

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7441 to 7445, 7601 to 7620 of 2018
W.P.M.P.Nos.9244, 9246, 9248, 9250 & 9252, 9489, 9491, 9493,
9495, 9497,9527, 9525, 9523, 9521, 9519 of 2018

M/S.SODEXO TECHNICAL SERVICES INDIA PRIVATE LIMITED,
(FORMERLY KNOWN AS HADEN INTERNATIONAL GROUP
INDIA PRIVATE LIMITED)

"SREYAS VIRAT", 1ST FLOOR,
NO.13/1 & 14, THIRD CROSS ROAD,
R.A.PURAM, CHENNAI-600 028.
REP.BY ITS AUTHORIZED SIGNATORY.

...PETITIONER IN W.P.NOS.7441 TO 7445, 7601 TO 7620 OF 2018

vs.

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-600 104.

2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT-603 204.

3 D.PAUL MOHAN RAJ
NO.23 P.V.KOIL 1ST STREET ROYAPETTAH
CHENNAI-600 014.

... RESPONDENTS in WP No.7441/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-600 104.

2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT-603
204.

3 A.A.MALDHAS

... RESPONDENTS in WP No.7442/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-600 104.

2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT-603 204.

3 E.CHANDRAN
... RESPONDENTS in WP No.7443/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-600 104.

2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT-603
204.

3 N.VENKATESAN
... RESPONDENTS in WP No.7444/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-600 104.

2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT-603 204.

3 R.HARIKRISHNAN
... RESPONDENTS in WP No.7445/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-104.

2 M/S. FORD INDIA LTD.
REP BY ITS MANAGING DIRECTOR S.P.KOIL PO
MARAMALAI NAGAR CHENGALPATTU DISTRICT-204.

3 A.BALASUBRAMANI @ BALAN
... RESPONDENTS in WP No.7601/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-104.

2 M/S. FORD INDIA LTD.
REP BY ITS MANAGING DIRECTOR S.P.KOIL PO
MARAMALAI NAGAR CHENGALPATTU DISTRICT-204.

3 R.CHINADURAI
... RESPONDENTS in WP No.7602/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-104.

2 M/S. FORD INDIA LTD.
REP BY ITS MANAGING DIRECTOR S.P.KOIL PO
MARAMALAI NAGAR CHENGALPATTU DISTRICT-204.

3 S.RAGOTHAMAN
... RESPONDENTS in WP No.7603/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-104.

2 M/S. FORD INDIA LTD.
REP BY ITS MANAGING DIRECTOR S.P.KOIL PO
MARAMALAI NAGAR CHENGALPATTU DISTRICT-204.

3 D.KUMAR
... RESPONDENTS in WP No.7604/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT CHENNAI-104.

2 M/S. FORD INDIA LTD.
REP BY ITS MANAGING DIRECTOR S.P.KOIL PO
MARAMALAI NAGAR CHENGALPATTU DISTRICT-204.

3 M.AARON
... RESPONDENTS in WP No.7605/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603
204

3 M.V.AMALANATHAN
... RESPONDENTS in WP No.7606/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT 603 204

3 S.CHANDRASEKARAN

... RESPONDENTS in WP No.7607/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603
204

3 N.JANAKIRAMAN
... RESPONDENTS in WP No.7608/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603
204

3 S.RAVICHANDRAN
NO.12 THANGARAJ NAGAR MAIN ROAD
PERUNGALATHUR CHENNAI 63
... RESPONDENTS in WP No.7609/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603
204

3 K.ANBALAGAN
... RESPONDENTS in WP No.7610/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT 603 204

3 J.JABARAJAN
... RESPONDENTS in WP No.7611/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603 204

3 W.SWAMY KANNU
... RESPONDENTS in WP No.7612/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603
204

3 L.BALAKRISHNAN
... RESPONDENTS in WP No.7613/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT 603
204

3 K.LOGANATHAN
... RESPONDENTS in WP No.7614/2018

1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI 104

2 M/S.FORD INDIA LIMITED
REP BY ITS MANAGING DIRECTOR S.P. KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT 603 204

