



W.P.No.689 of 2015

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**DATED: 29.11.2024**

**CORAM :**

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.689 of 2015

P.Nagarajan

.. **Petitioner**

**Vs.**

1.The Presiding Officer  
Labour Court  
Coimbatore.

2.The Managing Director  
Lakshmi Automobile Works Ltd.,  
686, Avinashi Road  
Coimbatore – 641 037.

.. **Respondents**

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records from the 1<sup>st</sup> respondent - Labour Court relating to the impugned Award dated 30.04.2013 in I.D.No.8 of 2011 and quash the same and direct the 2<sup>nd</sup> respondent - Management to reinstate the petitioner in service with full back wages, continuity of service and other attendant benefits, including the increments every year.

For the Petitioner : Mr.R.Rajaram



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For the Respondents : Mr.Anand Gopalan for R2  
for R1 - Court

**ORDER**

The Writ Petition is filed challenging the award of the Labour Court dated 30.04.2013 in I.D.No.8 of 2011.

2. The Claim Petition filed by the Workman was dismissed by the Labour Court. Aggrieved by which, the Workman is before this Court.

3. The Workman was appointed as a Typist with effect from 01.07.1990 in the 2<sup>nd</sup> respondent – Management and was working as a Senior Typist in the year 2002. In the year 2002, his service was dispensed with by an order dated 25.02.2002. The order reads as follows:-

Dated:25.02.2002

Mr.P.Nagarajan  
T.No.90032  
Senior Typist.

The Textile Machinery Manufacturing Industry has been continuously affected by the demand recession and lack of orders. Consequently, our Company is continuously incurring losses



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resulting in strained financial situation. Due to the above reasons, our Unit is facing an unprecedented and severe crunch. Hence, it is not possible to give you continuous work. Under these circumstances, the Management is left with no option than to dispense with your services with immediate effect.

Therefore, as per the terms of employment, you will be relieved from the services of the Company as at close of 28.02.2002. You will be paid salary for three months in lieu of notice.

You may contact the Accounts Department for settlement of your account.”

4. Pursuant to the order, his gratuity has been calculated at Rs.31,415.54/- and was settled on 16.03.2022. Thereafter, the Workman had filed C.P.No.1105 of 2004. It was the claim of the Workman that subsequent to his dispensation of service, in respect of similarly situated other Workmen, the Management has floated a Voluntary Retirement Scheme, whereunder the other Workmen had received some monetary benefits. The Workman is entitled to the same monetary benefits as per the Voluntary Retirement Scheme and therefore, on that basis, he filed the Computation Petition.

5. The Computation Petition was dismissed by holding that the said Voluntary Retirement Scheme was floated by the Management subsequently and



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therefore, the scheme as such is not applicable to him.

6. Again, the Workman filed another C.P.No.429 of 2006 claiming to compute the entire wages payable to him stating that his non-employment is illegal as there was no proper procedure followed by the Management to retrench him. No compensation was also paid to him. The said Computation Petition was dismissed, as there was no adjudication with reference to the non-employment of the Workman and as such liberty was also given to the petitioner to raise an Industrial Dispute before the appropriate authority with regard to his alleged entitlement made in the Computation Petition. Thereafter, the present Industrial Dispute is raised in I.D.No.8 of 2011. The Industrial Dispute was contested by the Management.

7. It is the first contention of the Management that the petitioner was not a Workman. The second contention of the Management was that the claim was hit by acquiescence, delay and laches. The third contention of the Management is that earlier when the petitioner himself had claimed only Voluntary Retirement Scheme wages, he cannot now turn around and claim reinstatement with back



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wages. On the said pleadings, the parties went into trial.

8. The Workman examined himself as **W.W.1** and **Exs.W.1 to W.6** were marked. On the side of the Management, **Exs.M.1 to M.4** were marked. The Labour Court after considering the case of the parties, dismissed the Industrial Dispute. Aggrieved by which, the Workman is before this Court.

9. Heard, *Mr.R.Rajaram*, the learned counsel for the petitioner and *Mr.Anand Gopalan*, the learned counsel appearing on behalf of the 2<sup>nd</sup> respondent - Management.

10. The learned counsel appearing on behalf of the Workman would submit that the reasonings which are given by the Labour Court to non suit the work are incorrect. He would submit that when in an earlier Computation Petition, liberty was given, the Workman has rightly filed the Industrial Dispute. Admittedly, the respondent – Management has been employing more than 100 Workmen and therefore, no retrenchment could have been made without following the procedure laid down under Section 25 (n) of the Industrial Disputes Act.





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gratuity amount or deposited the same. Therefore, there was no right vested with the petitioner to file the Computation Petition.

13. After the dismissal, the petitioner – Workman had filed the Claim Petition, claiming wages. When the Claim Petition was pending, in view of the stand taken by the Management that the Workman had not even raised an Industrial Dispute with reference to his retrenchment, the Workman raised a dispute in the year 2011. However, the Computation Petition was dismissed with liberty to the Workman to raise an Industrial Dispute with reference to his entitlement.

14. Therefore, there is a huge delay of 11 years. The said delay and latches are purely attributable to the Workman alone and therefore, in view of the delay no relief whatsoever can be granted in the Industrial Dispute. He would submit that in any event, even if the reasonings given by the Labour Court are erroneous, still the Management has raised the other question that the petitioner is not a Workman within the definition of the Act, and therefore, the matter has to go back to the Labour Court for letting in evidence with reference to the said issues



and that no relief can be granted to the Workman in the present Writ Petition.

