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W.A.No.2723 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.2723 of 2023

Bala Vijayakumar

... Appellant / 2nd Respondent

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

...1st Respondent/1st Respondent

2.JBM Auto System Pvt. Ltd,
(Formerly known as Thyssenkrupp JBM (P) Ltd.,
Rep. by its G.M-P & A-T Palanichamy,
Singaperumal Kovil Post,
Chengalpattu Taluk,
Kancheepuram District-603 204.

... 2nd Respondent/Petitioner

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, against the order dated 05.09.2019 passed by this Court in W.P.No.35969 of 2016 and allow this Writ Appeal.



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For Appellant : Mr.S.V.Navin Prabhu
for Mr.V.Shanmuganathan

For Respondents : R1- Labour Court
Mr.K.R.Hariharan for R2

JUDGEMENT

(Judgement of this Court was delivered by M.S.RAMESH.J)

The appellant, who was inducted as a trainee on 30.08.2003 for a period of three years under the second respondent / Management, was terminated from his services on 22.12.2008. Claiming that the termination would amount to retrenchment as defined under Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), and that the procedure contemplated for such retrenchment has not been complied with, the workman had raised an industrial dispute in I.D.No.218 of 2011 before the I Additional Labour Court, Chennai. By an award dated 03.08.2016, the Labour Court had found that the termination was contrary to the agreement of training (Ex.M2) and his services were continued even after the expiry of the agreed training period of three years and further found that the payslips (Ex.W6) included the special allowance, which was not provided under the training agreement, held that the appellant was a



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regular workman under the second respondent / Management and that his services were wrongly terminated. Accordingly, the Labour Court had directed the second respondent / Management to reinstate the appellant as a regular workman with effect from 22.12.2008, together with the back wages and all the other attendant benefits.

2. When the award of the Labour Court was challenged before the Writ Court in W.P.No.35969 of 2016, the learned Single Judge, through the order dated 05.09.2019, had found that the appellant was allowed to continue his service under the second respondent / Management beyond the period of training, which cannot be strictly construed as permanent employment. However, the learned Single Judge had placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Rashtrasant Tukdoji Maharaj Technical Education Sanstha, Nagpur vs. Prashant Manikrao Kubitkar***, reported in (2018) 12 SCC 294, modified the award of the Labour Court by ordering compensation of Rs.1,00,000/- in lieu of reinstatement. Challenging the order of the learned Single Judge, the workman has preferred the present Writ Appeal.



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3. Heard Mr.S.V.Navin Prabhu, learned counsel for the appellant and Mr.K.R.Hariharan, learned counsel appearing for the second respondent.

4. The learned counsel for the appellant submitted that since the appellant herein continues his service over and above the training period for almost 4 ½ years, he is deemed to be a workman as defined in the Industrial Disputes Act and therefore, the termination, without complying with the requirements of Section 25 F of the Act is bad in law.

5. On the other hand, the learned counsel appearing for the second respondent submitted that the appellant was never declared as permanent workman by the second respondent / Management, which fact has been rightly appreciated by the learned Single Judge in the Writ Petition. He would further submit that even if the termination order is set aside, the reinstatement would not be automatic and therefore, no interference is required to the order of the learned Single Judge.

6. Admittedly, the appellant herein had been working from 30.08.2003 till 22.12.2008, even after the expiry of the three year training



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period under the second respondent / Management. The Labour Court had taken into account of the training agreement, Ex.M2, which stipulates the training period as 3 years with a further condition that the trainee would not be entitled for any allowances apart from the stipend. However, the payslips, Ex.W6 produced before the Labour Court evidences that the allowances were being paid to the appellant. In consideration of these two documents, the Labour Court had come to the conclusion that the second respondent / Management had failed to comply with the requirements of Section 25 F of the Act and held that the termination was bad in law and accordingly, ordered for reinstatement with back wages. We approve the findings of the Labour Court.

7. The learned Single Judge, however, has not addressed this aspect and had observed that since an order of confirmation of service was not issued to the appellant, he was presumed to have continued only as a trainee.

8. In our considered view, when the second respondent / Management had violated the terms of the agreement and continued the



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services of the appellant for 5 years and 4 months contrary to the three year training period stipulated therein and had also been paying him the allowances, apart from the stipend, to which he was not entitled to under the terms of the training agreement and furthermore, when they had also extracted work from the appellant, on par with the regular workman, we are constrained to lift the corporate veil of terming the appellant as a trainee and hold that the appellant was performing the duties of a regular workman only. If that be so, the second respondent / Management ought to have complied with the provisions of Section 25 F of the Act before retrenching the appellant. Admittedly, the one month notice period, as well as the retrenchment compensation provided under Section 25 F of the Act, has not been paid and consequently, the termination itself would be illegal.

9. The consequential question that would arise is as to whether the appellant be entitled for reinstatement together with back wages and attendant benefits as ordered by the Labour Court. The Hon'ble Supreme Court in several of its decisions had been consistently observing that all cases of illegal termination will not result in an automatic order of reinstatement and that based on the facts and circumstances of the case,



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alternate reliefs could be granted, including the award of compensation in lieu of reinstatement.

10. In the case of ***Ruby General Insurance Company Limited vs. Shri P.P.Chopra***, reported in (1969) 3 SCC 653, it was held that the normal rule in case of invalid orders of dismissal would be for reinstatement of the workman, but there could be cases where it would not be expedient to adopt such a course. Similar view has been taken in the case of ***Rashtrasant*** (supra).

11. In the instant case, the appellant was retrenched on 22.12.2008 and the Labour Court had passed the award of reinstatement together with back wages way back on 03.08.2016. More than 15 years have lapsed since the services of the appellant was terminated and at this point of time, it would not be expedient to direct the Management to reinstate the appellant. On the other hand, if the compensation awarded by the learned Single Judge is enhanced to a lump sum amount of Rs.5,00,000/-, the ends of justice could be secured.



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12. Accordingly, the order of the learned Single Judge passed in W.P.No.35969 of 2016 is modified and the second respondent / Management is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as a lump sum compensation to the appellant, in lieu of his reinstatement, within a period of four (4) weeks from the date of receipt of a copy of this order.

13. With the above observations and directions, this Writ Appeal stands disposed of. No Costs.

[M.S.R., J] [C.K., J]

13.08.2024

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

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and
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