



Writ Petition No.28690 & 28691 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition Nos.28690 and 29691 of 2004
and WVMP.No.1968 & 1969 of 2004
and WPMp.379 of 2012 and WPMP.No.1969 of 2004

1. Southern Structurals Staff Union,
Regd. No.1054/CPT,
Rep., by its General Secretary,
No.3/1, 4th Cross,
Gandhi Nagar West,
Avadi, Chennai-600054.

2. V.Rajendran ... Petitioners in W.P.No.28690 of 2004

1. V.Vasanthasekar

2. B.Paul Selvanatha ... Petitioners in W.P.28691 of 2004

Vs

1. The Management of
Southern Structurals Ltd.,
Rep., by its Chairman cum Managing Director,
C.T.H. Road, Pattabiram,
Chennai-600072.

2. The Assistant Commissioner of Labour (C) II,
Conciliation Officer,
Kuralagam, Chennai-600 10 ... Respondents W.P.No.28690 of 2004



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1. The Management of
Southern Structurals Ltd.,
Rep., by its Chairman cum Managing Director,
C.T.H. Road, Pattabiram,
Chennai-600072. ... Respondent in W.P.No.28691 of 2004

Prayer in W.P.No.28690 of 2004: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ in the nature of Declaration, declaring the action of the 1st respondent company Southern Structural Limited, a Tamil Nadu Government Company retrenching the following eight workers namely (i) V.Rajendran, (ii) D. Balasubramanian, (iii) P.S.Parthiban, (iv) K.Ramachandran (v) M.Thangaraja (vi) A.Palanisamy (vii) P.S.Parthiban, (viii) D.Rajaram w.e.f. 01.10.2004 as being illegal, contrary to Section 33, 25 F & G of the Industrial Disputes Act, 1947 and Rule 62 of the Tamilnadu Industrial Disputes Rules, 1958 and writ proceedings relating to G.O.Ms.No.90 & G.O.Ms.No.91 dated 17.09.2003.

Prayer in W.P.No.28691 of 2004: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ in the nature of Declaration, declaring the action of the respondent company Southern Structural Limited, a Tamil Nadu Government Company retrenching the petitioners as being illegal, contrary to Section 25 F & G of the Industrial Disputes Act, 1947 and Rule 62 of the Tamilnadu Industrial Disputes Rules, 1958 and writ proceedings relating to G.O.Ms.No.90 & G.O.Ms.No.91



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dated 17.09.2003.

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In Both W.P's:

For Petitioners : M/s.S.Ramaswamy Rajarajan, M. Bhargavi

For Respondents : Mr.Anand Gopalan

for T.S.Gopalan for R.1

: Mr.A.M.Ayyadurai

Government Advocate for R.2

COMMON ORDER

These Writ Petitions are filed for issuance of Writ in the nature of declaration declaring action of the 1st respondent company Southern Structural Limited, a Tamil Nadu Government Company retrenching 8 workers w.e.f. 01.10.2004 as illegal and contrary to Section 33, 25 F & G of the Industrial Disputes Act, 1947 and Rule 62 of the Tamilnadu Industrial Disputes Rules, 1958 and also against the Writ proceedings relating to G.O.Ms.No.90 & G.O.Ms.No.91 dated 17.09.2003 pending on the file of this Court.

2. The petitioner is the union of first respondent company, represented by its General Secretaty registered under Trade Union Act 1926



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and the 2nd petitioner is one of the affected workmen.

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3. The facts in breif as per the affidavit enclosed to this affidavit are as under:

First respondent Southern Structurals Limited, a Tamilnaud Government Company situated at Pattabiram, Chennai, where Railways wagons and cranes were being manufactured. The said company is in existence since, 1956. It was taken over by the Government of Tamil Nadu as per G.O.Ms.No.56, Industries Department dated 07.01.1971. However on account of mis-management, the company did not do well. On 12.10.1992, the first respondent company was declared as sick company under the Sick Industrial Companies (Special Provisions) Act, 1985, thereby Board for Industrial and Financial Reconstruction (BIFR) was trying to find a prospective buyer to purchase the company. The first respondent company wanted to get rid of the employees and in the process number of work orders have not been implemented by the first respondent.

4. The disputes relating to violation of Section 9 A of the Industrial Disputes Act in changing working hours from the time slot of 8 a.m., to



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4.30 p.m., to that of 10.a.m to 05.45 p.m., depriving the workers half an hour tea break, withdrawing the canteen facilities, were pending before the second respondent conciliation officer.

