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W.P.No.34599 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2023

PRONOUNCED ON : 06.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.34599 of 2005

and W.P.M.P.No.37511 of 2005 & W.V.M.P.No.254 of 2006

The Management of
Brakes India Limited,
Padi, Chennai – 600 050.

...Petitioner

-Vs-

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2. S.Vijayalakshmi
3. M.S.Venkatesan
4. M.S.Govindan
5. M.S.Perumal
6. M.S.Balakrishnan
7. V.Nagalakshmi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent herein viz., the Presiding Officer, Principal Labour Court, Chennai, in I.D.No.234 of 1998 and quash the award passed therein dated 01.12.2004 which was received by the petitioner on 07.07.2005.



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For Petitioner : Mr.R.Jayaprakash
For Respondents
For R1 : Court
For R2 to R7 : Mr.K.M.Ramesh, Senior Counsel
For Mr.V.Subramani

ORDER

The Writ Petition has been filed challenging the award passed by the Labour Court in I.D.No.234 of 1998 dated 01.12.2004, thereby ordered to pay back wages from the date of the discharge of the deceased workman, till the date of his retirement and all other attendant benefits.

2. The petitioner herein is called as the management and the deceased workman is called as the workman. The workman was employed in the petitioner's firm on 01.06.1965, as Helper. Thereafter he was promoted as Fork Lift Operator in the year 1970. The workman had licence to drive heavy vehicle as such he was promoted as Fork Lift Driver in Staff Grade III during the month of October, 1975. While being so, he had complaint of chest pain while he was on duty on 10.08.1981. Due to which he got admitted in the private hospital. Thereafter he was shifted to Royapettah Government Hospital. After 47 days, he was



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discharged from the hospital. Once again, he suffered with chest pain on 16.12.1982 and he was admitted in the Royapettah Government hospital.

Thereafter, he was resumed duty on 27.01.1983. Again he went on leave from 28.01.1983 to 11.02.1983 due to his ill-health. On third time, on 02.03.1983, again he suffered with chest pain and the cardiologist had examined him and opined that the workman was fit to do normal work of a Fork Lift Operator. On fourth time, on 17.06.1983, the workman again suffered with chest pain and the specialist opined that he should not work after the meals(one hour rest), night shifts and should not carry or shift heavy loads. Accordingly, the workman was advised not to undertake night duty.

3. While being so, the workman wrote a letter to the company on 06.08.1983, stating that his health condition deteriorated after frequent heart attacks. Therefore, he request the petitioner company to consider his case sympathetically and requested to consider his family members for suitable job. Due to his heart ailment and opinion given by the specialist and also considering the nature of work and having regard to the fact that there was no scope for providing employment in any



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other position, the workman was discharged from service on the ground of continued ill health from 02.09.1983, since he was not medically fit to continue to perform his regular duties. Aggrieved by the same, the workman raised dispute under Section 2A of the Industrial Dispute Act (hereinafter called as “the ID Act”) before the Assistant Commissioner of Labour - II. However, the government declined to refer the matter for adjudication. Hence, the workman challenged the same before this Court in W.P.No.370 of 1985. The Hon'ble Division Bench of this Court by an order dated 19.03.1990, remitted back the matter to the government for fresh consideration.

4. Aggrieved by the same, the petitioner management preferred an appeal before the Hon'ble Supreme Court of India in S.L.P.(C).No.12620 of 1990. While pending the appeal, the government referred the dispute before the Additional Labour Court-I, Madras by an order dated 27.08.1991. Therefore, the petitioner management had withdrawn the S.L.P.(C).No.12620 of 1990 and challenged the order dated 27.08.1991 viz., reference made by the government, before this Court in W.P.No.14470 of 1991. This Court by an order dated



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14.01.1992, once again remitted back to the government for fresh disposal after providing opportunity to both parties.

5. Thereafter, once again the government declined to refer the matter for adjudication by an order dated 09.04.1992 and the same was challenged by the workman before this Court in W.P.No.5734 of 1992. This Court by an order 06.11.1997 dismissed the writ petition as against which, the workman filed an appeal in W.A.No.1715 of 1997. The Hon'ble Division Bench of this Court by an order dated 20.03.1998, set aside the rejection order and referred the matter directly to the Labour Court by framing issue as to whether the discharge of the workman or his non-employment is justified and if not what relief, the workman is entitled to, in W.A.No.1715 of 1997.

6. While pending adjudication before the Labour Court in I.D. No.234 of 1998, the workman died and his legal representatives were impleaded as parties to the proceedings viz., the respondents 2 to 7 herein. After adjudication, the Labour Court found that the workman was illegally discharged from his service and ordered to pay back wages from



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the date of his discharge to till the date of his retirement with all other attendant benefits. Challenging the said order, the petitioner management preferred the present writ petition with the above said prayer.