3 S.BALARAMAN
... RESPONDENTS in WP No.7615/2018

- 1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC)
CHENNAI-600 104.
- 2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT-603
204.
- 3 P.DHAMODARAN
... RESPONDENTS in WP No.7616/2018

- 1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC)
CHENNAI-600 104.
- 2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT-603
204.
- 3 A.JOSEPH
... RESPONDENTS in WP No.7617/2018

- 1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC)
CHENNAI-600 104.
- 2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR
CHENGALPATTU DISTRICT-603 204.
- 3 A.KANNAN
... RESPONDENTS in WP No.7618/2018

- 1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI-600
104.
- 2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT-603
204.
- 3 V.N.RAJENDRAN
... RESPONDENTS in WP No.7619/2018

- 1 THE PRESIDING OFFICER
II ADDITIONAL LABOUR COURT (FAC) CHENNAI-600
104.
- 2 M/S.FORD INDIA LIMITED
REP. BY ITS MANAGING DIRECTOR S.P.KOIL POST
MARAIMALAI NAGAR CHENGALPATTU DISTRICT-603
204.
- 3 M.BARAT
... RESPONDENTS in WP No.7620/2018

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the award dated 24.10.2017 in I.D.Nos.147 to 156, 159 to 165, 167 to 169, 170 , 173 to 176 /2002 on the file of the Presiding Officer, II Additional Labour Court, Chennai.

For Petitioner : Mr.S.Ravi
for M/s.Gupta and Ravi

For Respondents : R1-Labour Court
Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co
for R2.
Mr.Andrew Vivek manohar
for R3.

C O M M O N O R D E R

The common award passed by the second Additional Labour Court, Chennai dated 24.10.2017 is under challenge in the present writ petitions.

2. The petitioner is M/s.Sodexo Technical Services India Private Limited. The petitioner states that they are engaged in the business of providing facility management services to various reputed companies across the country. The writ petitioner was awarded contract by the 2nd respondent for operating the vehicles belonging to them for transporting their employees to and from their factory premises. In pursuance of the aforesaid contract, the petitioner recruited persons like the 3rd respondent as drivers. The drivers were initially appointed as a service operative for a period of one year with effect from 15.02.1999 by virtue of an appointment order dated 01.02.1999. They were on probation period for a period of six months. The agreement between the petitioner and the second respondent was on a contractual basis for a specified period and the same could be extended only at the sole discretion of the second respondent herein. Since the nature of the contract between the petitioner and the second

respondent is temporary and the renewal of such contract is on the basis of the discretion of the second respondent, the nature of employment of the third respondent herein was also temporary as per the contract of employment dated 01.02.1999.

3. The letter of appointment issued to the third respondent had clearly stipulated that the appointment has been issued arising out of the expected contract with the second respondent which is to commence on 01.04.2000. Subsequently, the second respondent terminated its agreement with the petitioner and consequently, the petitioner was left with no other alternative than to retrench all the drivers engaged for the purpose of the contract with the second respondent. The contract of employment between the petitioner and the third respondent was terminated and the third respondent was given notice pay and retrenchment compensation in accordance with law.

4. The drivers/workmen raised an Industrial Dispute against the second respondent herein, challenging their non-employment and the writ petitioner was impleaded as a respondent, pursuant to the order passed by the Labour Court. The disputes were raised by 25 drivers, who were terminated by the petitioner.

5. The learned counsel for the writ petitioner states that the award was passed under suspicious circumstances, the Industrial Disputes were posted by the Labour Court on 13.09.2017 "for arguments". At the request of the writ petitioner, it was adjourned to 12.10.2017. On the said date, the counsel for the petitioners did not argue and the disputes were adjourned to 13.11.2017 "for arguments". On 01.11.2017, when the counsel for the writ petitioner was perusing the court diary they found that an award has been passed in all the disputes on 31.10.2017 itself. Thereafter, they checked the records and found that on 12.10.2017 itself the Presiding Officer had suo moto advanced the hearing to 20.10.2017 for arguments without any notice to the petitioner herein. On 20.10.2017, it had been adjourned to 24.10.2017. There is no indication that any arguments were advanced by any party on the said date. On 24.10.2017, the Labour Court posted the disputes "for orders" on 31.10.2017 and the Common Award had been passed on the said date.