5. The first respondent Management has filed an application under Section 25 N of the Industrial Disputes Act to the Government of Tamil Nadu seeking permission to retrench 15 workers. The Government has stated in the letter dated 23.03.2004 that no permission is necessary since the Government has issued G.O.Ms.No.90 & 91, dated 17.09.2003 declaring the first respondent company as Relief undertaking suspending the applicability of Industrial Dispute Act, Minimum Wages Act, Tamil Nadu Industrial Employment Standing Orders Act and Tamil Nadu Shops and Establishment Act. Aggrieved by the same, petitioner union has raised Industrial Dispute which is pending before the conciliation officer.

6. The petitioner Union has filed W.P.No.17042 & 17043 of 2004 challenging two G.O's declaring the first respondent as Relief undertaking as illegal on the ground that after declaring relief undertaking cannot go ahead and retrench the workers. Those Writ Petitions were admitted by this



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Court on 22.06.2004 and interim stay was granted in both G.O.'s. First respondent management originally had 469 employees including staff, workers and officers. Out of them, 445 were forced to take voluntary retirement and others were threatened to be retrenched. 19 employees were retained for administrative works and remaining 19 employees did not go on VRS. The dispute relating to employees who are forced to go on VRS was pending before the second respondent conciliation officer.

7. The first respondent management after grant of stay of both G.Os by this High Court on 26.06.2004 has come out with an idea to retrench 8 workers who were active members of first petitioner union. First respondent cannot retrench without taking permission under Section 33 of Industrial Dispute Act as the issue with regard to the retrenchment of the workers is pending before the second respondent conciliation officer.

8. Prior to proposing of retrenchment, the first respondent management should put up a seniority list as per rule 62 of the Tamil Nadu Industrial Dispute rules 1958 which the first respondent has not done. Thereby, it is not clear as to who is junior and who is senior among them. In



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case if the first respondent wanted to retain the juniors and retrench the seniors, reasons have to be recorded as required under Section 25(G) of the Industrial Dispute Act. The first respondent taking advantage of the interim stay has retrenched 8 workers stating that they have been complying with the Industrial Dispute Act, thereby the very purpose of declaring first respondent as relief undertaking is lost. The retrenchment of 8 workers with effect from 01.10.2004 is illegal and contrary to Section 33, 25 (F), 25(G) of Industrial Dispute Act read with Rule 62 of Tamil Nadu Industrial Disputes Rules.

9.The first respondent has filed counter affidavit through its General Manager in charge stating that first respondent has started its factory at Pattabiram, Chennai for manufacturing of railway wagons. Later it also used to produce cranes and mining equipment. Originally it was a private company and in the year 1971 it was taken over by the Government of Tamil Nadu. It became sick company after 1989 and referred BIFR in May 1992. Ever after implementation of rehabilitation package, the company could not revive, thereby, BIFR declared the rehabilitation scheme as failed.



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10. It is mentioned in the counter affidavit that the Government has constituted a committee to study working of various public sector undertakings. The committee has concluded that the first respondent company could not sustain without financial support of the state government and recommended for wound up. First respondent company started production from November 2001. At that time there were more than 750 employees including workmen. A voluntary retirement scheme was introduced whereunder except 19 workers, rest of them have opted for voluntary retirement scheme. Out of the employees who opted for VRS, 19 employees were retained for day-to-day administrative works. VRS opted employees have received their dues. Out of 19 employees, who did not opt for VRS, 7 were in deputation in the corporations of state government. On 29.01.2004, first respondent made an application to the government seeking permission to retrench 15 workers. The government has replied stating that first respondent had been declared as relief undertaking under Tamil Nadu Relief Undertaking Act, thereby, the provisions of the Industrial Dispute Act will not apply.



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11. It is further submitted in the counter affidavit that the petitioner has filed W.P.Nos.17042 and 17043 of 2004, challenging G.O.No.90 and 91 dated 07.09.2003, declaring the first respondent as relief undertaking. On 22.06.2004, the bench of this Court has admitted the same and granted stay of operation of both the G.Os'. The union has filed an application for injunction restraining the first respondent from terminating the services of the employees without complying with the provisions of the Industrial Dispute Act.

