

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7230 of 2010

P.Prabha

... Petitioner

Vs.

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

2. The Management,
Moulis Euro RSCG
Advertising Services Private Ltd.,
Chennai - 600014.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent herein in I.D.No.364 of 2002 and quash the award dated 06.01.2010 consequently directing the second respondent to reinstate the petitioner with back wages and continuity of service with all attendant benefits.

For Petitioner : Mr.M.Sivavarthanan

For Respondents : Labour Court [R1]
M/s. D.Veda
For M/s. Meenakshi Sundaram
[R2]

O R D E R

The award dated 06.01.2010 passed in I.D.No.364 of 2002 is sought to be quashed in the present writ petition.

2. The petitioner/workman states that she joined in the second respondent/Organisation on 04.06.1972 as Typist cum Receptionist and worked at various Departments and on completion of 15 years of service, the petitioner was posted as Media Assistant. On 30.12.1995, the petitioner was promoted as Media Executive with effect from April 1995. Though, the writ petitioner was designated as Media Executive, she was asked by the second respondent to assist in the Accounts Section for the

accounts related to the Media Department. The petitioner states that she was performing the duties and responsibilities of the accounts sustained in the Accounts Section. On account of the financial crisis, the second respondent/Management retrenched some employees. The grievance of the writ petitioner is that she was senior to other employees and by erroneously including her name in the list of juniors, the petitioner was retrenched along with other junior persons.

3. The learned counsel appearing on behalf of the writ petitioner relying on Section 25G of the Industrial Disputes Act, 1947 says that the last come first rule must be followed and the second respondent/Management erroneously included the name of the writ petitioner in the list of juniors and such action is in violation of Section 25G of the Industrial Disputes Act. This apart, it is contended that the writ petitioner was already promoted as Media Executive from 01.04.1995, however, in the seniority list, her name was wrongly stated as Accountant. Thus, the second respondent victimised the writ petitioner by wrongly including her name in another cadre wherein, she was not at all working. For all these reasons, the impugned award is liable to be scrapped.

4. The learned counsel appearing on behalf of the second respondent disputed the contentions raised on behalf of the writ petitioner by stating that the second respondent/Company was facing financial crisis and accordingly, had taken a decision to retrench some employees. The writ petitioner was assisting the Accounts Section for accounts related to the Media Department. This apart, the writ petitioner had already received the retrenchment compensation and all other settlement benefits. Under these circumstances, the Labour Court made a finding that the writ petitioner is not entitled for any other further benefits. The learned counsel appearing for the second respondent solicited the attention of this Court in respect of the findings of the Labour Court wherein, the Labour Court held that the writ petitioner/workman had not produced any document to establish that she was senior to all other retrenched employees. No seniority list was placed before the Labour Court. Thus, the writ petitioner failed to establish that she was senior to all retrenched employees and other junior employees, who were retained in the second respondent/Organisation. It is not enough if an employee establishes that she is a senior employee but in order to establish the violations under Section 25G, the workman should establish that the other junior employees in the same cadre are retained by the Management while retrenching the senior employees. It is being the requirement to be ascertained for the purpose of holding that the provisions of Section 25G is violated.

5. This Court is of the opinion that the Labour Court found that no such findings or documents have been produced before the Labour Court so as to arrive the conclusion that junior employees in the same cadre were retained by the second respondent/Management at the time of retrenchment of the seniors.

6. This being the principles to be followed, this Court is of the considered opinion that the benefit of Section 25G is of no avail to the writ petitioner, in view of the facts and as well as the findings of the Labour Court arrived, based on the evidences and documents.

7. The Labour Court further found that the retrenchment was issued based on the financial crisis faced by the second respondent/Management. Under those circumstances, the second respondent had taken a decision to retrench few employees. The said circumstances were not denied or disproved by the employee.

8. In respect of the settlement, the learned counsel appearing for the writ petitioner states that she received all the settlement with protest and therefore, in the event of considering the writ petition, the petitioner may get a further benefit.

9. The learned counsel appearing for the second respondent/Management made a submission that the Company was closed.

10. This Court is of the opinion that even if the Company is in a running condition, this Court cannot brush aside the findings of the Labour Court in this regard. The findings of the Labour Court itself is that the writ petitioner has failed to establish the seniority and other list of employees, who were retained in service at the time of retrenchment of the writ petitioner along with other persons. This being the findings of the Labour Court, this Court do not find any infirmity or perversity and consequently, the award dated 06.01.2010 passed in I.D.No.364 of 2002 is confirmed and the writ petition stands dismissed. No costs.

sni

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.Meenakshi Sundaram, Advocate, SR.No.83780

+1cc to Mr.M.Sivavarthanana, Advocate, SR.No.83668

W.P.No.7230 of 2010

Kak(12/11/2019)