15. I have considered the rival submissions made on either side and perused the material records of the case.

16. When the Workman raised the present Industrial Dispute, the claim was rejected by the Labour Court for three reasons, which are contained in paragraph Nos.9, 10 and 11 of the Award. As far as the reasoning mentioned in paragraph No.9 of the Award is concerned, it states that liberty was given only with reference to the prayer made in the Computation Petition. This finding is incorrect. When the petitioner had earlier filed the Computation Petition, it was held that his claim had not been adjudicated in an Industrial Dispute, thus straightaway claiming wages was incorrect and accordingly, liberty was given to do so. Therefore, when an Industrial Dispute was raised, it can be raised with an appropriate relief of reinstatement with back wages, therefore, the finding of the Labour court in paragraph No.9 is unacceptable.

17. In paragraph No.10, the Labour Court again states that the petitioner



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had only stated that he was denied employment and that he had not stated in his petition about the violation of Section 25 (F) of the Industrial Disputes Act. Since the order served on the workman was marked as **Ex.W.2**. It clearly goes on the footing that it was a retrenchment and the violation of Section 25 (F) being a legal argument, need not be necessarily and expressly stated in the Claim Petition. It is enough that the Workman had pleaded that his retrenchment was illegal. Therefore, the said reasoning is incorrect in law.

18. The third reasoning is that the Workman did not choose to redeposit his gratuity that he had received at the relevant point of time. The said question as to whether the Workman can maintain a dispute without depositing the benefits received by him, has since been decided by the Division Bench of this Court in the case of *the Management of Chandra Textiles Pvt. Ltd., Coimbatore Vs. N.Palanisami and Others*,<sup>1</sup>. It is useful to refer to the Judgment of the Division Bench in this regard, which reads as follows:-

“19. In our view, a reading of the letter dated 24th October, 1977 written by the first respondent to the appellant will show that it is unequivocal in its terms. The first respondent has clearly pointed out that he is not accepting the award in so far as it refused

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<sup>1</sup> (1987) ILLJ 458 MAD



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to grant the relief of reinstatement. He has made it clear that he would be filing a writ petition challenging the award. We are unable to dissociate this latter from the acceptance of the cheque and hold that the acceptance of the cheque is an independent act and it could be construed as an approbation of the award. In our view, it is the intention of the person concerned, as reflected by his act and words, which will govern the situation. Such intention could be found out only by taking into account both the act and the words of the said person, particularly when they are simultaneous in time.

21. The House of Lords, in *Lissenden v. Bosch Ltd.* (1940) 1. All ER 425, has considered this at some length. In that case, an award of workmen's compensation at the rate of 12s.3d. per week was made in favour of a workman under the Act of 1925 in respect of his incapacity caused by industrial disease for the period from October 5, 1936 until the date of the hearing namely October 31, 1938 together with the costs of the arbitration. The workmen received and signed a receipt for, the arrears of compensation due under the award and the taxed costs were paid to his solicitors. The workmen thereafter appealed against the award in so far as it terminated weekly payments of compensation on 31st October, 1938, on the ground that he had not wholly recovered from the effects of the industrial disease. It was held that in accepting the arrears of compensation the workmen was exercising a legal right to be paid what was admittedly due to him, and in serving his notice of appeal, he was exercising another and independent legal right of claiming the further relief to which he maintained he was entitled, and therefore, there was no case of election and the workman had a right of appeal."

19. In view thereof, the question has to be gone into with reference to the particular facts and circumstances of the case. In the facts of the present case, the Management chose to serve the order and immediately calculated the gratuity and paid it to the Workman. I do not see the same as a disability or a bar on the



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Workman to seek remedy to his rights. The next contention of the learned counsel for the Management that the petitioner is not a Workman, cannot be countenanced, in view of the very designation of the petitioner, as initially he worked as a Typist and thereafter as a Senior Typist.

20. In view thereof, the reasoning given by the Labour Court with reference to the rejection of the claim are all unsustainable. Therefore, the Award has to be interfered with.

21. Now considering the relief that has to be granted by this Court, it can be seen that it is the Workman's own making that he immediately did not raise the Industrial Dispute and he chose to pursue the erroneous remedies initially, until such time he file an Industrial Dispute. Therefore, it would be inequitable to order reinstatement with back wages also. However, by considering the overall facts and circumstances of the case, I am of the view that the relief of reinstatement with back wages need not be granted to the Workman, but instead



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the relief of compensation can be given.

22. In the instant case, the gratuity amount which is calculated for the 12 years of service comes to Rs.31,450/-. If the compensation for retrenchment had been paid, it would have been slightly higher, and additionally, one month's wages should also have been paid. Roughly, this would amount to Rs. 45,000/-. Even if the said Rs.45,000/- is calculated from the date of retrenchment in the year 2002 with further 9% interest for these 22 years the same would come to more than 220 %.

23. In view thereof, considering the overall facts and circumstances of the case, I am of the view that it would be just and proper to direct the Management to pay a sum of Rs.1,50,000/- to the petitioner – Workman. Accordingly, this Writ Petition stands allowed on the following terms,

(i)The Award of the Labour Court, Coimbatore made in I.D.No.8 of 2011 dated 30.04.2013 shall stand set aside;

(ii)The retrenchment of the Workman by an order dated 25.02.2002 is held to be illegal, however, on the facts and circumstances of the case, the Workman is



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granted the relief of compensation;

(iii) The Management shall pay the compensation of a sum of Rs.1,50,000/-

within a period of eight weeks from the date of receipt of the copy of this order,

failing which the said sum would carry interest at the rate of 9% per annum, till

the date of disbursement;

(iv) No costs.

29.11.2024

Neutral Citation : Yes

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To  
The Presiding Officer  
Labour Court  
Coimbatore.



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**D.BHARATHA CHAKRAVARTHY, J.,**

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