

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 13.06.2019
Pronounced on:24.06.2019
CORAM
THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
W.A.Nos.424 & 838 of 2013
and
M.P.Nos.1 & 1 of 2013

The Management of Caterpillar
India Pvt. Ltd.,
Meinallathur Post, Tiruvellore
Tiruvellore District ... Appellant
in W.A.No.424 of 2013

S.Lakshmiah ... Appellant
in W.A.No.838 of 2013

Vs

1.The Presiding Officer
The II Additional Labour Court,
High Court Complex, Chennai
... 1st Respondent in both writ
appeals

2.S.Lakshmiah ... 2nd Respondent
in W.A.No.424 of 2013

3.The Management of Caterpillar
India Pvt. Ltd.,
Meinallathur Post, Tiruvellore
Tiruvellore District ... 2nd Respondent
in W.A.No.838 of 2013

These Writ Appeals filed under Clause 15 of the Letters
Patent, against the order dated 22.02.2013 passed by the
learned Single Judge in W.P.No.45712 of 2002 on the file of
this Court.

Prayer in W.P.No.45712 of 2002:

Writ Petition filed under Article 226 of the
Constitution of India, seeking for the issuance of a writ
of Certiorarified Mandamus, calling for the records in
I.D.No.437 of 1984 onthe file of the first Respondent II
Additional Labour Court, Madras, quash the award made in
I.D.No.437 of 1984 dated 12.09.2002 and further direct the
second Respondent Management to pay the petitioner the

wages, allowances etc., from 17.9.1983 to 1.7.1996, the date on which the petitioner attained superannuation, in lieu of the normal relief of reinstatement, together with all other consequential and attendant benefits together with the retirement benefits with interest at 24% per annum from 1.7.1996 till date of actual payment.

For Appellant : Mr.Anand Gopalan for Mr. T.S.Gopalan
& Co. (in W.A.No.424 of 2013)

For Appellant : Mr.K.Venkatakrishnan
(in W.A.No.838 of 2013)

For R1 : Court (in both writ appeals)

For R2 : Mr.K.Venkatakrishnan
(in W.A.No.424 of 2013)

For R2 : Mr.Anand Gopalan for Mr. T.S.Gopalan
& Co. (in W.A.No.838 of 2013)

COMMON JUDGMENT

C.V.KARTHIKEYAN, J.

The writ petitioner S.Lakshmiah had filed W.A.No.838 of 2013. The Management of Hindustan Motors Ltd., now known as Caterpillar (India) Private Limited, had filed W.A.No.424 of 2013. Both the Writ Appeals have been filed against the order of the learned Single Judge dated 22.02.2013 in W.P.No.45712 of 2002.

2. W.P.No.45712 of 2013 had been filed by S.Lakshmiah, to set aside the award dated 12.09.2002 passed by the II Additional Labour Court, Chennai and for a further direction to pay to the petitioner, wages, allowances etc., from 17.09.1983 to 01.07.1996, the date on which the petitioner had attained superannuation.

3. The case of the writ petitioner was that he joined the service of the Management on 18.07.1973 as an Assistant to the Production Manager. He was terminated from service on 17.09.1983 on the ground that he had not joined at the place of transfer at Dhanbad, State of Bihar. He raised an Industrial Dispute in I.D.No.437 of 1984 and an award was passed on 09.09.1995 dismissing the Industrial Dispute, holding that he was not a workman as defined under the Industrial Dispute Act.

4. The workman then filed W.P.No.3640 of 1986 which was allowed by order dated 10.04.1997 by setting aside the award and by granting reinstatement with full back wages. The Management then filed W.A.No.553 of 1997. The Division Bench of this Court remitted the matter back to the Labour Court to proceed with the dispute on merits and dispose of the same expeditiously. A further appeal filed by the Management in SLP (Appeal Civil) No.18905 of 2000 was also dismissed by the Hon'ble Supreme Court by order dated 13.09.2000. Thereafter, the Labour Court took up I.D.No.437 of 1984 for reconsideration. Further evidence, both oral and documentary were adduced by both sides. The Labour Court again dismissed the Industrial Dispute by award dated 12.09.2002 holding that the misconduct alleged to have been proved by the Management.

