



W.A. Nos. 961, 962, 965, 967 to 969 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos. 961, 962, 965, 967 to 969 of 2023

&

C.M.P. Nos. 9623, 9629, 9586, 9589 & 9632 of 2023

W.A. No. 961 of 2023

V.P. Srikanth

..Appellant

Vs.

M/s. Dodsai Enterprises Pvt. Ltd.,
Represented through its Managing Director,
E-1401 & 1402 E,
Lotus Corporate Park,
Graham Firth Steel Compound,
Jaycoach Signal, Western Express Highway,
Goregaon (East), Mumbai – 400 063.

..Respondent

Prayer: Writ Appeal as against the order dated 12.10.2022 passed in

W.P. No. 6500 of 2019.

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For Appellant :: Mr.Nissar Ahamed
Senior Counsel for
Kowser Sulthana I.
For Respondent :: Mr.A.K. Raghavulu

COMMON JUDGMENT

(Delivered by S. Vaidyanathan,J.)

The instant intra court appeals are directed against the order of the learned Single Judge dated 12.10.2022 passed in W.P. Nos. 6500, 6497, 6469, 6495, 6498 & 6539 of 2019 respectively whereby the order dated 21.12.2018 passed by the Additional Labour Court in Claim Petition Nos. 21, 19, 8, 24, 23 & 20 of 2016 along with other claim petitions were quashed holding that the remedy is only by way of an industrial dispute and that the claim petitions under Section 33(C)(2) of the Industrial Disputes Act, 1947 (“I.D.Act” in short) are not maintainable in the absence of any pre-existing right having been established.

2. Heard both sides.

3. Admittedly, the employees concerned in the writ appeals, numbering six, along with others were working under the respondent Management. The Management, decided to wind up and knowing the



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difficulties of the Management, the employees had tendered their resignations. Some of the employees/appellant in respective writ appeals were offered employment in another company and those employees, who were not able to secure employment, were offered ex gratia. On coming to know that employees, who were not able to secure employment, have been offered ex gratia, the appellant in the respective writ appeals along with similarly placed employees approached the Labour Court contending that same benefits, as applicable to the employees, who were offered ex gratia, have got to be extended to them as well. The employer however contended that these employees have already got employment and that only those who did not get employment were paid ex gratia. It has been further contended that there is a dispute that claim petitions under Section 33(C)(2) of I.D. Act, 1947 are not maintainable and that the Labour Court has granted the relief ignoring the same.

4. The order of the Labour Court was tested before the learned Single Judge and the learned Single Judge by accepting the contention of the Management allowed the writ petitions and set aside the order passed in the claim petitions.



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5. A reading of the internal correspondence would make it very clear that the resignation of the employees appears to have been obtained.

However, we are not going into that aspect as it is a disputed question of fact which neither this Court nor the Labour Court in the claim petitions could adjudicate unless the issue is connected with the claim petitions. Though the learned counsel for the workman in the respective writ appeals relied on judgment dated 14.02.2023 in W.A. Nos. 1581 to 1584 of 2021 (***K.P. Sakthivel V. Management of Tamil Nadu State Transport Corporation and Others***) to which one of us (SVNJ) was a party, wherein this Court has categorically held that when there is a pre-existing right, there is no need for adjudication either under Section 10 or under Section 2A of the I.D.Act, 1947, in the present case on hand, whether an employee, who got alternative employment or fresh employment under the new employer would be entitled to the benefits that are granted to those employees, who resigned and did not get employment and whether they could be treated on par with those employees, who did not get employment is a disputed question of fact. That apart, there is no iota of evidence available to show that there exists a pre-existing right. The decision quoted by the learned counsel for the workmen



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stated supra is not applicable to the facts of this case,

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6. However, in order to give a quietus to the matter and to shorten the life of litigation, this Court suggested whether a compromise could be arrived at as otherwise, the employer and the employee will have to litigate further by means of an industrial dispute which may take years together.

7. Acting upon the suggestion putforth by this Court, the employer agreed to pay a sum of Rs.50,000/- in respect of each workman concerned in the respective writ appeals and the workman concerned in each writ appeal is also willing to accept the same towards full and final settlement of all the claims pertaining to this employer in C.P. Nos. 21, 19, 8, 24, 23 & 20 of 2016.

8. In view of the consensus arrived at between the parties, considering the fact that there is no pre-existing right and that an industrial dispute alone is maintainable, in order to shorten the life of litigation, the

S. VAIDYANATHAN,J.

AND



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K. RAJASEKAR,J.

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employer/respondent shall pay a sum of Rs.50,000/- per workman concerned in each of the writ appeals towards full and final settlement of all the claims in C.P. Nos. 21, 19, 8, 24, 23 & 20 of 2016 within a period of two months from the date of receipt of a copy of this order. We make it very clear that this shall not be treated as a precedent if any claim is made by any other person.

9. The writ appeals are disposed of accordingly. No costs.
Connected C.M.Ps are closed.

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(S.V.N.J.) (K.R.S.J.)
15.11.2023

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