12. It is further submitted that The first respondent was advised that the interim order would not come in a way retrenching the employees if the retrenchment is effected after complying the provisions of Industrial Dispute Act. Accordingly, on 01.10.2004, first respondent has retrenched 8 staff members and 4 workmen. Retrenchment letter was served on all workmen on 01.10.2004. Then retrenchment letters were sent by registered post and it was also displayed in the notice board. The petitioner union is fully aware of the service of order of retrenchment. The present Writ Petition is filed challenging the retrenchment order dated 01.10.2004.



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13. It is also mentioned in the counter affidavit that all the employees who retrenched are workmen within the definition of the Section 2(s) of the Industrial Act. The aggrieved persons should approach the machinery under the Industrial Dispute Act. In the period of 12 months preceding to 01.10.2004 the number of workmen were less than 100 and therefore Section 25(N) of the Industrial Dispute Act would not apply and no permission is necessary for retrenchment. Retrenchment does not amount alteration of service conditions.

14. The petitioner union has filed reply affidavit stating that first respondent company has filed an application on 29.01.2004 for permission under Section 25(N) of the Industrial Dispute Act to retrench 15 workmen which includes 11 staff members and 4 workmen and the Government has returned the said application on 24.03.2004 on the ground that no such permission is necessary. The juniors cannot be continued on deputation when seniors are being sent out and it is violation of the Section 25(g) of the Industrial Dispute Act. The issue with regard to retrenchment of the employees is pending before the conciliation officer under Section 12 of the Industrial Dispute Act and thereby first respondent cannot decide to



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retrench without taking permission under Section 33 of Industrial Dispute Act. The retrenchment is arbitrary and violation of provision of Sections 33, 25(G) and 25(N) of Industrial Dispute Act and Rule 62 of Industrial Dispute Rules.

15. First respondent has filed additional counter affidavit stating that as in 01.10.2004 there were 38 employees on the roles of the company of which 12 were officers 18 were the staff members and 8 were workers. Out of which 8 officers, 7 staff members and four workmen submitted their VRS application and they have taken payment. Out of the remaining 19 person, 7 persons were on deputation under other government organisations. These persons have applied for vacancies advertised in other government organisations and interviews were conducted and they were selected by the organisation. They have applied absorption into the organisation. In case if the government decides against their absorption, the said 7 persons will be retrenched and that remaining 12 workmen were retrenched on 01.10.2004 by following the provisions of Industrial Dispute Act. Out of 12 retrenched workmen 8 staff members and 2 workmen have filed Writ Petition. One of the workman by name Udhayan has accepted retrenchment and signed



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settlement under Section 18(1) of Industrial Dispute Act.

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16. Heard both sides and perused the records

17. It is submitted by the learned counsel for the petitioner that eight persons were retrenched illegally about more than 20 years ago and all of them are starving and that though the first respondent company have declared that the company was closed, only in the year 2021 the company closed.

18. On the other hand learned Additional Government Pleader has submitted that first respondent company has followed all the procedure under the Industrial Dispute Act and retrenched eight persons and thereby the petitioner is not entitled for any relief.

19. The first respondent company was originally a private company situated at Pattabiram, Chennai. In the year 1971 it was taken over by the Government of Tamil Nadu, however in the year 1989, it become sick industry it was referred to BIFR in the month of May 1992. Though the



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rehabilitation package was announced, still the company could not be revived, therefore BIFR scheme was failed. Further the committee constituted to study the various public undertakings has given a report for closure of the first respondent company.

20. Originally when the company was started there were about 758 employees. After the company became sick, a Voluntary Retirement Scheme was announced wherein except 19 employees rest of them have taken Voluntary Retirement Scheme. Out of the 19 employees who have not opted for Voluntary Retirement Scheme, seven persons were deputed to the State Government. Finally the first respondent has retrenched eight staff members and four workmen on 01.10.2024.

21. The issue started when the first respondent has addressed a letter to Government on 29.01.2004 seeking for permission to retrench 15 workers. The Government having received the same replied stating that since the first respondent company declared “relief undertaking” under the Tamil Nadu Relief Undertaking Act, the provisions Industrial Dispute Act will not apply. It is to be noted at this stage the Government has issued



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G.O.MS.No.90 & 91 on 07.09.2003 declaring the first respondent as relief undertaking company. The petitioner union aggrieved by both the G.Os declaring the first respondent as relief undertaking has filed W.P.No.17042 and 17043 of 2004 wherein this Court has granted interim stay.