5. Challenging that award, S.Lakshmiah filed W.P.No.45712 of 2002. The conclusion of the learned Single Judge is extracted below for ready reference:-

"10.Therefore, I am of the view that the transfer of the petitioner to report before the Eastern Coalfields which is not belong to the Hindustan Motors and as such the petitioner was compelled to report before the Eastern Coalfields which is against his wish and without his consent. If at all the second respondent requires the petitioner's presence at Eastern Coalfields is necessary to attend the repairs of the supplied goods by them, he ought not to have been transferred and he must have been asked to go ahead with the work on deputation by way of other duty and not by way of transfer. Therefore, from this, it is very clear that the transfer order is perverse one and it requires interference of this Court. Therefore, the Award passed by the Labour Court is set aside and the matter is remitted back to the Labour Court to proceed with the matter and dispose the same in accordance with law. Whatever conversation which had taken place at the time of compromise, the parties would not have been compelled to give legal effect.

11. Therefore, the order of the

Labour Court is set aside and the matter is remitted back to the Labour Court. The Labour Court is directed to consider the matter in the light of the Standing Orders whether the transfer order has been effectively served and directed to consider and dispose of the same within three months from the date of receipt of copy of this order. Both the parties are directed to appear before the Labour Court on 25.03.2013".

6. As stated above, both sides have filed writ appeals challenging the said order. It is an admitted fact that S.Lakshmiah had crossed the age of superannuation more than two decades back and is well over 80 years of age as on date. It transpired during arguments that when the appeals were heard previously by a Co-ordinated Bench, the learned counsel for Management had offered to pay compensation. During the course of hearing before us, the learned counsel for the Management, offered a sum of Rs.12 Lakhs as lumpsum payment to the workman S.Lakshmiah.

7. Mr.K.Venkatakrishnan, learned counsel for the appellant was requested to obtain instruction as to whether the appellant/workman would accept the said sum of Rs.12 lakhs as lumpsum compensation or not. It was pointed out by Mr.K.Venkatakrishnan, that he had earlier given a written proposal claiming a sum of Rs.49 Lakhs as lumpsum compensation.

8. In Jagbir Singh V. Haryana State Agriculture Marketing Board and another reported in 2009-IV-LLJ-336 (SC), the Hon'ble Supreme Court had been held as follows:

"15.It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This

court has distinguished between a daily wager who does not hold a post and a permanent employee. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

16. While awarding compensation, a host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 01.09.1995 to 18.07.1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs.50,000 to the appellant by Respondent 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum."

It is seen that the Hon'ble Supreme Court had also held that granting compensation would be a just method and would also subserve the interest of the justice.

9. In the present case, the learned counsel for the Management had offered a sum of Rs.12 Lakhs as a full and final settlement and as a one time settlement. The claim of the learned counsel for the appellant/workman for compensation of Rs.49 Lakhs cannot be considered as bonafide since it also included as a sum of Rs.10 Lakhs for "the return on effort, and the opportunity and cost of time Psychological Trauma" and a sum of Rs.5 Lakhs for "the loss

due to pay revisions" without giving any details and a sum of Rs.6 Lakhs for "non-availed leaves and bonus" again without giving any details.

10. In view of these facts, we hold that in this case, particularly since S.Lakshmiah is well over 80 years of age, it would only be prudent to grant his compensation. Accordingly we hold that grant of compensation of Rs.12 Lakhs as offered by the learned counsel by the Management would be an adequate compensation for the appellant/workman in this case. We set aside the order of the learned Single Judge remitting the matter back to the Labour Court to give a finding on whether the transfer order had been effectively served. A finding on that aspect would be of no assistance to both parties. Admittedly, the appellant/workman, as on date is well past the age of 80 years and it would be highly impossible for him to even tender evidence in this regard. Accordingly, the writ appeals are disposed of with a direction to the Management to pay as compensation a sum of Rs.12 Lakhs within a period of two weeks from this date, failing which the amount should be paid with interest @ 9% per annum from the date of filing the writ petition till date of payment. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

smv

To,

The Presiding Officer

II Additional Labour Court,

High Court Complex, Chennai

+2ccs to Mr.K.Venkatakrishnan , Advocate SR.No. 51380

+2ccs to Mr.T.S.Gopalan , Advocate SR.No. 52058 and 47836

W.A.Nos.424 & 838 of 2013

mp

A.SK(04/07/2019)