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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2021

Pronounced on : 28. 07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.1674 of 2011

1.M/s.Dhanalakshmi Mills Ltd.,
130 B.S.Sundaram Road,
Tirupur,
Rep. by its Manager,
S.Krishnan

...Appellant/Petitioner

-vs-

1.The Presiding Officer
Labour Court, Coimbatore.

2.Dhandapani

...Respondents

Write Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.10596 of 2011 dated 12.07.2011 on the file of the High Court of Judicature at Madras.

Prayer in W.P.No.10596 of 2011: WP filed to issue a Writ of Certiorari calling for the records and quash the Common Order dated 21/01/11 in C.P.No.297 of 2008 on the file of the 1st respondent, Presiding Officer, Labour Court, Coimbatore.

For Appellant : Mr.Manohar Gupta
for M/s.Gupta & Ravi

For Respondent 1 : Court

For Respondent 2 : Mr.K.M.Ramesh

J U D G E M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

This Intra Court appeal is directed against the order passed in W.P.No.10596 of 2011. The 2nd respondent is the worker who



has knocked the doors of justice. In order to more fully appreciate the dispute on hand it is necessary to briefly allude to the facts which has culminated in the filing of the above Writ Appeal.

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2. The appellant company is a Public Limited Company registered under the Companies Act, 1956. The Registered office of the appellant Mill is situate at Tirupur and the company had two units, namely, a Spinning Mill (A) and a Weaving Mill (B). Due to reasons beyond control of the appellant, the operations of the B-Unit became totally unviable constraining the appellant to address the Appropriate Authority for closing down the B-Unit under Section 25 (o) of the Industrial Disputes Act, 1947, herein after referred to as the ID Act.

3. Thereafter, pursuant to the reference made before the Special Industrial Tribunal, Chennai in I.D.No.4 of 1993 an award dated 28.11.1994 was passed granting permission to the appellant to close down B-Unit as well as the preparatory Section of the A-Unit. Meanwhile, the company had also been declared as a sick industrial undertaking under Section 3 (1) (o) of the Sick Industrial Companies Special Provisions Act, 1985 by the Board for Industrial and Financial Reconstruction by its order dated 28.02.1994.

4. Meantime, the A-Unit had also suspended its operations in the year 1998. Thereafter, by orders of this Court dated 17.03.2005 in W.P.No.34935 of 2004, the appellant was permitted to infuse funds to settle the dues to the creditors as well as the workmen's due. A strategic investor was brought in who had settled the dues of the company's creditors and thereafter the net worth of the company turned positive. The A-Unit was revived and reopened and the workers of the B-Unit were absorbed into the A-Unit. Some of the workers of the B-Unit who had originally refused alternate employment were provided employment in the A-Unit.

5. When the A-Unit was re-opened the appellant found that some of the workmen were unable to work owing to their old age and therefore a review of their age was performed. These employees were called upon to submit proof of their age. However, some of the employees did not provide the supporting documents in proof of their age. Therefore, the appellant company had requested the Government General Hospital, Tirupur to constitute a medical committee to assess the age of the employees. The 2nd respondent herein refused to give proof of his age and also to submit himself for medical examination. He had the backing of the Union in taking such a stance.



6. A Show cause notice dated 23.03.2006 was issued to the 2nd respondent asking him to show cause as to why he should not be superannuated. There was no response to this show cause notice. Therefore, by order dated 13.04.2006 the services of the 2nd respondent in the appellant company was terminated. Five years later, the 2nd respondent herein and five others had filed Claim Petition before the 1st respondent, Labour Court claiming wages from the date of retrenchment since their termination would amount to retrenchment under Section 25 N of the ID Act.

7. It was their case that the termination was violative of Section 33 C (2) of the ID Act, as the dispute was pending before the Special Industrial Tribunal. The 2nd respondent had claimed a sum of Rs.1,51,787/- as outstanding wages from 15.04.2006 till 30.04.2008.

8. By order dated 21.01.2011, the 1st respondent had allowed the claim of the 2nd respondent. Challenging the same, the appellant had filed W.P.No.10596 of 2011 before this Court. By order dated 12.07.2011, the Writ Petition was dismissed by the learned single Judge holding that proceedings under Section 33 C (2) of the ID Act was just and proper. The learned Judge had relied upon the Judgement of the Constitution Bench of the Supreme Court in the case reported in AIR 1965 SC 1488 - Kays Construction Co. (P) Ltd vs State Of Uttar Pradesh And Others.