7. The learned counsel appearing for the petitioner management submitted that the workman was discharged only due to ill health and on four occasion, he suffered with heart attack and as such he was discharged from his service. The petitioner management is having certified standing order which is binding upon the employer and employee. However, the Labour Court concluded based on the judgment of the Hon'ble Supreme Court of India held in the case between the Transport Corporation and its employment. Therefore, the alternative employment would not arise, since the workman was discharged on the ground of medical illness.

7.1. He further submitted that there is regulation for alternative job, if an employee is found to be medically unfit, the Hon'ble Supreme Court of India held that it is not a vested right. That being the legal position, the Labour Court ought not to have ordered back wages. There



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is no provision in the certified standing order of the company for alternative employment. Even as per the Rights of Persons with Disabilities Act, the petitioner is being a private concerned, it would not apply for alternative employment for the person who medically unfit.

7.2. He also submitted that before the said Act, the Hon'ble Supreme Court of India held in the judgment reported in ***AIR 1991 SC 1003*** in the case of ***Anand Bihari and ors Vs. Rajasthan State Road Transport Corporation, Jaipur and ors.***, as follows :-

"5. The definition of "retrenchment" Under Section 2(00) of the Act is as follows:

2(00). "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- (a) voluntary retirement of the workman; or*
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its*



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expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

There is no dispute before us that the only Sub-clause of the definition which can cover the present termination of service is Sub-clause (c). There was some debate before us as to the exact import of the expression "continued ill-health". While it was urged on behalf of the workmen that ill-health which is spoken of there does not cover the cases of a loss of a limb or an organ or of its permanent use, and covers cases only of a general physical or mental debility or incapacity to execute the work, the argument on behalf of the Corporation was that it would include also cases of a permanent loss or incapacity of a limb or an organ such as eye or eyesight, ear or hearing capacity, of hand or leg etc. which is necessary for discharging the duty in question. For this purpose, reliance was placed on behalf of the Corporation on a decision of this Court in Workmen of the Bangalore Woolen, Cotton and Silk Mills Co. Ltd. v. Its Management, [1962] 1 LLJ 213. In that case the Court while interpreting the definition of retrenchment has held as follows:.

The definition "retrenchment" in Section 2(00) of the Act means termination of service. A service cannot be said to



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employment again. It would follow that such a person cannot be said to have been retrenched within the meaning of the Act as amended by the Ordinance. (emphasis supplied)

6. Even otherwise, it can scarcely be disputed that the expression "ill-health" used in Sub-clause (c) has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not any illness but that which interferes with the usual orderly functioning of the duties of the post which would be attracted by the sub-clause. Conversely , even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted, it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged which is relevant and material and should be considered for the purpose. The expression "ill-health" is defined in the new Collins Concise English Dictionary to mean "not in good health; sick"; in Webster's Comprehensive Dictionary (International Edition) to mean "disordered in physical condition; diseased; unwell; sick"; in the Concise Oxford Dictionary (3rd Edition) to mean "out of health; sick; with disease; with anxiety (of health), unsound;



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disordered, morally bad", and in Shorter Oxford English Dictionary to mean: "Unsound, disordered; Out of health, not well". Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a work-man's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worse still in cases such as the present one they will endanger the lives and the property of the consumers. Hence, we have to place a realistic and not a technical or pedantic meaning on the said phrase. We are, therefore, more than satisfied that the said phrase would include cases of drivers such as the present ones who have developed a defective or subnormal vision or eye-sight which is bound to interfere with their normal working as drivers.



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7. *In the view we have taken of the said sub-clause, it is obvious that the termination of the services of the workers in the present case being covered by Sub-clause (c) of Section 2(oo) would not amount to retrenchment within the meaning of Section 2(oo) of the Act. Hence, the termination per se is not illegal because the provisions of Section 25F have not been followed while effecting it.*”

Therefore, the termination of service of the workman on the ground of continued ill-health, is being covered by sub-clause (c) of Section 2(oo) of the ID Act, it would not amount to retrenchment within the meaning of Section 2(oo) of the ID Act. Hence, the termination *per se* is not illegal.

