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W.A.No.369/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-02-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.369 of 2023

The Management,
Tamil Nadu Water Supply and Drainage Board,
Cuddalore-1.

...

Appellant

-VS-

1.Murugan

2.The Presiding Officer,
Labour Court,
Cuddalore.

...

Respondents

Appeal is filed under under Clause 15 of the Letters Patent against the order, dated 17.02.2021, passed in W.P.No.9041 of 2004, on the file of this Court.

For Appellant : Mrs.S.Shahila Bhanu



reinstatement with 50% back wages. Also, according to the appellant, the respondent ought to have proved his case and, since he failed to do so, the Labour Court ought not to have granted any relief.

4. A reading of the award of of the Labour Court, as confirmed by the learned single Judge, is very clear that the respondent has produced Attendance Register as Ex.W-1 and the management witness has admitted in the cross-examination that the respondent was terminated from service with effect from 31.10.1991 and that he had been working under the management regularly and completed 240 days of continuous service every year preceding the date of termination. Two witnesses have been examined by the respondent and their evidence has been taken note of by the Labour Court that the respondent was in continuous employment.

5. For the sake of convenience, Sections 25B and 25F of the Industrial Disputes Act,1947, in short, "the Act", are extracted below :

"25B. Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a



cessation of work which is not due to any fault on the part of the workman;

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(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case."

"25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's 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: (b) the workman has been paid, 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; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

6. A reading of Section 25B would make it clear that if an employee has rendered 240 days of continuous service in a period of 12 calendar months, he/she is deemed to be in continuous service.

7. In the case on hand, as admitted by the management witnesses, the employee was in continuous service with an interrupted service, which was not due to the fault of the employee, and that he completed 240 days every year, preceding the date of termination.

8. Further, Section 25F would make it clear that the employer will have to pay retrenchment compensation at the rate of 15 days of average pay for every completed year of continuous service. Even though an employee works for more than three years as in this case and that he has rendered 240 days of continuous service at least in one year, the employer has to pay retrenchment compensation for that particular year, failing which, the termination is bad in the eye of law.



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9. The Supreme Court, in a catena of decisions, held that once non-employment is justified and non-compliance of Section 25F of the Act is made out, reinstatement with full back wages is not automatic. Taking note of the said ratio decidendi, the Labour Court, after analysing the evidence on record, including the fact that the employee has approached the Court belatedly, came to the conclusion to deprive 50% of back wages and directed that employee be posted as an NMR with continuity of service and, therefore, on and from the date of award, the employee is deemed to have been in service without any break.

10. Since the finding of fact has been rendered by the Labour Court, which has been affirmed by the learned single Judge, and the factum that retrenchment compensation has not been paid to the employee despite completion of 240 days of continuous service every year preceding the date of termination, we are not inclined to interfere with the award of the Labour Court, as confirmed by the learned single Judge.

11. This Court, in W.A.Nos.116 to 122 of 2023, decided on 10.01.2023, referring to the decision of the Supreme Court in *General Manager, Telecom v. A.Srinivasa Rao*, 1997 (8) SCC 767, has held that the appellant is an industry and, therefore, the contention that the appellant management is not an industry cannot stand.



Section 2 (j) of the Act, which was sought to be replaced in 1982, has not come into force as on date. As such, we confirm the award of the Labour Court, as affirmed by the learned single Judge. The appellant is directed to implement the award within a period of three months from the date of receipt of a copy of this order, failing which, it is open for the employee to file a complaint under Section 29 of the Act, seeking prosecution against the persons falling under Section 32 of the Act, for which, there is no need to add the management as a party, and the Government is bound to sanction prosecution, as there cannot be any delay, in the light of the decision of the Supreme Court in *The Life Insurance Corporation of India Ltd. v. D.J.Bahadur and Others*, 1980 AIR 2181, in which, the ratio laid down was that the settlement under award will continue to be in force till such time it is replaced by another settlement or award.

12. For the sake of reference, Sections 29 and 32 of the Industrial Disputes Act, 1947, are extracted hereunder :

"29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the



offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid by way of compensation, to any person who, in its opinion, has been injured by such breach."

"32. Offences by companies, etc.- Where a person committing an offence under this Act is a company or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."

13. Writ Appeal is, accordingly, dismissed. No costs. Consequently, the connected C.M.P.No.3534 of 2023 is closed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
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(S.V.N.,J.) (R.K.M.,J.)
22-02-2023

To

The Presiding Officer,
Labour Court,
Cuddalore.



WEB COPY

9/9



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