on 31.8.2000. Once again, another application was obtained from him, before granting appointment. With effect from 1.4.2000, his consolidated salary was revised to Rs.2,425/- per mensem. On the expiry of the third spell, i.e., on 31.8.2000, the 2nd respondent-workman was not ousted, but he was given voucher payment under the head "conveyance allowance" for the period from 1.9.2000 to 11.9.2000.

(d) Thereafter, the 2nd respondent-workman was issued with another appointment order, appointing him as "Operative Trainee Probationer", with effect from 12.9.2000, on a salary of Rs.3,600/- per month. The probation was prescribed for 6 months and once again, a fresh application was obtained from the workman. The probation period was extended by 6 months, upto 30.9.2001, vide order, dated 25.5.2001. No reason for extension of the probation was mentioned in the order, dated 25.5.2001. Even after 30.9.2001, he continued to be in the employment without any break in service.

(e) Along with the 2nd respondent/workman, there were 22 other workers, similarly engaged initially as trainees and thereafter, as probationers. However, on 31.03.2002, the services of all those workmen came to be terminated. Representations were sent on 31.3.2002, 4.4.2002 and 8.4.2002. The cheque sent along with the termination towards compensation was also returned. On 30.4.2002, the Management once again terminated the services of 23 other so-called probationers in an identical manner.

(f) The 2nd respondent-workman earlier filed W.P.No.14625 of 2002 against the termination order and it came to be disposed of on 10.5.2005. Thereafter, the 2nd respondent raised an industrial dispute, before the Labour Officer, Krishnagiri, under Section 2-A(2) of the Industrial Disputes Act. Against the said termination, similar disputes have been raised before the Labour Officer. On conciliation, no settlement was arrived at and a failure report, dated 5.9.2002, was filed before the Conciliation Officer. On the strength of the failure report, the 2nd respondent/workman filed a claim statement, dated 19.8.2002, before the Labour Court, Salem. The said dispute was registered as I.D.No.209 of 2005 and notice was issued to the management. Management filed a counter statement, dated 25.8.2005. The 2nd respondent/workman filed a rejoinder, dated 4.10.2005. Similar other disputes were also registered as I.D.Nos.207, 208, 209, 210, 211, 212 and 213 of 2005 and a common trial was conducted. After trial, all the Industrial Disputes were disposed of by a

common award. Aggrieved by the Award relating to I.D.No.209 of 2005, both the Management and the workman had filed writ petitions as narrated above.

3. We have heard the learned counsel for the appellants/management and the learned counsel appearing for the 2nd respondent/workman. We have also perused the materials on record.

4. The only issue which requires to be decided in these writ appeals is as to whether the termination of the 2nd respondent/workman is termination simpliciter and would fall under Section 2(oo)(bb) of the Industrial Disputes Act, as contended by the appellants/management or "retrenchment" and thus falls under Section 2(oo) of the Industrial Disputes Act, as contended by the 2nd respondent/workman. Section 2(oo) and 2(oo)(bb) of the Industrial Disputes Act read as under:

"2.Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include.--

(a)voluntary retirement of the workman;
or

(b)retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or

(c)termination of the service of a workman on the ground of continued ill-health;."

5. To appreciate this issue, the facts relating to the period of employment of the 2nd respondent/workman and the order issued by the appellants/management, terminating the services of the 2nd respondent/workman, as contended by the appellants/management, needs to be stated. It is seen from the records that the 2nd respondent was appointed as a Trainee in the

appellant/management with effect from 14.06.1997, on a consolidated pay of Rs.1675/- per month, for a period of one year. Thereafter, he was appointed as Work Apprentice with effect from 09.07.1998 and he was paid a consolidated stipend of Rs.1925/- with other allowance of Rs.250/- for a period of one year. Thereafter, on 09.08.1999, he was appointed as Operative Trainee on temporary basis for a period of one year, on condition that his appointment would automatically cease unless extended by the Management. Again, on 02.09.2000, he was appointed as Operative Trainee and put under probation for a period of six months and thereafter his probation was extended for a further period of six months i.e. upto 30.09.2001 and again extended for a further period of six months, upto 31.03.2002. However, finally he was terminated from service on 30.03.2002. The order of termination reads as under:

"Ref: This office Appointment order SFH/PRNL/AO/68/2000 dt. 12.09.2000 and subsequent orders dated 25.05.2001.

