



W.P.No.12958 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2023

PRONOUNCED ON: 18.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.12958 of 2021

C. Govindan

... Petitioner

Vs.

The Management of
Thermal Systems and Engineering
Plot No.150, SIDCO Industrial Estate (NP)
Ambattur, Chennai 600 098

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Award dated 26.02.2021 in I.D. No.456 of 2015 on the file of the III Additional Labour Court, Chennai, quash the same and direct the respondent to pay full back wages to the petitioner for 3 years from 03.01.2015 at the rate of Rs.11,124/- per month.

For Petitioner : Mr.S. Senthilnathan

For Respondent : Mr.R. Umasudhan

ORDER



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Challenge in this Writ Petition is made to the Award passed by the Presiding Officer, III Additional Labour Court, Chennai, in I.D.No.456 of 2015.

2. The Writ Petitioner was working for the respondent Management as a Technical Assistant from the year 1989. On 03.01.2015, when he went to the office for reporting duty, the respondent Management did not permit him to do work. Thereafter, the Writ Petitioner sent a letter dated 29.01.2015 to the Management requesting the latter to allow him to work. This letter was not considered by the Management. According to the Writ Petitioner, the Management had terminated his services without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (in short 'ID Act'). He, therefore, raised an Industrial Dispute in I.D. No.456 of 2015 under Section 2(A) 2 of the ID Act before the III Additional Labour Court, Chennai. The respondent Management filed a detailed counter denying the claim of the Writ Petitioner. The III Additional Labour Court, Chennai, after analysing the oral and documentary evidence adduced on both sides, directed the respondent Management to pay compensation of



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Rs.1,00,116/- in lieu of reinstatement and back wages as he had already attained superannuation. Aggrieved over the same, the present Writ Petition is filed by the petitioner/workman.

3. Mr.S. Senthilnathan, learned counsel for the Writ Petitioner would contend that though the Labour Court had come to a conclusion that the Writ Petitioner was denied employment from 03.01.2015 by the respondent Management and the compensation should be computed on the basis of the remaining period of service of the petitioner, it had restricted to three months salary per year for the remaining three years of service and awarded compensation of Rs.1,00,116/-. This warrants intervention by this Court, he pleaded.

4. Per contra Mr.R. Umasudhan, learned counsel for the respondent would contend that as per Section 25-F (b) of the ID Act, the workman can be 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 therefore, the order passed by the Labour Court is perfectly in order.



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5. While the main contention of the Writ Petitioner before the

Labour Court was that he was not given employment from 03.01.2015

onwards, the respondent Management had stated that the Writ Petitioner

absented himself from attending duty since December 2014 onwards.

However, the Management did not adduce any acceptable oral/documentary evidence to substantiate their contention in this regard.

On the contrary, the petitioner had filed a copy of the letter dated 29.01.2015 sent by him to the Management seeking the latter to provide

him a job. The respondent Management neither considered the

representation of the Writ Petitioner nor sent any reply. As already

observed, no documentary evidence was adduced by the respondent

Management to show that the Writ Petitioner abstained from duty. Thus

it is clear that the Management had literally terminated the Writ Petitioner

from service without following proper procedure. Since the Writ

Petitioner had attained superannuation on the date of passing of the order

by the Labour Court on 26.02.2021, the Labour Court had come to a

conclusion that payment of compensation would be appropriate in lieu of

reinstatement and back wages. However, while calculating the

compensation, the Labour Court had taken into account only three

months salary per year for remaining three years of service of the



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petitioner. For better understanding, the observation of the Labour Court is extracted hereunder:

"The age of the petitioner as on the date of non employment on 03.01.2015 would have been 55 years and he would have served a further period of 3 years only, if not denied employment. Hence this Court is inclined to compute the compensation on the basis of the remaining period of the service of the petitioner which may be appropriate in the interest of justice.

As per Ex.W1, the last drawn pay is Rs.11,124/-.
This Court is inclined to consider 3 months salary per year and the computation of the compensation is as below:

3 months salary x 3 years of remaining service

Rs.11,124/- x 3 x 3

Total Compensation = Rs.1,00,116/-"

It is not known as to why the Labour Court though had come to a conclusion that the compensation should be computed on the basis of the remaining period of service, had given only three months salary per year.

The last drawn pay of the Writ Petitioner is Rs.11,124/- per month.



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While awarding compensation, the Labour Court should have taken into consideration the entire background of the case. In the instant case, the Writ Petitioner was denied employment from 03.01.2015 and absolutely no evidence was adduced on the side of the Management for terminating the present Writ Petitioner from employment or for his absence from duty. The contention of the counsel for the respondent Management that as per Section 25-F (b) of the ID Act, the petitioner/workman is entitled only for 15 days average pay cannot be accepted for the simple reason that the retrenchment compensation is totally different from payment of compensation in lieu of back wages and reinstatement into service. Therefore the actual amount of compensation for three years works out to Rs.4,00,464/- (Rs.11,124/- x 3 x 12). Since the Writ Petitioner was not actually working in the respondent Management for the said period, awarding 50% of the above amount towards payment of compensation would meet the ends of justice.

6. In the result, the Writ Petition is partly allowed. The respondent Management is directed to pay compensation of Rs.2,00,232/- (Rupees Two Lakhs Two Hundred and Thirty Two only) to the Writ Petitioner within a period of one month from the date of receipt of a copy of this



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order. No costs.

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Index : yes/no

Speaking /Non speaking Order

To

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R.HEMALATHA, J.

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Pre-delivery Order in
W.P.No.12958 of 2021

18.12.2023