9. Challenging the same the appellant is before this Court.

10. Mr.Manohar Gupta, learned counsel appearing on behalf of the appellant would submit that in the year 1998 the operations had totally stopped and the Mill was reopened only in the year 2005. Despite several demands being made to the 2nd respondent to furnish proof of his age the 2nd respondent had refused to comply with the request. The 2nd respondent had also refused to subject himself for medical examination before the medical committee formed for this purpose by the Government General Hospital, Tirupur. Therefore, the appellant was left with no other alternative to terminate his services under Section 26 of the Standing Orders of the Mill.

11. Mr.Gupta's argument was that the provisions of Section 33 C (2) of the ID Act is in the form of an Execution Petition and without challenging the termination the 2nd respondent was estopped from filing the Claim Petition for computation of wages. The learned counsel would submit that the only request made by the management was that the workmen should submit a documentary proof of their age. Most of the employees had furnished the same and it was only this respondent and 5 others who had not complied with this request.



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12. That apart, he would argue that the learned single Judge had erred in treating the termination as retrenchment under Section 25 N of the ID Act. He would submit that this is a case of termination per se and without challenging the termination the Claim Petition before the 1st respondent was totally without any basis and was premature.

13. Per contra, Mr.K.M.Ramesh, learned counsel appearing on behalf of the 2nd respondent / workman would submit that the termination of the 2nd respondent is retrenchment as contemplated under Section 2 (o o) of the ID Act since it is not a termination of the workman on reaching the age of superannuation. He would submit that none of the contention contemplated prior to the retrenchment of the workman has been followed in the instant case. He would further submit that the only ground on which the termination has been effected is on the ground that no proof of age had been provided to the appellant company, whereas, even at the time of joining the services the 2nd respondent had submitted all the requisite details including proof of age to the appellant. He would rely on the following Judgements in support of his contention:

(i) AIR 1964 SC 743 - Central Bank of India Ltd. Vs. P.S.Rajagopalan Etc.

(ii) 1969 (2) SCC 400 - U.P.Electric Supply Co. Ltd., Vs. R.K.Shukla Anr. Etc.

(iii) 1970 (3) SCC 67 - Ramakrishna Ramnath Vs. Prising Officer, Labour Court and another.

(iv) 1976 AIR (SC) 1111 - State Bank of India Vs. Shri N.Sundara Money.

14. Heard the learned counsels and perused the records.

15. A perusal of the order of termination dated 13.04.2006 would indicate that since the 2nd had not utilised the opportunities to assess his age either in the form of a documentary proof or by submitting himself for medical examination, the management was constrained to arrive at a conclusion that the 2nd respondent has attained 58 years of age. Consequently his services has been terminated with effect from 15.04.2006. Therefore, it is crystal clear that the termination is on account of the fact that the 2nd respondent has attained the age of superannuation.

16. However, from a perusal of the letter dated 24.02.2006 as well as the letter of termination, it is very clear that the records pertaining to the 2nd respondent is very much available with the appellant and from that records the age of the 2nd respondent has also been ascertained. Infact, even in the appellant's letter dated 24.02.2006 addressed to the 2nd respondent this fact is very clear from a reading of the opening



17. Therefore, two things emerge from this sentence.

(ii) As on 2006, the 2nd respondent's age is only 56 years and he had another two years to go.

18. The termination letter would also mention that the records of the appellant company shows that the age of the 2nd respondent as 56 years. Considering the fact that the termination was prior to the age of superannuation the 2nd respondent and similarly placed persons treated the letter as one of retrenchment and therefore filed a Claim Petition seeking full back wages and other attendant benefits.

" " (oo) 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--

(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

(c) termination of the service of a workman on the ground of continued ill- health;]

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,--



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(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a



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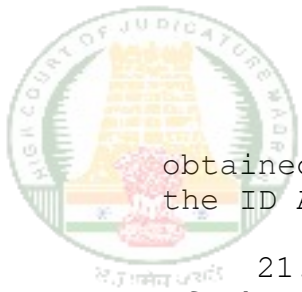
Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

20. The 2nd respondent had stated that none of the conditions contemplated for retrenchment has been followed. This is evident since the appellant had terminated the 2nd respondent on the ground of his attaining the age of superannuation. Since the 2nd respondent had not attained the age of superannuation the termination has to be treated as "Retrenchment" as defined in Section 2(o o) of the ID Act. The damages were calculated by the 2nd respondent from the date of their termination till the date the 2nd respondent would reach the age of superannuation. The appellant would question this action only on the ground that the termination was on account of the 2nd respondent failing to provide proof of age and therefore impliedly accepting the case that he had reached the age of superannuation. This statement appears to be totally wrong in the light of the very letter addressed by the appellant to the 2nd respondent, wherein, they have themselves stated that the 2nd respondent was 56 years old. The appellant has also not



obtained the requisite permission under Section 33 (2) (b) of the ID Act.

