

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2019

CORAM

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

W.P.Nos.27132, 27133, 27134, 27135 & 26896 of 2014

B.Francis

..Petitioner
W.P.No.27132/2014

M.Dhanasingam

..Petitioner
W.P.No.27133/2014

V.Jayaveera Boopathy

..Petitioner
W.P.No.27134/2014

A.Abdul Salaam

..Petitioner
W.P.No.28696/2014

Usman Khan

..Petitioner
W.P.No.27135/2014

Vs.

1.The Management of Buckingham & Carnatic Mills Limited,
Perambur Barracks Road,
Chennai - 600 012.

2.The Presiding Officer,
First Additional Labour Court,
Chennai - 600 104.

.. Respondents
in all WPs

Prayer W.P.No.27132/2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for records relating to the award dated 27.06.2013 passed in C.P.No.444 of 2000 on the file of the second respondent and quash the same and allow C.P.No.444 of 2000 as prayed for.

Prayer W.P.No.27133/2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for records relating to the award dated 27.06.2013 passed in C.P.No.440 of 2000 on the file of the second respondent and quash the same and allow C.P.No.440 of 2000 as prayed for.

Prayer W.P.No.27134/2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for records relating to the award dated 27.06.2013 passed in C.P.No.184 of 2002 on the file of the second respondent and quash the same and allow C.P.No.184 of 2002 as prayed for.

Prayer W.P.No.27135/2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for records relating to the award dated 27.06.2013 passed in C.P.No.180 of 2002 on the file of the second respondent and quash the same and allow C.P.No.180 of 2002 as prayed for.

Prayer W.P.No.26896/2014: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for records relating to the award dated 27.06.2013 passed in C.P.No.9 of 2002 on the file of the second respondent and quash the same and allow C.P.No.9 of 2002 as prayed for.

For Petitioner

in all WPs : Mr.Prakash Goklaney

For R1

in all WPs : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Company

For R2

in all WPs : Labour Court

O R D E R

These writ petitions are filed challenging the order dated 27.06.2013 passed in C.P.Nos.440, 444 of 2000 and C.P.Nos. 9, 180 & 184 of 2002.

2. The grievance of the writ petitioners is that the Voluntary Retirement Applications submitted by them were rejected by the first respondent/Management.

3. The learned counsel for the writ petitioners stated that the Memorandum of Settlement under Section 12(3) of the Industrial Dispute Act, 1947, between the Management and the Labour Union stipulates that those workmen and staff members who opt for retiring under the Voluntary Retirement Scheme will be paid a sum of Rs.1,25,000/-, as compensation. Besides the

above, eligible gratuity as per the law will be calculated separately and paid. When 12(3) Settlement ensures that in the event of submitting an application opting Voluntary Retirement Scheme, the same will be accepted by the Management and in violation of the said settlement, the applications submitted by the writ petitioners for Voluntary Retirement was rejected. Thus, the writ petitioners are constrained to move the present writ petition.

4. The learned counsel of the first respondent/Management disputed the contentions by stating that Voluntary Retirement Scheme is a special Scheme introduced by way of separate notice and such a Scheme is formulated on certain extraordinary circumstances. Considering the findings of the first respondent/Management, the very Scheme of Voluntary Retirement stipulates that Union and the Management reached agreements on 16.07.1996 and 23.02.1997 to reopen the mill. However, the Management on the basis of its own assessment and on the basis of the assessment of ATIRA, found it impossible to run the mill viably and profitably. Several rounds of discussions were held bilaterally and further before the Conciliation Officers to reopen the mill but no satisfactory settlement could be arrived at. Finally on the advice of the Hon'ble Chief Minister of Tamil Nadu a Settlement was reached before the Commissioner of Labour on 28.03.1998. A copy of the Settlement is displayed along with this Notice. In line with the terms of the above Settlement a Voluntary Retirement Scheme was announced. Clause 9 of the Voluntary Retirement Scheme stipulates that the Management reserves the sole right to accept or not to accept any application under the Voluntary Retirement Scheme without assigning any reason. The decision of the Management in this regard shall be final.

5. Citing the above clause, the learned counsel appearing for the first respondent/Management states that Voluntary Retirement cannot be claim as matter of right by the workman and the Management has got discretion to accept or not to accept on various grounds. Therefore, the writ petition is devoid of merits as the writ petitioners now claim Voluntary Retirement as a matter of right.

6. The 12(3) Settlement stipulates Regular Voluntary Retirement Scheme. However, the mere stipulation of a Voluntary Retirement Scheme would not confer any right on the workmen to claim the said Scheme as a matter of right. In fact, any such special Schemes are subject to acceptance of the employer and the acceptance can never be claimed as a right and therefore, the special Voluntary Retirement Scheme cannot be an absolute right of an employee and such a Scheme is subject to the

acceptance of the employer also. The eligibility and availability and other criterias are fixed under the service conditions as well as the prevailing settlements are to be assessed for the purpose of accepting Voluntary Retirement application submitted by the workmen. This being the scope of the Scheme, the writ petitioners cannot claim the Scheme as a matter of right. The lower Court has considered these aspects and rejected the claim petition filed by the writ petitioners.

7. During the course of arguments, it is brought to the notice of this Court that the workmen reached the age of superannuation and they have received all the terminal benefits including the gratuity and Provident Fund amount. The compensation directed to be paid, pursuant to the directions of the BIFR (Board for Industrial and Financial Reconstruction) was also paid to the workmen and the writ petitioners had received the same. At the out set, workmen/petitioners had received all the terminal benefits, gratuity, provident fund as well as compensation awarded by the BIFR. In view of the fact that the first respondent/Management had settled all the terminal benefits, now, the cause aroused for filing of the present writ petition became vanished. The petitioners cannot now claim the total benefits under the Voluntary Retirement Scheme as well as under the Regular Retirement Scheme. In view of the fact that the writ petitioners had received all the benefits, on account of their superannuation, no further consideration is required in respect of the claim set out by the writ petitioners in this Writ Petition. Thus, the order dated 27.06.2013 passed in C.P.Nos.440, 444 of 2000 and C.P.Nos.9, 180 & 184 of 2002 are confirmed.

8. Accordingly, the writ petitions stand dismissed. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

dua/ssb

To

1. The Management of Buckingham & Carnatic Mills Limited,
Perambur Barracks Road,
Chennai - 600 012.

WEB COPY

2.The Presiding Officer,
First Additional Labour Court,
Chennai - 600 104.

+4 CC to Ms. Prakash Goklaney, Advocate sr 84967, 84966, 84969,
84970.

+1 CC to M/s. T.S. Gopalan & Co, Advocate sr 84791.

W.P.Nos.27132, 27133, 27134, 27135 & 26896 of 2014

BP(CO)
SP(18/11/2019)



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