6. The Labour Court in its common award dated 24.10.2017, set aside the order of termination issued to the third respondent and directed the petitioner to reinstate the third respondent in service with continuity of service, full back wages and all other attendant benefits. Under these circumstances, the writ petitioner is constrained to move the present writ petitions.

7. The learned counsel appearing for the petitioner solicited the attention of this Court, the order of agreement

enclosed in page No.9 of the typed set of papers along with the writ petitions and the conditions enumerated therein. The condition Nos.1, 3 and 4, read as follows:

" 1. The Company has assigned the said employee Mr.Paul Mohan Raj.D., the post of Service Operative in the company, on a contractual basis for a period of 12 (1 year) months commencing from 15.02.2000 and ending with 14.02.2001 for the purpose of Operation and Maintenance of buses and pool cars of the company Ford India Limited. While this contract is expected to last till 14.02.2001, as indicated above, this assignment shall be co-terminus with a completion of the aforesaid at the estimated time or at the time the contract referred to is completed whichever is earlier.

3. The company reserves its right to extend this appointment for such further period/periods as may be necessary in the event of the aforesaid contract between the company and M/s.Fort India Limited not being completed within the aforesaid stipulated time and such extension, if any, shall be informed to you in writing.

4. Upon completion of the aforementioned contract, on the basis indicated hereinabove, this appointment shall come to an automatic end by efflux of time."

8. As per the said conditions, the appointment is in the nature of co-terminus and the appointment commenced along with the contract, therefore, there is no question of extending the appointment of these workmen. Once the period of contract came to an end, the appointment is also automatically lapsed and there is no possibility of extending the appointment or agreement unilaterally by the writ petitioner. Thus, the third respondent cannot claim for extension of service or reinstatement in respect of compliance of Section 25(F) of the Industrial Disputes Act.

9. The learned counsel for the writ petitioner urged this Court to peruse the cross-examination of the workmen, wherein the workmen admitted the fact that regarding the receipt of notice along with one month salary and also retrenchment compensation and the proof of acknowledgment were also filed before the Labour Court and the same was not marked on account of certain suspicious circumstances. However, the fact regarding the receipt of notice along with one month salary was admitted by the workmen, during the cross-examination before the Labour Court. Even in the proof affidavit filed by the writ petitioner before the Labour Court in the Industrial Disputes, it is categorically stated as follows:

agreement notwithstanding the term of 12 months mentioned in clause 1 above, either party may terminate the employment hereunder at any time by giving at least one month's prior notice in writing. Provided however, the company may determine the services of the employee on paying him in lieu of notice one month's salary in advance'. I submit that since the 1st respondent terminated its agreement with the 2nd respondent by letter dated 21.05.2001, the 2nd respondent had no other option but to retrench their employees. Accordingly as per section 25-F of the Industrial Disputes Act 1947, the 2nd respondent issued letter addressed to the Secretary to the Government of Tamil Nadu in charge of Labour, Chennai 9 and also letter of termination of contract was issued to the retrenched workmen which included the petitioner herein and the petitioner was paid the retrenchment compensation of Rs.6,146.00 and notice of pay of Rs.4097/-, thus amounting to a total sum of Rs.10,243/- and the same was received and acknowledged by the petitioner."

10. Thus, the writ petitioner had complied with the mandatory provisions of 25(F) of the Industrial Disputes Act.

11. Apart from this, the learned counsel for the writ petitioner contended that Section 25(F) is inapplicable with reference to the facts and circumstances of the case on hand, the appointment of the third respondent/drivers with the petitioner was in the nature of co-terminus, and therefore, the period of contract expires as per the terms and conditions of the agreement entered into between the writ petitioner as well as the second respondent. In this regard, the learned counsel for the writ petitioner refers to Section 2[oo][bb] of the Industrial Disputes Act which states that "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-removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

12. The facts and circumstances of the case falls within Sub-clause (bb) of Section 2(oo) of the Industrial Disputes Act. It is a case of retrenchment and the retrenchment was made pursuant to the expiry of the period of contract entered into between the petitioner and the second respondent M/s.Ford India Limited. Thus, it cannot be construed as a termination, but a retrenchment made on account of expiry of the contract.

