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W.P.Nos.3988 & 3990 to 3993 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.09.2023

Pronounced on : 04.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.3988 & 3990 to 3993 of 2004 and
WPMP.Nos.4703, 4707, 4709, 4711 & 4713 of 2004

WP.No.3988 of 2004

The Management of Universal
Cooling Systems,
368, Chettipalayam Road,
Malumichampatti Post,
Coimbatore 641 021
By its Partner

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore
2.P.Malliga

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a Writ of Certiorari calling for the records of the first
respondent in ID.No.687 of 1999, quash the award dated 24.12.2003.



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For Petitioner
in all WP's

: Mr.R.Asokan

For Respondents
in all WP's

R1

: Court

For R2

: Mr.R.Sunil Kumar

COMMON ORDER

These writ petitions have been filed challenging the common award passed by the first respondent in ID.Nos.687, 690, 694, 696, 697, 707 & 708 of 1999 dated 24.12.2003, thereby ordered to reinstate the second respondent in all the writ petitions (hereinafter called as 'workmen') with 50% backwages.

2. Mr.R.Asokan, the learned counsel for the petitioner submitted that the petitioner was one of the manufacturers of radiators required for the automobile industry. It produced radiators as per the specific order placed by Maruti Udyog Limited. Thereafter, the said Maruti Udyog Limited started its own manufacturing unit and as such, it completely stopped its orders to the petitioner. It resulted in lack of orders for the radiators manufactured by the petitioner and also lead to



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retrenchment of number of workmen working in the factory since there was no work in the factory. That apart, the petitioner manufactured brass and copper radiators. The new companies introduced aluminium radiators which are cheaper than the brass and copper radiators and as such, it was also one of the reason for closure of the petitioner factory. Due to the financial loss, the petitioner issued closure notice as contemplated under Section 25FFA of Industrial Disputes Act, 1947 to the State Government as well as the workmen. The petitioner also displayed the notice in the notice board of the factory. Along with closure notice, the petitioner also sent closure compensation. However, the workmen refused to receive the same.

2.1 He further submitted that there were totally 51 workmen, out of which 24 workmen were received closure compensation and left the factory accepting the closure of the petitioner factory. The remaining 22 workmen refused to receive the compensation and raised a dispute under Section 2-A(1) of Industrial Disputes Act for non employment. In fact, the workmen through their Union already raised issues under Section



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2(k) of Industrial Disputes Act and subsequently, it was withdrawn.

Thereafter, every workman individually raised dispute under Section 2-A(1) of the Industrial Disputes Act. While pending the disputes, some of the workmen entered into a settlement under Sections 12(3) and 18(1) of the Industrial Disputes Act and received closure compensation and their disputes were closed as not pressed. The Labour Court allowed the Industrial Disputes raised by the workmen and ordered to reinstate them with 50% of backwages. The workmen raised Industrial Disputes for their non employment under Section 2-A of Industrial Disputes Act. When the non employment was due to closure of the factory which affected the entire workmen employed in the unit, there cannot be adjudication of the dispute with respect to the legality or otherwise of the closure of the factory in the absence of an Industrial Dispute raised by the workmen under Section 2(k) of the Industrial Disputes Act and by the valid reference.

2.2 He further submitted that admittedly, the workmen and also the concerned authority were served with notice as contemplated under



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Section 25FFA of the Industrial Disputes Act. Though the workmen specifically contended that the machineries of the petitioner unit were shifted to its sister concern and the closure itself is malafide one, they failed to produce any evidence to substantiate their claim. That apart, the Labour Court cannot enlarge the scope of the adjudication since the workmen raised dispute for their non employment. The petitioner surrendered its licence to the Factories Inspector as early as on 01.03.1999 and from that date, the factory was not functioning. The petitioner unit is separately functioning and it was engaged in the production of radiators. In fact, Maruti Udyog Limited only placed orders and on the said orders, the petitioner factory manufactured radiators and supplied to it as per the orders. Once it stopped its orders, the petitioner unit sustained financial loss and as such, it issued closure notice as contemplated under Section 25FFA of the Industrial Disputes Act to the authority concerned and to the workmen. It also surrendered its licence to the Factories Inspector. Therefore, the reason for closure of the petitioner unit is not for any other reason as alleged by the workmen.



