



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.12.2023

Pronounced on : 09.01.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.6443, 6444 and 33847 of 2012

and

W.M.P.No.1 of 2012

W.P.No.6443 of 2012

C.Palanisamy

... Petitioner

Vs.

1. The Management of Narayan Krishna Spinner Ltd.,
119, Dhali Road,
Udamalpet – 642 126.

2. The Management of Super Spinning Mills,
C/o Narayan Krishna Spinners Ltd.,
119, Dhali Road,
Udamalpet – 642 126.

3. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein pertaining to the award passed in I.D.No.130 of 2004 dated 15.02.2010 quash the same and to direct the first and the second respondents herein to reinstate the petitioner with continuity of service, backwages and all



other attendant benefits.

W.P.No.6444 of 2012

P.Ponraj

... Petitioner

Vs.

1. The Management of Narayan Krishna Spinner Ltd.,
119, Dhali Road,
Udamalpet – 642 126.

2. The Management of Super Spinning Mills,
C/o Narayan Krishna Spinners Ltd.,
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3. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein pertaining to the award passed in I.D.Nos.131 of 2004 dated 15.02.2010 quash the same and to direct the first and the second respondents herein to reinstate the petitioner with continuity of service, backwages and all other attendant benefits.

W.P.No.33847 of 2012

U.P.Natarajan

... Petitioner

Vs.



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... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein pertaining to the award passed in I.D.Nos.129 of 2004 dated 15.02.2010 quash the same and to direct the first and the second respondents herein to reinstate the petitioner with continuity of service, backwages and all other attendant benefits.

For Petitioners : Mr.G.Purushothaman
(in all W.Ps)

For R2 : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.,
(in all W.Ps)

COMMON ORDER

The issue that arise for consideration in these three Writ Petitions is one and the same and they were also filed aggrieved by the common award



passed in I.D.Nos.129 to 131 of 2004 dated 15.02.2010 by the learned Labour Court, Coimbatore. Hence, all the Writ Petitions were heard together and are being disposed of by this common order.

2. The petitioners in these Writ Petitions worked as workmen with the first respondent company for about 20 years. While so, the first respondent issued a notice of termination dated 02.06.2003, informing the petitioner and 115 others through individual notices, stating that the second respondent herein had acquired the entire management and ownership over the mill and its properties with effect from 04.06.2003 and as such, the services of the petitioners shall stand terminated with effect from 04.06.2003. The compensation that would be payable to the petitioners consequent upon their retrenchment under Section 25FF of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947' for short) and the layoff compensation, leave salary etc., was sought to be paid by way of cheque enclosed to the notice dated 02.06.2003. Out of 118 workmen, 115 of them have accepted the compensation, whereas the petitioners herein, having raised an objection against the notice dated 02.06.2003, through their representations dated 11.06.2003, requested the first respondent to reinstate them into service. It is also contended by the petitioners that the second



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respondent herein, having acquired the entire properties of the first respondent and taken over the Management, ought to have continued the petitioners in service. Thereafter also the petitioners have made a claim for their reinstatement and having not been successful in their said attempt, the matter went before the Conciliation Officer and consequent upon failure of conciliation proceedings, the petitioners raised a dispute under 2-A(1) of the Act, 1947. The same was taken on record by the learned Labour Court, Coimbatore vide I.D.Nos. 129 to 131 of 2004 dated 15.02.2010 and the claim of the petitioners was rejected by the learned Labour Court, Coimbatore under the impugned award dated 15.02.2010. Aggrieved by the said award, the petitioners approached this Court by filing the present Writ Petitions.

3. Heard Sri G.Purushothaman, learned counsel for the petitioners and Sri P.Raghunathan, learned counsel for the second respondent. There is no representation for the first respondent.

4. Sri.G.Purushothaman, learned counsel for the petitioners contended that the so-called transfer of the management and properties of the first respondent in favour of the second respondent through the memorandum of



understanding dated 04.06.2003 is a sham and nominal transaction and in fact, there is no such transfer entitling the first respondent to invoke Section 25FF of the Act, 1947. He has also further contended that prior to the issuance of the termination notices dated 02.06.2003, the first respondent closed its Mill by declaring layoff with effect from 02.05.2003, without following the due process of law, especially Section 25(M) of the Act, 1947 and the said layoff is also illegal and not in accordance with law. He also further contended that in terms of Section 33-2(a) of the Act, 1947, the first respondent is not entitled to alter in regard to any matter not connected with the dispute, the conditions of service applicable to the workmen immediately before the commencement of such proceedings, if any proceedings such as conciliation, arbitration etc., are pending at the relevant point of time. But in the instant case, the first respondent has violated the restriction imposed under Section 33-2(a) and therefore, the impugned termination of services of the petitioner is liable to be declared as illegal. He also further contended that the respondents have not complied with the requirement of Section 25FF of the Act, 1947.

