IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION NO.30568 OF 2015 (L-TER)

BETWEEN :

SRI R. MANJUNATHA SWAMY
AGE 26 YEARS,
S/O. R. RAJASHEKARAIAH,
R/AT MANJUNATHA SWAMY NILAYA,
HOSAHLLI, GOLLARAPALYA,
MAGADI MAIN ROAD,VISHWANEEDAM POST,
BANGALORE-560 091.

...PETITIONER

(BY SRI B. RAVISHANKAR FOR J. KANIKARAJA, ADOVCATE – PHYSICAL HEARING)

AND :

M/S. IBM INDIA PVT. LTD.
ESTEEM ASRANI,
NO.3K, SARJAPUR ROAD,
KORAMANGALA INDUSTRIAL LAYOUT,
BANGALORE-560 034,
REPRESENTED BY ITS
MANAGING DIRECTOR.

…RESPONDENT

(BY SRI THOMAS VELLAPALLY, ADVOCATE – PHYSICAL HEARING)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE

AWARD DATED 31.03.2015 PASSED BY II ADDITIONAL LABOUR COURT, BANGALORE IN I.D. NO.51/2012 VIDE ANNEXURE-A.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING :

ORDER

The petitioner in this writ petition has called in question the award of the labour Court rejecting the dispute filed by the petitioner claiming reinstatement along with full backwages.

2. During the pendency of the writ petition, learned counsel appearing for the parties submitted that the matter is likely to be settled and had on the last date of hearing submitted that the matter has indeed been settled between the parties, what remained was only payment of money and sought a week's time. Today, the parties would submit that they would pay the amount as settled between the parties. The only choke is with regard to deduction of TDS by the employer while settling an amount of compensation in lieu of reinstatement and backwages to the petitioner workman.

3. The writ petition is filed challenging the order of Labour Court declining the dispute raised by the workman seeking reinstatement and backwages and the same prayer is sought in this petition. The workman was terminated by respondent employer on 30.04.2012 and the parties have entered into a settlement on 23.12.2020. Therefore, the compensation which is now payable to the workman in terms of the settlement arrived at between the parties is in the form of backwages which is spread over from the date of termination till today. Therefore, tax deducted at source from the amount of compensation payable to the workman would become contrary to law.

4. I am fortified by a judgment of the Madras High Court in the case of ***D. THAKUR V. THE PRESIDING OFFICER, II ADDITIONAL LABOUR COURT, CHENNAI*** rendered in W.P. Nos.31904 and 31905 of 2007 by its order dated 03.12.2014, wherein learned Judge of the Madras High Court has held as follows –

> "6. While so, during the pendency of these writ petitions, the workman and the Management entered into a compromise and the Management has agreed to pay a sum of Rs.9,00,000/- towards backwages for the period of non-employment from 30.11.1995 to 30.12.2009. However, the Management has deducted a sum of Rs.48,610/- towards TDS payable to the Income Tax Department and a demand draft for Rs.7,78,100/- (Rupees Seven Lakhs Seventy Eight Thousand and One Hundred only) is given to the workman. Further, the Management has paid a sum of Rs.73,290/- towards gratuity for the service rendered by the workman by way of another demand draft. The Management has also agreed to pay a sum of Rs.2,50,000/- towards superannuation fund.
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> 8. At this juncture, it is brought to my notice that the workman need not pay income tax for the backwages since the backwages are spread over for so many years (from 30.11.1995 to 30.12.2009) and in that event, there is no reason to deduct TDS on the backwages. It is also stated that the workman is entitled to claim relief under Section 89 of the Income Tax Act."

5. Learned counsel appearing for respondent – employer would, however, place reliance upon Sub-Section (3) of Section 17 of the Income Tax Act, 1961 which deals with computation of salary for the purposes of assessment of tax, "profits in lieu of salary" includes compensation for assessment of tax, it is only when the assessee was amenable to tax at the relevant point of time which

admittedly is not the case when the workman was terminated on 30.04.2012 was assessed to tax. Therefore, the deduction of TDS by the employer while paying compensation in terms of the settlement will be contrary to law. Therefore, the employer is directed to make good the settled amount of compensation without deduction of TDS to the petitioner. With the aforesaid observation, the writ petition stands disposed.

6. The learned counsel appearing for respondent would submit that the amount of compensation payable as settled i.e., Rs.11,00,000/- would be paid to the petitioner workman within four weeks from today and also would undertake to issue a relieving letter to the petitioner workman.

Sd/-
JUDGE

hnm