

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.11.2019

CORAM

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

W.P.No.6683 of 2012

&

M.P.No.1 of 2012

The Management
T.Stanes & Co. Ltd.,
Bangalore Road,
Konavattam & Post,
Vellore - 632 013.

...Petitioner

..Vs..

1.The Presiding Officer,
The Principal Labour Court,
Vellore District,
Vellore.

2.Chinnappan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in I.D.No.28 of 2011 and quash its Award dated 16.11.2011.

For Petitioner : Mr.Anand Gopalan,
for M/s.T.S.Gopalan & Co.

For Respondents: Mr.E.Kannadasan,
(for second respondent)

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ORDER

The award dated 16.11.2011 passed in I.D.No.28 of 2011 is under challenge in the present writ petition.

2.The writ petitioner is the Management of T.Stanes & Co.Ltd. The petitioner is a Public Limited Company having its registered Office at Coimbatore. The petitioner is in business of manufacturing and supply of Agro Inputs. The learned counsel

appearing on behalf of the petitioner/management made a submission that the second respondent was employed by Mr.Jothi Prakash, a Contractor. The writ petitioner is the principal employer. The second respondent in his written letter to the Labour Officer, claimed certain monetary dues. Several such communications were sent by the second respondent and subsequently it was informed that the second respondent was terminated.

3.The learned counsel appearing on behalf of the petitioner/ management made a submission that the second respondent had attained the age of 60 years as early as in the year 1995. He reached the age of superannuation and allowed to retire from service. However, the Contractor allowed him to work after the age of superannuation and therefore, the principle employer is noway connected with such employments made after the retirement of an employee. On account of the dispute between the Contractor and the second respondent regarding the settlement of wages, various correspondence were sent between them and to the Labour Officer concerned. However, the fact remains that the second respondent reached the age of superannuation in the year 1995 and he served after the age of superannuation till the year 2009 and he raised an industrial dispute during the year 2010 stating that he was terminated from service on 10.08.2009.

4.In this regard, it is contended by the writ petitioner that the services of the second respondent was completed in the year 1995 itself, any subsequent engagement may not be a cause for raising an industrial dispute, as such appointment was noway connected with the principal employer. As per the terms and conditions of the contract between principal employer and the Contractor, the workman who reached the age of superannuation, cannot be re-engaged after the age of superannuation.

5.This apart, the subsequent engagement is a post retirement engaged by the Contractor and therefore, an industrial dispute raised in this regard, as such, cannot be construed for the purpose of treating the discharge as dismissal from service. Once, the second respondent was allowed to retire from service on attaining the age of superannuation, any further engagement by the Contractor would not confer any right by claiming that post retirement engagement amounts to termination.

6.The Labour Court found that the facts in this regard are not disputed. The fact regarding the post retirement engagement was admitted and the retirement of the second respondent during the year 1995 was also admitted. This being the factum of the case, the Labour Court ought not to have entertained the industrial dispute under Section 2A (2) of the Industrial

Disputes Act. Once, the employee was allowed to retire from service and thereafter any other engagement after retirement cannot be construed as an employment, so as to claim that the employee was terminated from service. It was only a concession extended by the Contractor in order to provide some other job, in order to recall such condition after the retirement cannot be construed as illegal and he was illegally terminated from service. The question of re-engagement does not arise at all in view of the fact that the employee has reached the age of superannuation and the said fact was admitted before the Labour Court.

7. Under these circumstances, the award of the Labour Court is perverse. However, if the superannuation benefits are not settled in favour of the second respondent, the writ petitioner as well as the Contractor are directed to settle superannuation benefits and other consequential benefits as applicable during the year 2009 for the period in which the second respondent served, as expeditiously as possible within a period of 6 months from the date of receipt of copy of this Order. It is made clear that the settlement of all the benefits are done in accordance with law.

8. However, the award of the Labour Court granting retrenchment compensation cannot be sustained, as the question of termination in respect of the post retirement engagement would not arise at all. Further the second respondent was allowed to retire from the service in 1995 and any further engagement cannot be construed as non-employment and it was only a concession extended by the Contractor.

9. Accordingly, the award of the Labour Court dated 16.11.2011 passed in I.D.No.28 of 2011 is quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mrm

To

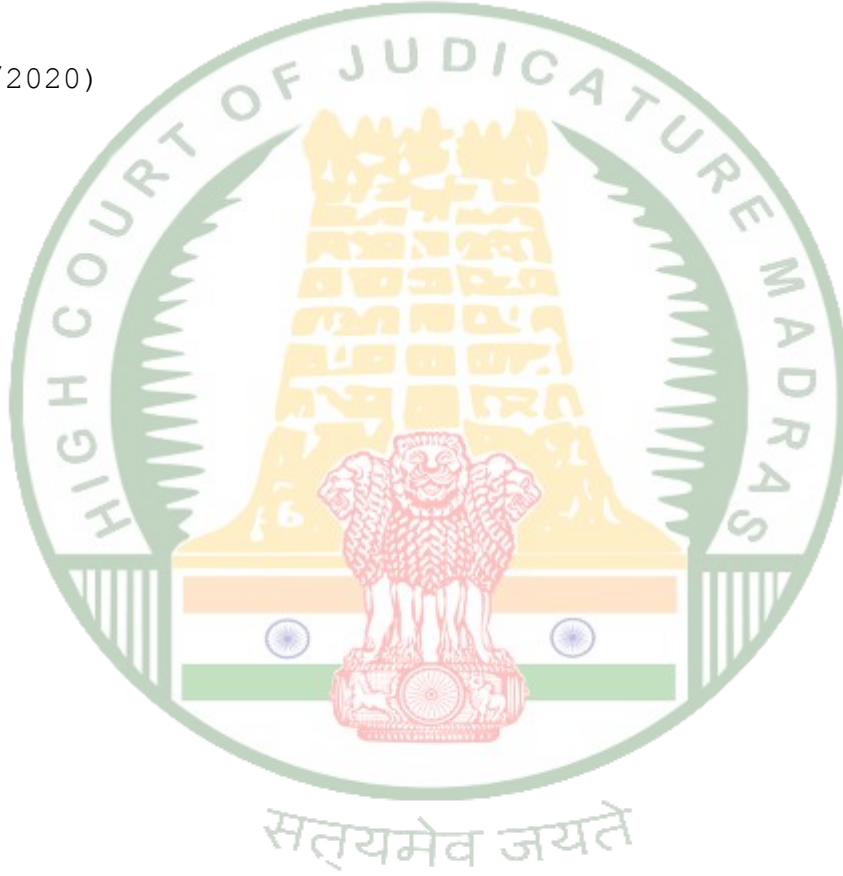
The Presiding Officer,
The Principal Labour Court,
Vellore District,
Vellore.

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.94469

+1cc to Mr.E.Kannadasan, Advocate SR.No.94701

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RSI (CO)
GMY (02/01/2020)



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