



W.P.No.1918 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.1918 of 2014

1.A. Kanakaraj

2.P. Chelliya

3.P. Vadivel

4.P. Kandasamy

5.N. Muthusamy

6.M. Mayilvahanan

7.R. Krishnan

... Petitioners

Vs.

1.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai – 600 006.

2.M/s. Gem Granites,
Kadukkamaram, Nadur Post,
Yercaud – 636 602.

... Respondents

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records from the files of the first respondent in I.D.Nos.39/2010, 20, 21, 22 and 23 of 2011 and quash its impugned common Award made therein dated 25.07.2012 insofar as it has denied the claim of the petitioners for



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reinstatement in service, with continuity of service, with back wages and with all other attendant and consequential benefits and to award costs.

For Petitioners : Mr.K.M. Ramesh

For Respondents : Tribunal [R1]

Mr.M.R. Dharanichander [R2]

ORDER

All the petitioners herein, who were the erstwhile workmen of the second respondent, are alleged to have been terminated from their services with effect from 01.02.2001 onwards.

1.2. When they had raised Industrial Disputes challenging their termination, the dispute came to be referred to the first respondent – Tribunal (C.G.I.T.) under Section 10(2)(A) of the Industrial Disputes Act, 1947 (hereinafter called as I.D. Act).

1.3. The point of reference in all the above I.Ds was as to “Whether the demand of the workmen for reinstatement with effect from 01.02.2001 from the Management of Gem Granites, with back wages, is just and legal? What relief the workmen concerned are entitled?”



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2. The Central Government Industrial Tribunal (C.G.I.T.), through its common award dated 25.07.2012, had held that the termination of these workmen, was in violation of Section 25F of the I.D. Act, for non-issuance of notice, notice pay or compensation prescribed thereunder and thereby, set aside the action of the second respondent in terminating the petitioners herein. However, in lieu of reinstatement, C.G.I.T. had ordered for compensation as provided under Section 25F(b) of the I.D. Act, which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof, in excess of six months, within a period of one month, failing which, the workmen would be entitled to get interest @ 12% p.a. The petitioners have now challenged the portion of the award, denying their claim for reinstatement in service, with continuity of service and back wages.

3. Admittedly, all the petitioners herein have reached the age of superannuation. This apart, the Labour Court had also taken into consideration that all these petitioners were engaged in the mining activity in the site belonging to the second respondent, which mining site was



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almost nearing exhaustion owing to the output of granite products therein.

The work at the mining site has become scanty, if not nil. It is in this background, that their claim for reinstatement was denied. I do not find any infirmity in such a finding.

4. It is a settled proposition of law that in all cases where reinstatement is ordered by the Labour Court/Industrial Tribunal, reinstatement is not automatic.

5. In the decision of the Hon'ble Supreme Court in the case of '**Jagbir Singh Vs. Haryana State Agriculture Marketing Board & another**' reported in '**(2009) 15 SCC 327**', the aforesaid proposition was laid down in the following manner:-

.... “7. *It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be*



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wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.....

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”.....

6. The ratio in ***Jagbir Singh's case*** stated supra, was followed by the Hon'ble Supreme Court in a later decision in the case of ***'Incharge Officer& another Vs. Shankar Shetty'*** reported in ***'(2010) 9 SCC 126'***.

7. Thus, in line with the ratio laid down by the Hon'ble Apex Court in the aforesaid decisions, as well as in various other decisions in this



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connection, the petitioners herein cannot rightfully claim for reinstatement and other benefits, in lieu of compensation.

8. Likewise, the compensation awarded by the Labour Court under Section 25F(b) of the I.D. Act, which is equivalent to 15 days average pay for every completed year of continuous service or any part thereof, in excess of six months is, a reasonable compensation as per the views of this Court. Thus, I do not find any infirmity in the findings of the award passed by the CGIT dated 25.07.2012.

9. Accordingly, the Writ Petition stands dismissed. No costs.

12.10.2022

Speaking/Non-speaking
Index:Yes/No

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To

The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai – 600 006.



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M.S.RAMESH,J.

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