Therefore, the question of complying with Section 25(F) of the Industrial Disputes Act, would not arise at all. As a matter of fact, it is established that the petitioner company had complied with the provisions of Section 25(F) of the Industrial Disputes Act by issuing notice along with one month salary, which is acknowledged by the third respondent/drivers and admitted before the Labour Court during the cross-examination.

13. The learned counsel appearing on behalf of the third respondent/drivers disputed the contention by stating the terms and conditions of the appointment are enumerated in that order. However, the labour Court found that the mandatory provisions under Section 25(F) of the Industrial Disputes Act has not been complied with, the third respondent/drivers were terminated in an illegal manner and no enquiry was conducted and no charge memorandum was issued to the third respondent. In the absence of issuing any charge memorandum and conducting domestic enquiry, the order of termination cannot be sustained. The Labour Court arrived at a conclusion on the basis of no charge memorandum was served and no domestic enquiry was conducted and the provision of Section 25(F) of the Industrial Disputes Act have not been complied with. Therefore, the third respondent/workmen are entitled for reinstatement with backwages and continuity of service. However, this apart, the labour Court made an observation that the third respondent/workmen was working continuously for a period of 240 days.

14. This Court is of the considered opinion that the findings arrived at by the Labour Court is contrary to the facts established by the writ petitioner before the Labour Court. The findings are running contra to the facts and evidence produced before the Labour Court. The writ petitioner has produced contract agreement as well as the compliance of the Section 25(F) of the Industrial Disputes Act. The notice along with cheque issued also had already been filed as a document. Even during the cross-examination, the fact regarding the compliance of Section 25(F) of the Industrial Dispute Act has been admitted by the workmen. Under these circumstances, the findings of the labour Court is directly in contravention with the documents marked before the Labour Court as well as the evidence produced. Even if it is the finding that the Provisions under Section 25(F) of the Industrial Disputes Act have not been complied with, the same runs contra to the deposition made by the workmen, during cross-examination. This being the factum, the labour Court attacked directly in contravention with the deposition of the witnesses as well as the documents filed before the Labour Court.

15. Even considering independently, this Court is of the opinion that the nature of appointment of the third respondent/drivers are co-terminus in nature. The order of

appointment reveals that the appointment will come to an end after the expiry of the period of contract, admittedly, the period of contract also expired and the same has not been extended by the second respondent/M/s.Ford India Limited. Thus, the writ petitioner had retrenched these workmen and paid retrenchment compensation as well as complied with the provisions under Section 25(F) of the Industrial Disputes Act. This being the factum of the case, the award of the Labour Court is not only perverse, but, the finding is also in contradiction with the documents marked as well as the deposition of the witnesses before the Labour Court. Thus, this Court is inclined to consider the present writ petitions.

16. Accordingly, the common award dated 24.10.2017 passed in I.D.No.147 to 156, 159 to 165, 167 to 169, 170 , 173 to 176 /2002 are quashed. All these writ petitions stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb
To

1. The Presiding Officer
II Additional Labour Court,
Chennai-600 104.
2. M/s.Ford India Limited
Rep.by its Managing Director
S.P.Koil Post,
Maraimalai Nagar,
Chengalpattu District-603 204.

+25cc to Mr.Andrew Vivek manoah , Advocate SR.No. 84034

+1cc to Mr.T.S.Gopalan and co , Advocate SR.No. 83099

+1cc to M/s.Gupta and Ravi , Advocate SR.No. 83055

W.P.Nos.7441 to 7445, 7601 to 7620 of 2018

W.P.M.P.Nos.9244, 9246, 9248, 9250 & 9252, 9489, 9491, 9493,
9495, 9497,9527, 9525, 9523, 9521, 9519 of 2018

vsn ii

A.SK(19/12/2019)