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W.A.No.2670 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM :

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

W.A.No.2670 of 2024
and C.M.P.No.19277 of 2024

The Managing Director,
M/s.Hindustan Unilever Ltd.,
Personal Products Factory,
Vadamangalam, Pondicherry.

... Appellant

Vs.

1.The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.

2.R.Devakumar

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 29.08.2023 passed in W.P.No.24927 of 2017 to the extent it directs reinstatement of the 2nd respondent in service.

For Appellant : Mr.Jose John

For R1 : Labour Court

JUDGMENT



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(Judgment of the Court was made by *M.S.RAMESH, J.*)

Claiming that the second respondent herein was appointed as a trainee on 28.02.2012 for a period of 1 year and during his training period, his progress report was not satisfactory, the appellant/Management had terminated his services on 05.03.2013. When the second respondent had challenged the order of termination before the Central Government Industrial Tribunal cum Labour Court, Puducherry, in I.D.(L).No.30 of 2013, the Tribunal had passed an Award on 28.06.2017, directing the appellant/Management to reinstate the second respondent herein, together with continuity of service and 25% of backwages from the date of non-employment. The challenge to the Award of the Tribunal before a learned Single Judge of this Court in W.P.No.24927 of 2017 was disposed of on 29.08.2023, by confirming the Award of the Tribunal, insofar as it relates to reinstatement and continuity of service. However, the Award of backwages was set aside. The order of the learned Single Judge is assailed by the Management, in this Intra-Court Appeal.



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2. The learned counsel for the appellant/Management submitted that the second respondent herein was inducted as a trainee on 28.02.2012 for a period of 1 year. Since his performance during the training period was not satisfactory, he was relieved from the services. According to the learned counsel, the second respondent being a trainee, is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act') and the service of a trainee can be terminated during the period of traineeship, in accordance with the terms of appointment and such termination, will not amount to retrenchment within the meaning of Section 2(oo) of the Act. He thus submitted that the learned Single Judge ought not to have taken into account of the continuous period of employment in a year, which has no relevance to a case of a trainee appointed for a fixed duration and which termination falls within the exception to retrenchment.

3. Before the Industrial Tribunal, the HR Executive of the appellant/Management was examined as R.W.1. The Tribunal had taken into consideration of his deposition wherein, he had admitted that the second respondent was temporarily engaged as an operator in the



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Production Department for the period between 2008-2012, with an intermittent break in the service and that during this period of 4 years, his performance was satisfactory and therefore, he was inducted as a trainee. He had further deposed that during the second respondent's training period, there were no adverse remarks from his Shift Officer and that they had not issued any notice with regard to his poor performance. It is in this background, the Tribunal had also taken into account that during the second respondent's earlier engagement between the year 2008-2012, the Management had paid the EPF contribution and that the Management had failed to establish that he was a trainee for the period between 2008-2012. With these observations, the Tribunal was of the view that having engaged the services of the second respondent for the period of 5 years and having found his work satisfactory, had raised a doubt as to why he was thereafter put under traineeship. Accordingly, the Tribunal had directed the appellant/Management to reinstate the second respondent back into service, with the attendant benefits.

4. The learned Single Judge had also found that the Tribunal was



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correct in treating the second respondent as a workman, since he had completed 240 days in a calendar year and therefore, refused to interfere with the Award of reinstatement.

5. The submission of the learned counsel for the appellant is that the second respondent, being a trainee, cannot be treated as a workman within the meaning of Section 2(s) of the Act and his termination, owing to poor performance within the training period, will not amount to retrenchment.

6. The Tribunal, on the basis of oral and documentary evidences before it, had lifted the corporate veil and had satisfied itself with regard to the past 5 years of service of the second respondent between the year 2008-2012 and raised a suspicion with regard to the appellant's conduct in thereafter extending training to the second respondent. With such evidences in hand, the Tribunal had come to the conclusion that the second respondent was a workman, within the meaning of Section 2(s) of the Act, since he had completed 240 days in a calendar year. We do not find any perversity or any other illegality in such a finding. The learned Single Judge also had rightly approved the findings of the CGIT. In this



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background, we are unable to endorse the submissions of the learned counsel for the appellant.

7. In the result, there are no merits in the present appeal and accordingly, the Writ Appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

[M.S.R., J]

[C.K., J]

24.09.2024

Index: Yes

Speaking order

Internet: Yes

Neutral Citation: Yes

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To

The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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