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W.A.No.219/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.219 of 2021

M.Rajaram (died)

1.Kannagi
2.Desingraj
3.Priya

...

Appellants

-VS-

1.The Senior Divisional Personnel Officer,
Southern Railway,
Tiruchirapalli District.

2.The Industrial Tribunal,
Tamilnadu,
Shasthri Bhawan,
Chennai-600 036.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 22.02.2019, passed in W.P.No.7311 of 2002, on the file of this Court.

For Appellants : Mr.R.Dhinesh Kumar

For Respondent 1 : Mrs.T.P.Savitha



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JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal has been preferred against the order of the learned single Judge, dated 22.02.2019, passed in W.P.No.7311 of 2002, whereby the Award of the Industrial Tribunal, dated 01.07.1998, passed in I.D.No.5 of 1993, was modified into one of compensation of Rs.3.00 lakhs from reinstatement with 50% back wages.

2. Admittedly, the appellant - deceased employee had joined the service of the respondent Railway as a Mazdoor on 24.06.1970 and worked till 21.10.1972. Thereafter, he was again engaged between 21.03.1982 and 20.12.1982. There is no dispute about the appellant employee having completed 240 days of service in a period of 12 Calendar months, preceding the date of termination. However, the employee had made a representation to the respondent Railway to consider his request for re-employment and empanelment in the list only in the year 1987.

3. The main contention of the respondent Railway that the appellant employee did not report for work and even otherwise if there was termination it would fall under Section 2 (oo) (bb) of the Industrial Disputes Act,1947, in short, "the Act", is not correct. From the pleadings, it appears that the job, the employee discharged, was a perennial one. However, the employee did not raise the dispute immediately after termination. Though Section 2A of the Act was amended and time limit was introduced



fixing the maximum period as three years for raising the dispute, it had come into effect only on 15.09.2010.

4. The Apex Court, in *Prabhakar v. Joint Director, Sericulture Department*, 2015 (15) SCC 1, has held that the dispute has got to be raised at the earliest point of time and there should not be any delay and, that, in case of delay, no relief would be granted.

5. In this case, the employer Management has violated Section 25F of the Act. Even in case of irregular employment, if an employee works for 240 days of continuous service within a period of twelve Calendar months preceding the date of termination, based on which calculation has got to be made, retrenchment compensation has to be paid. For the sake of convenience, Section 25F (b) of the Act is extracted below :

"25F. 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) xxxxx

(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.



From the aforesaid definition, it is very clear that for every completed year of continuous service, the employer will have to pay retrenchment compensation. Though a reference has been made to Section 25B (2) (b) of the Act, the same will be applicable only for the purpose of deciding about the continuous service in excess of six months and not otherwise. Section 25B (2) (a) of the Act alone will be applicable for the purpose of payment of retrenchment compensation.

6. The learned single Judge has taken note of the judgment of the Apex Court in *Jagbir Singh v. Haryana State Agricultural Marketing Board*, 2009 (15) SCC 327, and modified the Award of reinstatement with 50% back-wages into one of compensation of Rs.3.00 lakhs. Paragraph 13 of the said judgment of the Supreme Court reads as under :

"13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs.50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

7. In the case on hand, the appellant employee had rendered service hardly for three years; at present, he is no more, and his legal heirs have come on record. Taking note of the pendency of the matter and in the light of the decision of the Supreme



Court in *Jagbir Singh's* case, cited supra, we agree with the finding of the learned single Judge modifying the Award into one of compensation of Rs.3.00 lakhs. However, instead of awarding interest on the amount of Rs.3.00 lakhs as ordered by the learned single Judge, we increase the compensation to Rs.4.00 lakhs without interest, which shall be paid by the employer to the employee within a period of one month from the date of receipt of a copy of this order.

8. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.957 of 2021 is closed.

Index : Yes/No
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Speaking / Non-speaking Order
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(S.V.N.,J.) (K.R.S.,J.)
07-06-2023

(2/2)

To

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