



W.A.No.18 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.18 of 2020

The Director,
BCG Vaccine Laboratory,
Guindy, Chennai.

...Appellant

Vs.

M.Mallikarjuna (Deceased)

1.The Presiding Officer,
Central Government Industrial Tribunal,
Cum- Labour Court, Chennai – 03.

2.M.Sivakami

3.M.Udhaya Kumar

4.M.Bhuvaneswari

5.M.Saranya

6.Ragamma

...Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, to allow this Writ Appeal by setting aside the order dated 21.03.2019 in W.P.No.27192 of 2004, thereby the order of the 2nd respondent in I.D.No.60 of 2001 dated 10.03.2004.

For Appellant : Mr.N.Ramesh

For Respondents : Mr.V.Ajay Khose for R2, R4 and R5

R1 – Tribunal

R3 and R6 - died

J U D G M E N T

(Judgment was made by **R.SUBRAMANIAN, J.**)

Aggrieved by the direction for payment of all pensionary benefits to the legal heirs of the employee, the appellant/ employer is before us.

2. The employee one Mallikarjuna (Deceased) moved the Regional Labour Commissioner under Section 2(A) of the Industrial Disputes Act challenging his oral termination. He claimed that he was in employment



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with the 2nd respondent/ appellant herein from 1982 as a Casual Labourer and he was appointed on a *ad hoc* basis as a Safaiwala from 31.03.1989.

This appointment was periodically renewed. On 30.11.1990 the employer paid salary for the month of November and informed him that his services were no longer required. Claiming that such termination is illegal, the deceased employee sought to raise Industrial Dispute.

3. Since conciliation failed, the matter was referred to the Industrial Tribunal. The Industrial Tribunal while rejecting the claim for regularization, having found that the workman has not proved his claim that his juniors were regularized, directed reinstatement with 50% back wages since it found that the provisions of Section 25F of the Industrial Disputes Act was not complied with by the employer. While the workman accepted the award, the employer challenged it.

4. From the order of the writ Court we find that the only contention that was raised before the writ Court was that the employer was not an Industry and therefore the question of applicability of Section 25F



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will not arise. We do not find any other point having been urged before the writ Court.

5. The Writ Court relying upon the judgments of the Hon'ble Supreme Court in *Bangalore Water Supply Vs. Rajappa* reported in *1978 (2) SCC 213* and *General Manager, Telecom Vs. A.Srinivasa* reported in *1997 (8) SCC 767* concluded that the employer is an Industry. The Writ Court also took into account the death of the workman during the pendency of the writ petition and directed payment of pensionary benefits to the legal representatives, who were impleaded.

6. Mr.N.Ramesh, learned counsel appearing for the appellant / employer would reiterate his submission that the employer is not an Industry. He would also make an attempt to canvass the issue relating to retrenchment.

7. We do not think we can accept the second contention addressed by the counsel, in as much as the same was not put in issue before the writ



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Court. As regards the contention that the appellant is not an Industry, we are unable to fault the writ Court for having come to such a conclusion as the judgment in *Bangalore Water Supply Vs. Rajappa* still holds good. In *General Manager, Telecom Vs. A.Srinivasa* the Hon'ble Supreme Court has reiterated that once the employer satisfies the three tests laid down in *Bangalore Water Supply Vs. Rajappa* it would be an Industry.

8. We however find that the direction that was issued to pay pensionary benefits to the legal heirs of the workman cannot be sustained, inasmuch as the Tribunal has rendered a specific finding that the workman is not entitled to regularization and such finding has not been challenged by the workman in the manner known to law.

9. We therefore allow the writ appeal in part and a direction to pay pensionary benefits will stand deleted. The award of the Industrial Tribunal will stand confirmed. We are informed that the employer has deposited 50% of the back wages till the date of award with the Industrial Tribunal and the legal representatives of the workman who are alive are



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permitted to withdraw the same. It is open to the legal representatives to workout their rights in the manner known to law. No costs.

(R.S.M., J.) (K.B., J.)
30.11.2022

dsa
Internet :No
Index :Yes
Speaking order



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To

WEB COPY

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