22. The grievance of the petitioner union is that the retrenchment of the employees is illegal against the provisions of the Industrial Dispute Act, and that the Juniors cannot be continued on continued on deputation when the seniors are being retrenched and there is violation of Section 25(G) of the Industrial Dispute Act, and that first respondent cannot retrench without taking permission under Section 23, thereby retrenchment is in violation of Section 23, 25G, 25H of the Industrial Dispute Act and Rule 62 of the Industrial Dispute Rules.

23. Section 25 F of the Industrial Dispute Act runs as under:

“Section 25F.—In clause (b), for "fifteen days", substitute "thirty days" [Vide Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Second Order, 2020, Notification No. S.O. 3465(E), dated (5-10-2020) and Vide Union Territory of



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Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S.O. 3774(E), dated (23-10-2020).] 4 [25FF. Compensation to workmen in case of transfer of undertakings.—Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if— (a) the service of the workman has not been interrupted by such transfer; (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer. 1 [25FFA. Sixty days' notice



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to be given of intention to close down any undertaking.—

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking: Provided that nothing in this section shall apply to— (a) an undertaking in which— (i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project. (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.] 25FFF. Compensation to workmen in case of closing down of undertakings.—(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for



not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. 2 [Explanation.—An undertaking which is closed down by reason merely of—

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or (iii) the expiry of the period of the lease or licence granted to it; or (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.] 3 [(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section



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shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if— (a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure; (b) the service of the workman has not been interrupted by such alternative employment; and (c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment. (1B) For the purposes of sub-sections (1) and (1A), the expressions “minerals” and “mining operations” shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).] (2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any



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compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every 1 [completed year of continuous service] or any part thereof in excess of six months.]”

24. As per the above provision, prior to retirement of any worker the workmen, the Management shall give one month notice in writing indicating the reasons for the retrenchment. In the case on hand admittedly notice were given to workmen who were retrenched thereby requirement of Section 25 has already been complied with.

25. The petitioner is also expected to address a letter to Government in respect of proposed retrenchment. On 29.01.2004, the first respondent send information to the Government seeking permission to retrench 15 workers. However the Government has replied stating that since the first respondent factory company is declared as relief undertaking under Tamil Nadu Relief Undertaking Act, the provisions the provisions of the Industrial Dispute Act will not apply. There is no doubt that the petitioner company was declared as relief undertaking as per Tamil Nadu Relief Undertaking



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Act. The petitioner union has filed WP.No.17042 and 17043 of 2004 challenging the G.O.'s 90 and 91 dated 07.09.2003 whereunder the first respondent factory was declared as relief undertaking. This Court has granted stay of operation of both G.O.s, thereby again the provisions of Industrial Dispute Act will apply. Therefore, the question to be considered is whether the provisions of Industrial Dispute Act have been followed or not.

26. It is the contention of the learned counsel for the petitioner union that the first respondent has violated Section 25G of the Industrial Dispute Act.

27. Section 25(G) runs as under:

“25G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall



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ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”

28. It is to be noted that originally there were 750 employees in the first respondent factory. Except 19, remaining employees opted for VRS. Out of the 19 also 7 workers have been deputed to the Government organisations and they have applied for available vacancies in the Government and likely to be absorbed. It is also specifically mentioned in case seven persons were not being absorbed, they will also be retrenched. Therefore when out of the 750 employees, except 19 persons all of the them have taken VRS and out of the 19 persons since 7 persons were deputed to the Government, then only 12 persons were left and out of the 12 persons, on behalf of 8 persons, these Writ Petitions are filed. Therefore, if at all there is a seniority, it has to be seen only in respect of 12 persons and according to first respondent all of them were retrenched. Since seven persons were not available and deputed to the Government, they were not retrenched, thereby under these circumstances, Section 25 (g) of the



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Industrial Dispute Act is deemed to have been complied with.

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29. In view of the above, on considering the entire material on record, this Court is of the opinion that the first respondent has complied with all the requirements of the Industrial Dispute Act and thereby the action of the first respondent retrenching eight persons cannot be declared contrary to the provisions of the Industrial Dispute Act.

30. With the above observations, these Writ petitions are disposed of .
No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2023

Speaking (or) Non Speaking Order

Index : Yes/ No

Internet : Yes

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To

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Southern Structurals Ltd.,
Rep., by its Chairman cum Managing Director,
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2. The Assistant Commissioner of Labour (C) II,
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Dr.D.NAGARJUN, J.
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