

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.1459 of 2013
and
Miscellaneous Petition No.1 of 2013

The Management of Standard Batteries Ltd.,
No.11/A, Girikunj, N.S.Patkar Marg,
Hughes Road, Mumbai-400 007. .. Appellant/Petitioner

-vs-

1. The Presiding Officer,
I Additional Labour Court, Chennai.
2. M.Shehul Hameed
3. Management of Exide Industries Ltd.,
No.21/22, Alandur Road,
Guindy, Chennai-32. .. Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent to set aside
the order dated 05.03.2013 made in W.P.No.22891 of 2004.

W.P.No.22891 of 2004:-

Petition filed under Article 226 of the Constitution of
India, praying for issuance of a Writ of Certiorari calling for
the records of the 1st Respondent in CP.No.687/98 and quash the
order dated 23.06.2004.

For Appellant : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondent-2: Mr.K.Prem Kumar

For Respondent-3: Mr.S.Ramasubramanian, for
M/s.S.Ramasubramanian & Assts.

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the Management of Standard Batteries Limited, the writ petitioner is directed against the order in W.P.No.22891 of 2004, dated 05.03.2013.

2.The said writ petition was filed by the appellant/Management challenging the order passed by the I Additional Labour Court, Chennai in C.P.No.687 of 1998. This petition was filed by the second respondent herein under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") claiming that the appellant/Management is liable to pay a sum of Rs.3,03,237/- being the monetary benefits payable to him. The Labour Court by order dated 23.06.2004, allowed the petition as prayed for, directed a sum of Rs.3,03,237/- to be paid to the second respondent.

3.The appellant/Management filed the writ petition challenging the said order. The writ petition was dismissed by the impugned order and this is how the appellant/Management is before us by way of this appeal.

4.Heard Mr.Anand Gopalan, for M/s.T.S.Gopalan and Co., learned counsel for the petitioner; Mr.K.Prem Kumar, learned counsel for the 2nd respondent; and Mr.S.Ramasubramanian, for M/s.S.Ramasubramanian and Associates, learned counsel for the 3rd respondent.

5.The first and foremost question which the Labour Court ought to have addressed is whether the petition under Section 33C(2) of the Act was maintainable and as to whether the monetary claim made by the 2nd respondent was pursuant to a prior adjudication done with regard to a dispute between the 2nd respondent and the appellant/Management. The 2nd respondent was employed with the appellant/Management in a post which according to the Management is a Management post and according to the 2nd respondent, he is a workman, as he was working only as a Clerk/Junior Assistant.

6.The appellant/Management issued a notice dated 21.03.1997 introducing an Early Voluntary Retirement Scheme at the Madras Plant. The Scheme was extended to all the Employees, Chargehands and Foremen and was held to be not applicable to the Directors of the company and the Management Staff. The 2nd respondent vide application dated 26.03.1997 requested that he may be relieved from service by applying the terms and conditions of the Voluntary Retirement Scheme published, vide notice dated 21.03.1997. No action was initiated on the said application. Therefore, the 2nd respondent submitted a

representation dated 03.09.1997. There was no reply sent to the said representation. Thereafter, the 2nd respondent sent representations dated 18.02.1998 and 12.03.1998. On 24.03.1998, a letter was sent to the 2nd respondent by the appellant/Management stating that the 2nd respondent is not eligible under the Voluntary Retirement Scheme, since it applies only to workers category on the shop floor and not to clerical staff like the 2nd respondent. In the said letter, it was informed that the factory of the appellant at Chennai had been taken over as a going concern by the 3rd respondent on 16.02.1998 and individual letters have been given to all the employees and the 2nd respondent was aware of the same that he was given an opportunity to continue his service with the 3rd respondent/company on the same terms and conditions and with continuity of service.

7.The 2nd respondent submitted a representation to the Vice President of the appellant/Management at Mumbai on 28.03.1998 and soon thereafter, filed the petition under Section 33C(2) of the Act. This petition was entertained as C.P.No.687 of 1998. In the said petition, the 2nd respondent claimed that he is deemed to have been permitted to go on voluntary retirement and entitled for payment of salary/wages. The appellant/management resisted the claim petition contending that the same is not maintainable, as the 2nd respondent has no existing right over the appellant to claim monetary amount as claimed in the petition, as the petition is not based upon any award passed by the Labour Court or pursuant to a settlement under the provisions of the Act. The Labour Court by order dated 23.06.2004 allowed the petition.