Please be advised that your probationary employment has come to an end with effect from 31.03.2002.

Without prejudice to your rights that you are not entitled for notice pay, retrenchment compensation, we are enclosing a cheque for Rs.7200/- (Rupees Seven Thousand and two hundred only) vide Cheque No.018907 dt. 30.03.2002 representing notice pay and retrenchment compensation purely on humanitarian grounds."

6. Though it is the contention of the appellants/management that the above order is termination simpliciter, a perusal of the order shows that it is only retrenchment. Writ Court has also given a finding to this effect in paragraph 13 of the order passed in the writ petitions and it reads as under:

"13. Even though the management has assigned such a reason, in the counter affidavit no such statement was found and no evidence was let in to prove such statement. Hence, their services were illegally terminated. But at the same time, since the management has offered retrenchment compensation, there was no dispute regarding the quantum of compensation ordered and it will not come within the exception to section 2(oo)(bb) of the Industrial Disputes Act. The Labour Court held that since no equity was held and prior notice was not given, it

decided to grant compensation to the workman and in the case of the present workmen, the compensation of Rs.1,25,000/- was fixed by the Labour Court."

7. Paragraphs 18, 19 and 20 of the writ court order are also relevant and they read as under:

"18. But, in the present case, the Labour Court clearly found that it is not a mere non-pleading in the counter affidavit but also no oral evidence was let in regarding the so-called unsatisfactory employment of the workman. Further, the Labour Court also found that it is not a case of exception of retrenchment and comes within section 2(oo) of the Industrial Disputes Act. Further, in the order of termination itself it is stated that the displacement of the workers was due to general recession in the factory. If it is accepted, it is a clear case of retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act.

19. It is clearly pleaded that it is a factory covered by Chapter V-B of the Industrial Disputes Act and inasmuch as a prior approval under Section 25-N of the Industrial Disputes Act was not obtained, it is a clear case of illegal retrenchment and the workers are entitled to be continued in service. Though the Labour Court was wrong in stating that it cannot go into any incidental question, namely whether the workman has assigned permanent status in terms of Act 46 of 1981, that need not be gone into at this stage. Under Section 3 of Act 46 of 1981, the workers are deemed to be become permanent without there being any order of any court and it is a satisfactory declaration conferred on the workers. The fact that the other workers have not challenged the award is not a conciliation for denying the relief to the present workman.

20. The Supreme Court has clearly held that in such an event when a retrenchment has become void abinitio, the workman can get the relief of reinstatement with continuity of service and backwages in the same status vide its judgment in State Bank of India vs. Sundaramoorthy reported in AIR 1976 SC

1111."

8. Writ Court has also held that in cases of this nature, denial of reinstatement of workmen will be illegal and the workmen are entitled to normal relief of reinstatement and backwages, relying on the judgment of the Hon'ble Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation, reported in (2010) 3 SCC 192. Paragraph No.21 of the order of the writ court reads as under:

"21. The Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation reported in (2010) 3 SCC 192 held that in such cases, the denial of reinstatement of a workmen will be illegal and the workmen are entitled to normal relief of reinstatement and backwages. In paragraphs 21,23,24,30 and 31 it was held as follows:

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State." (State of Mysore v. Workers of Gold Mines¹³, AIR p. 928, para 10.)

23. The Preamble and various articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of

justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society.

24. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Factories Act, 1948; Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Workmen's Compensation Act, 1923; Employees' State Insurance Act, 1948; Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Shops and Commercial Establishments Act enacted by different States.

30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted

such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private."

It is, therefore, clear that termination of the services of the 2nd respondent/workman is only 'retrenchment' under Section 2 (oo) of the Industrial Disputes Act, as held by the learned Single Judge, since the management had come forward to offer retrenchment compensation and would not come within the meaning of Section 2(oo)(bb) of the Industrial Dispute Act, as contended by the learned counsel for the appellants. In view of the above, it has to be held that the award of the Labour Court is not in accordance with law and the learned Single Judge is right in modifying the Award of the Labour court and directing reinstatement of the 2nd respondent/workman with backwages and continuity of service and other attendant benefits.