21. The construction of the provisions of Section 33 C (2) of the ID Act came up for consideration before the Constitution Bench in the Judgement reported in 1964 AIR 743 - The Central Bank Of India Ltd vs P.S. Rajagopalan Etc. The constitution Bench had placed the issues in perspective in paragraph 9 of their Judgement. They had formulated the questions that involved their consideration as follows:

"The question which arises for our decision is, however, slightly different. It is urged by the appellant that sub-sec (2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties in cases which fall under sub-sec. (2). The argument is, if there is a dispute about the workman's right to claim the benefit, that has to be adjudicated upon not under sub-sec. (2), but by other appropriate proceedings permissible under the Act, and since in the present appeals, the appellant disputed the respondent's right to claim the special allowance, the Labour Court had no jurisdiction to deal with their claim. In other words, the contention is that the opening words of sub-sec. (2) postulate the existence of and admitted right vesting in a workman and do not cover cases where the said right is disputed"

22. After tracing the legislative history the Constitution Bench concluded that the legislature with an intent to provide speedy remedy to individual workman had introduced Section 33 A in the year 1950 and Section 33 C in the year 1956. Ultimately, the Bench has held as follows:

"We have already noticed that in enacting Section 33C the legislature has deliberately omitted some words which occurred in Section 20 (2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. It is remarkable that similar words of limitation have been used in Section. 33C (1) because Section. 33 C (1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made under Section. 33C (1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in Section. 33C (2) and to that extent, the scope of Section. 33C (2) is undoubtedly wider than that of Section 33C (1).....



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There is no doubt that the three categories of claims mentioned in Section 33C (1) fall under Section. 33C (2) and in that sense, Section 33C (2) can itself be deemed to be a kind of. execution proceeding; .but it is possible that Claims not based on settlements, awards or made under the provisions of Chapter V A, may also be competent under s. 33C (2) and that may illustrate its wider scope."

23. In the Judgement reported in 1970 (3) SCC 67 - Ramakrishna Ramnath Vs. Presiding Officer, Labour Court, the issue involved was as follows, the appellant which was a partnership firm was engaged in the manufacture and sale of Bidis at various places in the Vidarba region of the State of Maharashtra. A Notification was came to be issued by the Government of Mumbai dated 11.06.1958 under Section 5 (2) read with Section 5 (1) (b) of the Minimum Wages Act. The appellant felt that by reason of this notification the working of the factories would become financially unviable and therefore they had issued a notice of closure dated 01.07.1958 to the Labour Officer, Nagpur.

24. Subsequently, the Government withdrew the notification and within a few weeks the appellant had resumed the work in its factories taking in all the employees who were there prior to 01.07.1958. One of the workmen made an application to the Presiding Officer, Labour Court at Nagpur, claiming certain amounts on account of retrenchment and one month notice pay in lieu of notice. She stated that the factory was closed from 01.07.1958 and as a result of this she and others came to be retrenched having put in more than 12 years continuous service prior to the said date and claimed the computation of the benefit in terms of money under Section 33 C (2) of the ID Act.

25. The point canvassed by the appellant has been captured in paragraph no.7 of the Judgement as follows:

"7. The points canvassed on behalf of the appellant before us may be summed up as follows: (1) The disputes which were referred to the Labour Court fell within the jurisdiction of an Industrial Tribunal. The jurisdiction under Section 33C(2) was a limited one and could not embrace a dispute of the nature in the instant case which could only fall under Section 10 of the Act. (2) The issue raised in each case was a fundamental one not limited to mere computation of a benefit in respect of a right envisaged by Section 33C(2). (3) There was really no closure of the appellant's business but only a lock out or a temporary stoppage of work not attracting the



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operation of Section 25-FFF. (4) In order to entitle the applicant to the benefits of Section 25F it was obligatory on her to show that she had worked for 240 days in each year of service for which the claim was made."

Ultimately, the Bench held that it was a closure and therefore the employee workmen were entitled to be compensated. The Bench had relied upon the Judgement of Central Bank of India Vs. P.S.Rajagopalan supra.

26. Therefore, from a perusal of the above Judgements and records before us the case on hand is a clear case of retrenchment and considering the fact that the Constitution Bench has upheld the right of the workmen to invoke Section 33 C (2) to receive the benefit we do not find any reason to interfere with the order of the learned single Judge and accordingly the Writ Appeal stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To,
The Presiding Officer
Labour Court, Coimbatore.

+1 CC to M/s.Gupta and Ravi, Advocate, Sr.No. 36342.

W.A.No.1674 of 2011

SJ(CO)
LS(02/09/2021)