7.3. The learned counsel appearing for the petitioner management also relied upon another judgment reported in **2005(4) Mh.L.J. 127** in the case of **Ramaswamy Murugesh Vs. S.G.Bhonsale and anr.**, as follows:-

“11. The expression 'continued ill-health' occurring in sub-clause (c) of Section 2(oo) has to be given contextual meaning. In the context, obviously it should mean the condition of the health of an employee



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that consistently affects the functioning of the duties of the post. It is not the gravity of disease that would alone fall, within the meaning of expression 'continued ill-health' but its affection on the due discharge of the normal duties. Ill-health is something not in good health. It is disordered physical condition. To find out whether the person is in continued ill-health for the purposes of sub clause (c) of Section 2(oo) of the ID Act is what is to be seen is whether such person does not possess good health for a considerable long period and that has affected him from active duties. The disease in the body may result in ill-health if it continues over a period of time affecting normal discharge of duties and if that happens a person can be said to be suffering from continued ill-health. As the Supreme Court said in the case cited supra that one has to place a realistic and not a technical or pedantic meaning on the phrase 'continued ill-health'. An illness over a period of time that affects in discharge of duties would bring into operation sub-clause (c) and the workman can be said to be suffering from continued ill-health. The phrase 'continued ill-health' also has to be given colour to cover the cases if on account of illness of the employee the product or service has been affected or likely to be affected."



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Accordingly, held that the expression continued ill-health in sub clause (C) of Section 2(oo) of the ID Act, does not mean uninterrupted continued ill-health but what it means is ill-health for considerable period and long duration affecting normal duties.

7.4. He also relied upon the judgment reported **2005 (2) L.L.N. 365** in the case of ***Maharashtra State Electricity Board and anr Vs. Damodhar Sakharam Bhoyar and ors***, in which the Hon'ble High Court of Bombay held as follows :-

“9..... Merely because he actually performed that job without any difficulty for certain time cannot be a decisive factor and based upon such service put in by him, it cannot be said that it is a retrenchment. It is thus clear that the law as explained by Apex Court in above judgment has not been correctly applied by either the Labour Court or Industrial Court. Under the circumstances both the orders impugned here are quashed and set aside”

Hence, he prayed to set a side the award passed by the Labour Court.



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8. Per contra, the learned Senior Counsel appearing for the respondents 2 to 7 submitted that the Rights of Persons with Disabilities Act, is also applicable to the private concern. Therefore, the Labour Court rightly ordered to pay back wages to the workman. The workman was employed permanently in the factory of the petitioner and he had 20 years of service. Initially the workman was appointed as helper and subsequently promoted as Work shower operator – grade III. Thereafter he was promoted as Fork Lift Operator in the staff category. He was in possession of heavy vehicle license. Therefore, he was fully qualified to appoint in the post of Fork Lift Operator.

8.1. He further submitted that during the course of his employment, the workman suffered with chest pain on 02.03.1983. Therefore, he had taken treatment in E.S.I Medical authorities and Royapettah Government Hospital. Thereafter, he was medically fit and the specialist doctor from cardiology in the Royapettah Government Hospital, also certified that he was fit for working in the said post. Thereafter, he reported duty on 16.08.1983 and he was permitted to do his duty.



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8.2. However, on 17.08.1983, he found that his punch card has been removed and he was required to see the Personal Officer. He was informed that not to come for duty without any notice and without any reasons. On 18.08.1983, he was entered in to the factory with a gate pass. Immediately on 03.09.1983 itself, the workman raised dispute before the Assistant Commissioner of Labour – II, against the refusal of employment by the petitioner management. Thereafter, the workman received letter from the management dated 06.09.1983, thereby discharged him from service on the ground of medically unfit. The ailment of the workman was only temporary in nature and he was having sound health and capable to discharge his duty.

8.3. He further submitted that the workman had involved in the trade union activities and he was a member of the Executive Committee of the union. Therefore, he was illegally discharged from his duty as such he raised the dispute before the Assistant Commissioner of Labour-II, Madras. However, by an order dated 26.12.1984, the government of Tamil Nadu in G.O.Ms.No.2726, refused to refer the matter before the



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Labour Court for adjudication on the ground that the management discharged him for continuous ill-health as provided in Clause 3(d) of the company's certified standing orders. After two rounds of litigation before this Court, finally the Hon'ble Division Bench of this Court referred the dispute before the Labour Court. Though the workman died, the Labour Court rightly ordered to pay back wages till his age of superannuation.

8.4. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported in *(2013) 10 SCC 324* in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak & ors.*, which held that in the case of wrongful termination of service, the back wages is normal rule. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. Hence, he prayed for dismissal of the present writ petition.



