

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35969 of 2016
and W.M.P.No.30939 of 2016

JBM Auto System Private Limited
(Formerly known as Thyssenkrupp JBM (P) Ltd)
Rep.by its GM-P & A-T. Palanichamy,
Singaperumal Koil Post,
Chengalpet Taluk,
Kanchipuram District-603 204.

...Petitioner

vs.

1. The Presiding Officer
I Additional Labour Court,
Chennai - 600 104. Salem.

2. Bala Vijayakumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.218 of 2011 and quash its award dated 03.08.2016.

For Petitioner : M/s.S.Ravindran
Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondents : R1-Labour Court
Mr.T.N.Sugesh for R2.

O R D E R

The award dated 03.08.2016 passed in I.D.No.218 of 2011 is under challenge in the present writ petition.

2. The writ petitioner is engaged in the manufacture of auto components for automobile industry, especially for Ford India Limited, situated at S.P.Koil Post in Chengalput District. The respondent has installed sophisticated machineries which need special skill and on the job training in the manufacturing process. Any experience gained by a workman in the engineering

industry would be of no use for operating the sophisticated machineries installed in the petitioner establishment. All the permanent workman working in the respondent establishment have undergone extensive training in the petitioner establishment. Similarly, if a trainee is not confirmed in service, he is deemed to continue in the training process. It is contended that there is no automatic confirmation in the service, after the end of training period. The fact remains that the second respondent/workman has entered into the service of the writ petitioner/Company as a trainee on 01.05.2004. The period of training was stipulated as 3 years. On completion of 3 years training period, the second respondent/workman was allowed to continue the training for a further period of one year and four months. Thereafter, he was terminated by the writ petitioner/Management through an order dated 22.12.2008. A cheque for a sum of Rs.2,736/- was enclosed along with the order of termination. The second respondent raised a dispute in I.D.No.218 of 2011 before the I Additional Labour Court, Chennai and on adjudication, the Labour Court found that the termination of the second respondent/workman was in violation of the mandatory provisions under Section 25F of the Industrial Disputes Act. The findings of the Labour Court would reveal that petitioner by engaging workman as trainees, extracted regular work from them for some period of time and then threw them away by taking advantage of the sham and nominal conditions of service. This is nothing but unfair labour practice. Thus, a conclusion was arrived that the termination of the writ petitioner from service was unlawful and consequently, it was set aside.

3. The learned Senior Counsel appearing on behalf of the writ petitioner/Company made a submission that they are not seriously disputing the findings of the Labour Court in this regard, more specifically with reference to the mandatory provision under Section 25F of the Industrial Disputes Act. However, the disputed fact that the second respondent/workman served in the writ petitioner/Company as a trainee for 3 years and no confirmation order as per the service rules were issued. In the absence of any confirmation order in writing, it is to be construed that the employee was allowed to continue only as a trainee. Further, even in case that no such confirmation order has been issued, the second respondent/workman had served for about one year and 4 months beyond the training period of 3 years. This being the factum, the award of the reinstatement with backwages is not necessary while allowing the services of the workman in the writ petitioner Company.

4. The learned counsel appearing on behalf of the second respondent/workman disputed the contentions raised by the writ petitioner by stating that the petitioner was allowed to

continue in service beyond the period of training and therefore, an inference is to be drawn, that the writ petitioner/Management allowed him to continue in service as an employee. Under these circumstances, there is no infirmity in the award of the Labour Court as such. Therefore, the writ petition is to be rejected.

5. In this regard, the learned counsel appearing on behalf of the writ petitioner cited the judgment of the Hon'ble Supreme Court of India, in the case of RASHTRASANT TUKDOJI MAHARAJ TECHNICAL EDUCATION SANSTHA, NAGPUR vs. PRASHANT MANIKRAO KUBITKAR reported in (2018) 12 SCC 294. In a short order, the Apex Court made the following observation:

"1. Leave granted. The Labour Court held the termination of the respondent/workman to be in infraction of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 and awarded reinstatement with continuity in service but without backwages. The approach to the Labour Court was after 13 years of the termination made on 01.06.1994. The High Court in writ petition filed by the appellant affirmed the said order. Hence, the present appeal.

2. The respondent workman had worked under the appellant for a period of two years and three months whereafter he was terminated on 01.06.1994. Judicial opinion has been consistent that if the termination is found to be contrary to Sections 25-F and 25-G of the Industrial Disputes Act, 1947, reinstatement in service is not the rule but an exception and ordinarily grant of compensation would meet the ends of justice.

3. The respondent workman in the present case had worked for a period of two years and three months and that apart he had approached the Labour Court after 13 years. Taking into account the totality of the facts and circumstances of the case, we are of the view that the order of the Labour Court and the High Court ought to be modified by granting compensation of Rs.1,00,000 (Rupees One Lakh) in lieu of reinstatement without backwages as ordered. It is ordered accordingly. The aforesaid amount of compensation will be paid within a period of six weeks from today.

