

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.26119 of 2013

Coimbatore South Sarvodaya Sangh
rep.by its Secretary, No.33,
New Beemar Agraharam, Dharapuram
Tirupur District - 638 656.

..... Petitioner

Vs

1. S.Palanisamy
2. The Presiding Officer
Labour Court, Salem.

..... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in I.D.No.51 of 2002 passed by the second respondent dated 09.05.2013 and quash the same.

For Petitioner : Mr.A.S.Baalaji

For Respondent : Mr.K.V.Shanmuganathan

O R D E R

Challenging the order of termination passed by the petitioner herein, the first respondent / workman filed I.D.No.51 of 2002. As the workman had already attained the age of 58 years, the labour court, passed an award dated 09.05.2013, ordering payment of compensation of Rs.1,50,000/- to the workman, instead of reinstatement. This order is now challenged in this writ petition by the management.

2. Learned counsel for the petitioner contends that as per Section 2(j) of the Industrial Disputes Act, the Co-operative societies would not be governed by the provisions of the Industrial Disputes Act. It is pointed out by the learned counsel for the workman that the said Section 2(j) of the Act is not yet notified and hence the contention of the learned counsel for the management cannot be sustained. This Court is of the

view that, the contention, not having been raised before the labour court, cannot be raised for the first time in the writ petition. The second contention raised by the learned counsel for the management is that, the management has issued the letter of termination dated 09.02.2001, stating the circumstances under which they were not in a position to provide employment to the workman along with the intimation to collect the retrenchment compensation and other dues, and it is the workman who did not chose to receive the letter sent by the management and therefore, the workman alone is guilty of not approaching the management.

3. On a perusal of the award of the labour court, It is seen that the first respondent was employed as a driver and the management was not able to provide employment on account of the fact that the vehicle has to be sold out. In respect of this, the labour court has given a finding that the management witness himself has admitted that at the time when the order of termination was issued, the vehicle was not sold and therefore the order of termination is invalid, and consequently the payment of compensation is the proper relief.

4. Reliance is placed on 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", 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.

5. In the instant case also, the petitioner / 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 petitioner by the workman. 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, this Court finds no perversity in the order passed by the labour court in ordering retrenchment compensation and the writ petition is liable to be dismissed.

6. At this juncture, it is represented by the learned counsel for the petitioner / management that the management has already deposited Rs.50,000/-. Accordingly, the management is directed to deposit the balance Rs.1,00,000/- within a period of six weeks from the date of receipt of a copy of this order, and the first respondent / workman is permitted to withdraw the amount of Rs.50,000/- already deposited immediately and the balance shall be withdrawn, as and when the amount is deposited by the management. With the above observations, the writ petition is disposed of. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

kst
To

The Presiding Officer, Labour Court, Salem.

+1 CC to Mr.K.V.Shanmuganathan , Advocate sr 65319.

+1 CC to Mr.A.S. Balaji, Advocate sr 65119

W.P.No.26119 of 2013

SP(08/10/2018)

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