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9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. Admittedly, the workman suffered with his heart ailment during the course of his employment. He was lastly employed as Fork Lift Operator in the petitioner management. Due to his illness, he was taken treatment in the ESI hospital and Government Hospital, Royapettah, Chennai. Thereafter, the cardiology specialist from Royapettah government hospital, after medical examination issued certificate dated 20.04.1983, that the workman was fit to continue work as Fork Lift Operator. It is also evident to show that by an another certificate dated 12.07.1983, the cardiology specialist certified that the workman can continue normal work with certain exception. Accordingly, the specialist opined that avoid doing work after the meal (rest for one hour), night shifts, carrying or shifting heavy loads and continue the same drug in same dosage.

11. However, another medical doctor from the petitioner management advised the workman not to get over tired in order to



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prevent further angivil episodes and advised to undertake light duties for the present. He was also concur with the opinion of the cardiology specialist and opined that the workman's continued employment as Fork Lift Operator was harmful to his health and therefore, declared him medically unfit for the work. In pursuant to the said opinion, the workman was discharged from his duty on medical ground.

12. The workman immediately after his discharge, raised industrial dispute before the Assistant Commissioner of Labour under Section 2A of the ID Act. However, the government declined to refer the matter for adjudication before the Labour Court by an order dated 26.12.1984. It was challenged before this Court by the workman and the Hon'ble Division Bench of this Court remitted back the matter to the government for fresh consideration. Though it was challenged by the management, the same was dismissed as withdrawn before the Hon'ble Supreme Court of India.

13. Thereafter, the government referred the dispute before the Labour Court, and the same was challenged by the petitioner



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management in W.P.No.14470 of 1991 and this Court set aside the government order and remitted back to the government for fresh disposal. Thereafter, the government declined to refer the issue before the Labour Court for adjudication. Once again, it was challenged by the workman before this Court in W.P.No.5734 of 1992 and the same was dismissed by an order dated 06.11.1997. Aggrieved by the same, the workman filed an appeal in W.A.No.1715 of 1997 and the Hon'ble Division Bench of this Court by an order dated 20.03.1998, allowed the appeal and directly referred the dispute to the Labour Court for adjudication. In fact, the Hon'ble Division Bench of this Court framed issued to be adjudicated in the Labour Court as follows :-

“Whether the discharge of the workman or his non-employment is justified and if not to what relief, the workman is entitled to?”

The Labour Court adjudicated the issue and concluded that the discharge of the workman on the ground of medical unfit is illegal and directed the management to pay back wages from the date of discharge till the date of attainment of superannuation.



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14. The learned Senior Counsel appearing for the workman rightly pointed out that the Rights of Persons with Disabilities Act, is also applicable for the private concerned. It is relevant to extract the provision under Section 2(o) and 3(2) of the Rights of Persons with Disabilities Act, as follows :-

(o) “institution” means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities;

.....

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

Thus it is clear that, the Rights of Persons with Disabilities Act, is also applicable to the workman in order to place the workman in the alternative employment.

15. Though the Rights of Persons with Disabilities Act came into force from the year 1995, as per the judgment of the Hon'ble Supreme Court of India reported in ***AIR 1991 SC 1003*** in the case of ***Anand Bihari and ors Vs. Rajasthan State Road Transport***



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Corporation, Jaipur and ors., the discharge of workman being covered by Sub-clause (c) of Section 2(oo) of the ID Act, it would not amount to retrenchment within the meaning of Section 2(oo) of the ID Act. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand.

16. In fact, the cardiology specialist opined that the workman was fit to work in the same cadre subject to certain conditions such as, avoid doing work after the meal (rest for one hour), night shifts, carrying or shifting heavy loads. However, in order to retrench him from service, the management after obtained opinion from the government doctor, also obtained opinion from its own medical officer and discharged him on the ground of medical unfitness. Further the workman lived till his attainment of superannuation and while pending adjudication before the Labour Court, he died.

17. That apart, the workman after discharged from the hospital, he continuously worked as Fork Lift Operator. He had completed his 20 years of continuous service in the petitioner management. The



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cardiology specialist attached to the Cardiac Rehabilitation & Ischaemic Heart Disease, Government Hospital, Royapettah, who had examined the workman, had opined that the workman was fit to do normal work as Fork Lift Operator. Therefore, there is no question of alternative employment.

18. Further, after discharge, the workman lived after the attainment of superannuation and he died only during the pendency of the proceedings before the Labour Court. His death was not due to any heart disease. In view of the above, this Court does not find any perversity in the award passed by the Labour Court and the present writ petition is devoid of merits and liable to be dismissed.

19. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Presiding Officer,
Principal Labour Court,
Chennai.

ORDER IN
W.P.No.34599 of 2005
and W.P.M.P.No.37511 of 2005
& W.V.M.P.No.254 of 2006

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