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2.3 He further submitted that even assuming that the sister concern of the petitioner is running, it is not necessary that the entire establishment of the petitioner should be closed in order to attract the provision under Section 25FFF of the Industrial Disputes Act. He relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***District Red Cross Society Vs. Babita Arora and Others*** reported in ***(2007) 7 SCC 366***, wherein the Hon'ble Supreme Court of India stated that in the case of *J.K.Synthetics Vs. Rajasthan Trade Union Kendra* reported in ***(2001) 2 SCC 87***, it is held that the closure need not be the entire plant. A closure can also be of a part of the plant. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose. Therefore, the bonafide in closure of the unit would not attract for the closure of unit under Section 25FFF of Industrial Disputes Act and the provision under Section 25-O of Industrial Disputes Act only requires bonafide.



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3. The learned counsel for the workmen vehemently contended that the closure of the petitioner unit is not genuine. The other workmen of the petitioner unit were shifted to its sister concern. The petitioner unit only was closed and other units are still functioning. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Management of the Express Newspaper (P) Ltd, Madras Vs. Workers and Others*** reported in (1963) 3 SCR 540.

4. Heard, Mr.R.Asokan, the learned counsel appearing for the petitioner and Mr.R.Sunil Kumar, the learned counsel appearing for the second respondent.

5. In the judgment relied upon by the learned counsel for the workmen in the case of ***Management of the Express Newspaper (P) Ltd, Madras Vs. Workers and Others***, the Hon'ble Supreme Court of India held that the theoretical distinction between a closure and a lockout is well settled. In the case of a closure, the employer does not merely close down the place of business, but he opposes the business itself; and



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so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of business itself. Experience of Industrial Tribunals shows that the Lockout is often used by the employer as a weapon in his armoury to compel the employees to accept his proposals just as a strike is a weapon in the armoury of the employees to compel the employer to accept their demands. Though the distinction between the two concepts is thus clear in theory, in actual practice it is not always easy to decide whether the act of closure really amounts to a closure properly so-called, or whether it is a disguise for a Lockout. Thus, it is clear that the lockout is often used by the employer as a weapon in his armoury to compel the employees to accept his proposals just as a strike is a weapon in the armoury of the employees to compel the employer to accept their demands.

6. In the case on hand, the petitioner unit was closed due to no order was placed by its customer. Therefore, the petitioner unit sustained heavy financial loss and as such, it was closed and its licence was also surrendered before the Factories Inspector. Therefore, the above judgment



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is not applicable to the case on hand. While pending two other writ petitions, two workmen i.e. R.Ganeshamoorthy and A.Mallika were settled by the petitioner by the settlement dated 21.03.2017 itself. Insofar as the present workmen are concerned, they are entitled for compensation as contemplated under Section 25FFF of Industrial Disputes Act as follows:

Sl. No.	Name	Gratuity Rs.	Legal Compensation Rs.	Other Legal dues Rs.	Total Rs.
1	N.Mangalagowri	20838.70	20838.70	1494.99	43172.40
2	P.Mallika	20838.70	20838.70	2581.04	44258.45
3	N.Janaki	20838.70	20838.70	2752.60	44430.01
4	B.Sasikala	20838.70	20838.70	1169.84	42847.25
5	P.Murugesan	17861.75	17861.75	2613.24	38336.80
	TOTAL				213044.91

7. In view of the above, this Court finds infirmity and illegality in the award passed by the Labour Court since it is perverse and against the evidence. Accordingly, the common award passed by the first



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respondent in ID.Nos.687, 690, 694, 696, 697, 707 & 708 of 1999 dated 24.12.2003 is quashed and all the writ petitions are allowed. However, the workmen/ the second respondent in all the writ petitions are entitled for their compensation as contemplated under Section 25FFF of Industrial Disputes Act as stated above. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

04.10.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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To

- 1.The Presiding Officer,
Labour Court,
Coimbatore
- 2.The Government Advocate
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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