



W.P.No.1817



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.18174 of 2012
and M.P.No.1 of 2012

T.Anbazhagan

...Petitioner

vs.

1.The labour Court,
Cuddalore.

2.The Management,
Chengalvarayan Co-operative Sugar Mill,
Matriculation School,
Periyasevalai,
Villupuram.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the Award of the Labour Court, Cuddalore dated 30.11.2009 in I.D.No.139 of 2000 and quash the same and consequently direct the 2nd respondent school to reinstate the petitioner in service with all the monetary and attendance benefits.

For Petitioner : Mr.J.Inbasekaran
for Mr.K.Selvaraj

For Respondent : R1 – Labour Court
R2 – No appearance



ORDER

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The Writ Petition has been filed challenging the award of the Labour Court affirming the order of retrenchment passed by the second respondent.

2.Heard Mr.J.Inbasakaran, learned counsel appearing for Mr.K.Selvaraj, counsel on record for the petitioner. When the matter was taken up, there is no representation on behalf of the respondents.

3.Mr.J.Inbasekaran, learned counsel for the petitioner would submit that the petitioner was employed as a Peon by the second respondent on 17.08.1985 and he had joined on 23.08.1985. Even though originally the petitioner was paid a salary of Rs.750/-per month, the same was revised and he was paid a sum of Rs.2,812.60 per month. The petitioner had been working continuously at the second respondent from the date of his appointment till 17.11.1999. On 17.11.1999, the second respondent issued an order of retrenchment by assigning a reason as to the financial condition of the school, the petitioner was sought to be retrenched. In the retrenchment order, it was stated that a sum of Rs.6,800/- had been enclosed towards retrenchment notice and compensation.

4.He would further submit that the said amount of Rs.6,800/- by way of

cheque was not enclosed with the order of retrenchment. Therefore, he had



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raised an industrial dispute on failure of Conciliation Proceedings. The Labour Court, however, refused to interfere with the order of retrenchment by holding that the procedure prescribed under the order of retrenchment had been followed and it was the petitioner who had not deposited the cheque that had been given to him.

5.He would submit that the reason assigned in the alleged order of retrenchment is false. He drew my attention to the evidence of the management witness, wherein the management witness had accepted that the school is functioning well and that the school had also with the credit of a sum of Rs.26,00,000/- in the bank. When such was the admission of the management witness, he would submit that the first respondent ought to have interfered with the order of retrenchment as the reason assigned in the order of retrenchment is false. He would further submit that the second respondent had not issued any retrenchment notice as prescribed under Section 25(F) of the Industrial Disputes Act. However, he would submit that such notice can be dispensed with in lieu of payment of one month notice.

6.He would further submit that the second respondent management had contended that apart from the retrenchment compensation of Rs.6,800/-, the petitioner had been paid one month salary in lieu of notice. To substantiate their



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claim of payment of both the compensation and salary in lieu of one month notice, they had produced Exhibits MW3 and MW4, the challan of the alleged cheque issued by them. MW3 was a cheque claimed to have been issued in lieu of one month notice, the said cheque is dated 11.03.2000 whereas the order of retrenchment had been passed on 17.11.1999. He would submit that this fact had been overlooked by the Tribunal in coming to the conclusion by the order of retrenchment, the petitioner was paid both the compensation as well as one month salary in lieu of notice, to come to a conclusion that a retrenchment had been validly made as provided under Section 25(F) of the Industrial Disputes Act. Therefore, he would submit that the entire award of the Tribunal is perverse and is liable to be interfered with and the order of retrenchment be set aside and the second respondent be directed to absorb the petitioner in service.

7.I have considered the submission made by the learned counsel appearing for the petitioner and perused the materials available on record before this Court.

8.The *lis* to be decided in this Writ Petition is to the validity of the retrenchment order passed by the second respondent dated 17.11.1999 retrenching the petitioner from service. It would be useful to refer to the provision of Section 25(F) of the Industrial Disputes Act.



25-F.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).

From a reading of the provisions of the Industrial Disputes Act, it could be seen that the following is envisaged while retrenching an employee which is a well established principle based on last come first go. The aforesaid provision envisages as follows:



(a) The first condition to retrench a workman is to give one month notice in writing indicating a reason for retrenchment and the period of one month had expired.

(b) In lieu of one month notice, wages for the said period is to be paid.

(c) The workmen should be paid a retrenchment compensation which is equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months.

The petitioner had raised an issue that he was not the last person employed by the second respondent for me to go into the said issue.

9. In the present case, the petitioner had been issued with a retrenchment order on 17.11.1999. The reasons for the retrenchment is the financial conditions of the second respondent school. The said order of retrenchment also indicates a payment of compensation of Rs.6,800/- towards one month salary and retrenchment compensation. The second respondent in its proceedings had claimed that they had paid a sum of Rs.6,800/- as retrenchment compensation which is evidenced by Ex.MW4 and had paid one month salary in lieu of one month notice under Ex.MW3.

10. I have perused both the Exhibits and the materials available on record.



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11.Ex.M.W.4 is dated 17.11.1999, the date on which the retrenchment order was passed by the second respondent. Ex.MW3 alleged to be the salary paid in lieu of notice period is dated 11.03.2000. When an order of retrenchment was passed on 17.11.1999, it was imperative that if the management had decided to dispense with the notice period namely the salary in lieu of one month notice ought to have been paid on the same date. But on the contrary in the present case, the same had been paid under Ex.MW3 on 11.03.2000 which was during the period of Conciliation Proceedings. Therefore, I am of the considered view that the procedures prescribed under Section 25(F) of the Industrial Disputes Act had not been followed in the case of the petitioner. The provision under Section 25(F) of the Industrial Dispute Act cloth with the management the power to remove the employee on last come first go basis, with a rider that they should be given preference in the future appointment.

12.From the evidence of the management witness as recorded by the first respondent, it could be seen that there is a categorical admission that the school is functioning well and the strength of the students have also increased apart from construction of a new building and the school is also maintaining a deposit of Rs.26,00,000/- in a bank account. When such being the position, I am not able to comprehend the reasons that had been stated in the retrenchment order.



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13.The statute provides that the retrenchment order should contain the reasons for retrenchment. There can be no false reasons adduced in the order of retrenchment in retrenching an employee. Therefore, I find that the reasons assigned by the second respondent which is statutorily mandatory is a false statement and therefore, I am of the considered view that the order of retrenchment had been made by the second respondent only to throw the petitioner out of service for the reasons best known to them. Further, the procedure contemplated under Section 25(F) of Industrial Disputes Act particularly, the payment of one month salary in lieu of the one month notice period has also not been paid on the date of retrenchment. Therefore, I find that the order of the Labour Court is wholly perverse and contrary to the facts of the case.

14.In fine, the order impugned in this Writ Petition is set aside as a sequel, the order of retrenchment made by the second respondent is also set aside. The second respondent is directed to reinstate the petitioner with continuity of service with all other attendant benefits, which shall be made within a period of eight weeks from the date of receipt of a copy of this order.



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15. In fine, the Writ Petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

The labour Court,
Cuddalore.



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K.KUMARESH BABU, J.

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