8.We find that the Labour Court framed only one question for determination, viz., whether the claim made by the 2nd respondent is maintainable and if so, whether the 2nd respondent is entitled to the computed money value of Rs.3,03,237/- from the appellant/Management. The point for determination though framed is a single point, the same has two limbs to it. The endeavour of the Labour Court should have been to determine as to whether the claim petition under Section 33C(2) of the Act is maintainable and only after being satisfied that the claim is maintainable, computation could have been done. Unfortunately, the Labour Court lost sight of this important aspect and solely on the basis that in terms of the Voluntary Retirement Scheme, the appellant/Management was bound to send a reply to the employee in writing and having not done do, he is entitled to proceed on voluntary retirement and accordingly, computed the salary payable.

9.In our considered view, the procedure adopted by the Labour Court is incorrect and this fundamental error has gone to

the root of the matter affecting the very validity of the order passed by the Labour Court. Before the Writ Court, the appellant/Management raised the question of maintainability of the petition under Section 33C(2) of the Act apart from contending that Voluntary Retirement Scheme is an invitation and unless the employees' offer is accepted by the Management, there will be nothing binding on the Management. In support of their contention, they placed reliance on the decision of the Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation vs. Birendra Bhandari, 2006 (3) LLJ 969 SC. Though the learned Single Bench in paragraph 7 of the order impugned has noted the contention raised by the learned counsel for the appellant that the Labour Court failed to consider whether the claim petition was maintainable while taking a decision in the matter, did not go into the said aspect, but merely proceeded on the basis that the failure on the part of the appellant/Management to intimate the result of the application for option to go on Voluntary Retirement Scheme is fatal.

11.As observed by us earlier, the error committed by the Labour Court has been perpetuated before the Writ Court. The Writ Court having noted that the appellant/Management has contended that the application under Section 33C(2) of the Act is not maintainable, should have endeavoured to decide the matter. As could be seen from the terms and conditions of the Voluntary Retirement Scheme notice dated 21.03.1997, the Scheme is voluntary. No doubt, the Scheme states that the intimation has to be given to the employees, but this intimation to be given on the decision to be taken either to accept or reject the offer without assigning any reasons vest with the Management and it has got sole discretion. The condition in the Voluntary Retirement Scheme notice makes the application as irrevocable, but it does not stipulate any time limit for the Management either to accept or reject.

12.The question of deemed acceptance cannot be read into the Voluntary Retirement Scheme, as there is no such provision in the Scheme. Therefore, on and after the communication dated 24.03.1998 from the appellant/Management to the 2nd respondent intimating that he is not eligible under the Scheme, if the 2nd respondent was aggrieved, he should have questioned the said decision of the Management. Without challenging the same, the question of filing an application under Section 33C(2) of the Act does not arise. Unless and until there is an adjudication and the result of the adjudication holds that the application made by the 2nd respondent for voluntary retirement is deemed to have been accepted, the question of computation of wages does not arise. That apart, we find that after the 2nd respondent made the application on 26.03.1997, he stopped reporting for work. Furthermore, the 2nd respondent has not accepted the offer

given by the Management to be absorbed as an employee under the 3rd respondent under the same terms and conditions with continuity of service.

13.Thus, for the above reasons, we find that the order passed in the writ petition calls for interference.

14.Accordingly, this writ appeal filed by the appellant/Management is allowed and the order passed in the writ petition is set aside. Consequently, the order passed by the Labour Court in C.P.No.687 of 1998, dated 23.06.2004 is set aside and the same is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Presiding Officer,
I Additional Labour Court, Chennai.
2. Management of Exide Industries Ltd.,
No.21/22, Alandur Road,
Guindy, Chennai-32.

+1cc to Mr.K.Prem Kumar, Advocate, S.R.No.23827
+1cc to M/s.T.S.Gopalan and Co., Advocate, S.R.No.23885

W.A.No.1459 of 2013

VSNIIC(CO)
CS/25/04/2019