9. It is also useful to refer to the decision of the writ Court, in a batch of writ petitions in W.P.Nos.23044 and 24473 of 2005, etc., decided on 12.01.2011 (MANU/TN/0252/2011 - The Divisional Railway Manager vs. Presiding Officer and Rambabu Kamath), in paragraph Nos.20 and 21, has held as follows:

"20. In the decision reported in MANU/TN/2351/2005 :: (2005) 2 MLJ 697 (Manager (F and A), Oil and Natural Gas Corporation Ltd. v. G.Radhakrishnan), a Division Bench of this Court pointed out that where a case falls under Section 2(oo) of the Industrial Disputes Act, the requirement of compliance of Section 25F is absolute, unless the case is covered under any of those excepted clauses mentioned in the said Section. This relates to a case of a contract labour for a period of 11 years

and thereafter employed by the employer as security supervisor, wherein the employee was relieved from service in attaining the age of 58 years. The employee therein contended that considering the age of retirement below board level at 60, relieving him at the age of 58 years was illegal. The employee challenged the order that it was in violation of Section 25F of the Industrial Disputes Act. Dealing with the submission, particularly with reference to Section 2(oo)(bb) vis-a-vis Section 25F of the Industrial Disputes Act, this Court pointed out that term based employment would fall outside the scope of retrenchment, so long as the requirement of such fixed period of employment was bona fide required by the employer. This Court pointed out that even though the requirement of employment was perennial, by adopting the methodology or employing the person for a specific period as many a times, an unscrupulous employer can also have reason to abuse the provisions of Section 2(oo)(bb) to thwart the other statutory protection available to an employee under Section 2(oo), namely, the benefits under Section 25F of the Industrial Disputes Act. Thus the retrenchment spoken to under Section 2(oo) expressly excludes termination of service as a punishment inflicted on a workman reaching the age of superannuation or a voluntary retirement.

21. In the decision reported in MANU/SC/0031/2001 ; AIR 2001 SC 672 (Vikramaditya Pandey v. Industrial Tribunal and Anr.), the Apex Court pointed out that "retrenchment", as defined under Section 2(oo) of the Industrial Disputes Act, covers every case of termination of service, except those which are given in the definition and discharge from employment or termination of service of a probationer would also amount to retrenchment. Thus if a discharge is simpliciter that it follows Section 2(oo) and the protection under Section 25F and if it is a penalty order, the same will have to follow the procedure for enquiry and ultimately to go by the procedure that offers protection as under Article 311(2)."

(emphasis supplied)

10.The next contention of the 2nd respondent/workman that he had served for more than 480 days, within a period of 24 calendar months and therefore, he ought to have been made permanent also merits acceptance. Interrupted period of service for no fault of the workman cannot be unaccounted for the purpose of calculating 480 days of continuous service. If the period of probation has been incorporated as a condition of appointment, and if there is no provision for extension of probation, the person will deemed to have been confirmed at the end of probation period, provided his conduct and performance during the period of probation has been satisfactory. In case, there is a clause of extension of probation period, the employee can be given this extension. However, at the end of extension period, subject to his satisfactory conduct and performance, his services have to be confirmed. In absence of any written confirmation order to this effect, his services will deemed to have been confirmed. Further, It is the findings of the Labour Court that in the order of extension of probation given on 01.10.2001, he was terminated on review of performance of his work as well as the situation of the company. But no such documents have been filed and no evidence was let in to prove this statement and also there is no such statement made in the counter statement filed before the Labour Court. Therefore, on this ground also the termination of the 2nd respondent-employee is bad in law.

In the result, the present Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

skm

To
The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.T.S.Gopalan & CO Advocate, S.R.No. 3756
+1cc to Mr.K.Sudalaikannan, Advocate, S.R.No. 4047

W.A.Nos.1549 and 1550 of 2012

KS (CO)
GN(11/03/2019)