5. This Court carefully considered the submissions made on either



side and also perused the entire materials on record.

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6. The contentions raised by the learned counsel for the petitioner with regard to non-compliance with the provisions contained in Section 25(M) and the layoff that was declared by the first respondent with effect from 02.05.2003 is concerned, the same is not the subject matter for consideration before the learned Labour Court and therefore, such a contention cannot be permitted to be raised for the first time before this Court in a Writ Petition arising out of an award passed by the learned Labour Court, Coimbatore. So also, the contentions raised by the learned counsel for the petitioner by placing reliance on Section 32-2(a) is also not the subject matter before the learned Labour Court or in the impugned award. Therefore, for the aforesaid reason, the same is also cannot be gone into by this Court in this Writ Petition.

7. The only question that arise for consideration before this Court is as to whether the learned Labour Court is justified in passing the impugned award, declaring that the transfer of the management and the properties of the first respondent in favour of the second respondent as not sham and nominal



and also whether the retrenchment of services of the petitioners is in accordance with Section 25FF of the Act, 1947 or not?

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8. Though it is contended that the transfer of management of the properties in favour of the second respondent in respect of the mill belonging to the first respondent is sham and nominal, the same was not raised initially by the petitioners before the Labour Court. Such a contention was raised for the first time before the Labour Court while filing the evidence affidavit of workmen witness before the learned Labour Court. Though there was considerable correspondence addressed by the petitioners to the first respondent prior to initiation of Industrial Dispute i.e., through Ex.W4 to Ex.W20, in none of the said correspondence, the petitioners have disputed about the transfer of management in favour of the second respondent. On the other hand, it is contended by the petitioners that the second respondent, having taken over the entire management and properties ought to have continued the petitioners in service. In the context of such a specific contention raised by the petitioners, they cannot be permitted to come around and contend that there is no transfer of the management and properties in favour of the second respondent. Further, the only witness examined on



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behalf of the petitioners is the petitioner in W.P.No.33847 of 2012, who also in categorical terms, admitted in his cross-examination that the mill in question is being managed by the second respondent, since much prior to the date of actual transfer i.e., 04.06.2003. The objection that is raised against the memorandum of understanding dated 04.06.2003, marked as Ex.M4, on the ground that the same cannot be treated as a valid transfer of management and that is only an understanding, entitling the first respondent to invoke the provisions contained under Section 25FF of the Act, 1947 is concerned, there is no specific proforma prescribed under Section 25FF for transfer of management or transfer of the assets. It is also not necessary that such transfer should be by way of a document in writing. If there is an agreement either oral or in writing, evidencing the transfer of management, that would suffice the requirement of Section 25FF to enable the employer to invoke Section 25FF.

9. In the instant case, in Ex.W4 to Ex.W6 notices itself, the first respondent has indicated about the proposed transfer of management in favour of the second respondent and the witness examined on behalf of the petitioners herein also in the cross-examination admitted about the transfer of



the management in favour of the second respondent. Further, the first respondent also brought on record the relevant registered documents under which the properties of the first respondent were transferred in favour of the second respondent herein under registered sale deeds and also the Board resolution of the first respondent, approving the transfer of assets and management of the first respondent in favour of the second respondent. Further, there is also no dispute that it is only the second respondent, who is now running the mill of the first respondent after having acquired the entire properties.

10. As already noted above, out of 118 workmen, 115 workmen have already accepted the compensation on the termination of their services under Section 25FF. It is only the three petitioners out of 118 workmen have raised a dispute and pursuing the matter till now. Though it is argued that the first respondent has not complied with Section 25FF of the Act, 1947, nothing is brought to the notice of this Court as to how and in what respect the respondents have not complied with the requirement of Section 25FF. There is also no dispute about the compensation that is calculated by the first respondent and the quantum that is covered by the cheques enclosed to the notices dated 02.06.2003. In the absence of any specific dispute about the



quantum and calculation of the compensation payable to the petitioners being raised before the learned Labour Court, this Court cannot go into such aspect and hence there is nothing to show that the first respondent has not complied with Section 25FF of the Act, 1947.

11. The scope of interference by this Court while exercising its certiorari jurisdiction is only under exceptional circumstances such as in case if the error is apparent on the face of the award passed by the learned Labour Court or in case, the findings of the learned Labour Court are based on no evidence or based on total misconception of the evidence on record or in case the award is perverse in the facts and circumstances of the case. In the instant case, none of the said circumstances exist nor the alleged by the learned counsel for the petitioner.

12. In the circumstances, this Court does not find any merit in the Writ Petitions and accordingly, these Writ Petitions are dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, shall stand closed.

09.01.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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