4. The appeal is allowed with the aforesaid modification of the order of the Labour Court as also the High Court."

6. Citing the above judgement, the learned Senior Counsel submitted that the second respondent/workman had hardly worked for a period of 1 year and 4 months beyond the period of training. This being the factum, the second respondent would be entitled to get the compensation as granted by the Supreme Court in the case cited supra.

7. This Court is of the considered opinion that undoubtedly, violation of the mandatory provisions of the Industrial Disputes Act should result in an order of reinstatement with backwages. The Labour Court though followed the provision of the Industrial Dispute Act without any deviation, since the length of service rendered is below 2 years, reinstatement would be excessive.

8. This apart, the second respondent/workman was a trainee for about 3 years and no order of confirmation was issued. In the absence of any confirmation order, it is to be presumed that he was allowed to continue only as a trainee. For example, even in Government service, the probation period is stipulated for two years and if the employee is allowed to continue beyond two years, unless the order of confirmation issued, no employee can be termed as a permanent employee of the department. Thus, an order of confirmation is mandatory for the purpose of treating as permanent employee. In the present case, no such confirmation order had been issued by the writ petitioner/Management. Contrarily, the second respondent/Workman was allowed to continue beyond the period of training and such continuance cannot be strictly construed as permanent employment for the purpose of coming to a conclusion that the second respondent is entitled to be treated as the permanent employee of the writ petitioner/Management.

9. Considering the fact that the second respondent/workman had served one year and 4 months beyond the training period of 3 years, this Court is of the considered opinion that the award of the Labour Court requires interference with regard to direction for reinstatement. It would be appropriate if the compensation is awarded as per the principles laid down by the Apex Court in the case cited supra. Accordingly, this Court is inclined to grant compensation in lieu of reinstatement ordered by the Labour Court in the Industrial Dispute. Accordingly, the following order is passed:

(i) The award passed by the first respondent dated 03.08.2016 in I.D.No.218 of 2011 is quashed.

(ii) The writ petitioner/Management is directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only) towards the compensation in lieu of the reinstatement with backwages and the said amount of Rs.1,00,000/- is to be paid to the second respondent/workman

within a period of 4 weeks from the date of receipt of a copy of this Order consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb

To

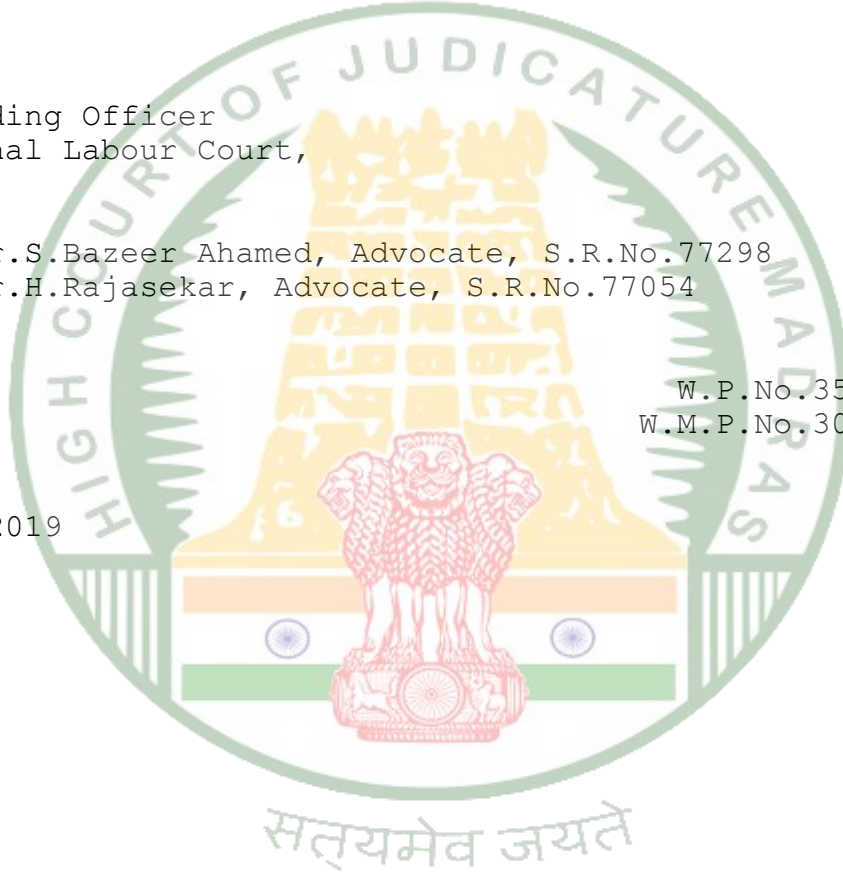
The Presiding Officer
I Additional Labour Court,
Chennai.

+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.77298

+1cc to Mr.H.Rajasekar, Advocate, S.R.No.77054

W.P.No.35969 of 2016
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PA(CO)
CS/31/10/2019



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