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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 06.11.2024

ORDERS DELIVERED ON : 16.12.2024

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**W.P. No.4002 of 2014
and M.P.No.3 of 2014
and W.M.P.No.36099 of 2024**

The Managing Director
M/s Athiappa Chemicals (P) Limited
Mettupalayam, Puducherry.

... Petitioner

Vs.

1.The President
Athiappa Chemicals (P) Ltd. Employees
Welfare Union, M.G.Road
Puducherry.

2.The Presiding Officer
Labour Court,
Puducherry.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the award passed by the 2nd respondent – Labour Court in I.D.No.18 of 2009 dated 19.02.2013, quash the same and pass such further or other order.



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For Petitioner : Mr.P.V.S.Giridhar
for M/s Giridhar and Sai
For Respondents : Mr.P.R.Thiruneelakandan for R1
for R2 – Labour Court

ORDER

This writ petition is filed challenging the award of the Labour Court, *Puducherry*, made in I.D. No.18 of 2009 dated 19/02/2013. By G.O.Rt. No.122/Lab/AIL/J/2009 dated 20/08/2009, the Government of *Puducherry* referred the questions as to,

(i) Whether the dispute raised by Athiappa Chemicals (p) Limited Employees Welfare Union against the management whether non-employment of 34 workmen named therein is justified;

(ii) if justified to what relief the petitioners are entitled to; and (iii) to compute the relief in terms of money if it can be computed.

2. A claim petition was filed by the workmen. They state that the labour welfare legislations were not followed, even concerning the workmen who have been working for more than 10 years. On 10/08/2006, when the factory was alleged to have discharged toxic effluents in the air, affecting the environment, the management announced a lock-out on 12/08/2006. After the Orders of the High

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Court in W.P. No. 18483 of 2007, the factory reopened on 06/07/2007. Even in the said writ petition, the workmen filed M.P. No. 3 of 2007 in which the management was directed to recall the laid-off workmen for duty when it commences the operations. However, operations commenced, only 10 out of 45 workmen alone were called, that too on 26/10/2007. The rest were non-employed as such a dispute was raised. Upon failure report of Conciliation, the matter was referred and hence the claim petition.

3. The claim was resisted by the management. It is stated that the Government ordered the closure of the industry by an order dated 11/08/2006. However, the pollution could not be proved, and the High Court, by its order dated 26/07/2007 made in W.P. No. 18483 of 2007, permitted the re-commencement of the operations. While so, the employees filed M.P. No. 3 of 2007, in which the learned Senior Counsel, appearing on behalf of the management, also agreed to reinstate the workers. Accordingly, taking note of the situation, after recommencement, ten workmen were called for work. Nine reported. Again, another seven were called for work. The workmen, at this point, resorted to illegal strike. Their non-employment is not wilful and only because the



industry is closed by the Government.

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4. With the above pleadings, when the matter was taken up for enquiry, one *Chinnappan* was examined as *WW-1* for the workmen. For the management, one *Sathiswaran* was examined as *RW-1* and *Ex.R1 to R-13* were marked. The Labour Court considered the case of the parties and ordered that the workmen are entitled to reinstatement with continuity of service with full back wages. Aggrieved, the present writ petition is filed by the management.

5. *Mr P.V.S. Giridhar*, the Learned Senior Counsel appearing for the management would submit that the Labour Court had gone beyond the claim of the workmen. They had pleaded as if they were retrenched without payment of compensation under Section 25F of the Industrial Disputes Act, 1942 (in short 'the Act'). As such, the Labour Court ought to have decided only the said issue and granted the compensation payable. Even otherwise, it can be seen that the industry is closed by the order of the Government at best the workmen will be entitled to closure compensation as there was no termination of service by the management. The Labour Court erred in ordering reinstatement. It further erred in



granting entire back wages.

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6. To contend that the Labour Court ought not to have gone into the questions other than the pleadings, the Learned Senior Counsel relied upon the Judgment of the Supreme Court of India in ***Indian Hume Pipe Co. Ltd -Vs- Workmen***¹. To press home the point that the industry was closed, reliance was made on paragraph 51 of the Judgment in ***J.K. Hosiery Factory -Vs- Labour Appellate Tribunal of India***².

7. The Learned Senior Counsel relied upon paragraphs 78 and 111 of the Judgment of the Supreme Court of India in ***Punjab Land Development and Reclamation Corporation Ltd -VS- Presiding Officer, Labour Court & others***³ to contend that in a genuine case of closure, the workmen can claim re-employment but only the compensation under Section 25 F of the Act. To contend that the back wages should not be ordered when there is no work, the Learned Senior Counsel would rely upon the Judgment in ***P.V.K. Distillery Ltd Vs***

¹ (1968) SCC Online SC 75

² (1956) SCC Online All 319

³ (1990) 3 SCC 682



Mahendra Ram⁴, more pertinently to paragraphs 18 & 20.

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8. Per Contra, *Mr Thiruneelakandan*, the Learned Counsel for the workmen, would contend that in this case, while the factory was sealed by the Pollution Committee and thereafter re-opened, the occasion was malafide utilised by the management to non-employ the workmen and chose to go with fresh hands. The action of the Government is not a closure. The workmen had only prayed for reinstatement with back wages and not compensation. The non-employment was notwithstanding the undertaking given by the management before this Court. When the entire action is illegal, reinstatement with back wages should follow.

9. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for consideration :

(i) Whether the order of the Government/Pollution Committee amounts to the closure of the undertaking or it is non-employment?

(ii) Whether the workmen had only pleaded for retrenchment compensation

4 (2009) 5 SCC 705



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and that they should paid only the same?

(iii) What relief should be granted to the workmen?

Point No.(i):

10. The order of the Government/Pollution Committee is nothing but sealing the factory and suspending its operation on allegations of air pollution. The term 'closure of undertaking' is defined in the Act and it would only be an act of the management to wind up its operations. In this case, even the order of the Government was challenged, and this Court held in favour of the management and permitted the re-commencement of its operations. At best, the interregnum period can be considered as a lockout, and there is no question of holding the same as a Closure. Section 2(cc) of the Act, reads as follows :

“2(cc) “closure” means the permanent closing down of a place of employment or part thereof;”

11. A further reading of Section 25FFA of the Act, makes it clear that it should be the intention of the employer to ‘close down’. The procedure of compensation is also prescribed in Section 25FFF of the Act, which also uses the same phrase ‘Close down’. Thus, the closure has a definite meaning for the purposes of the Act, to mean the intention and the action on the part of the



management to close down an activity or part thereof. In the instant case it is not as if the management believed that the order of the Pollution Committee would put an end to the business and the re-start was a fresh beginning after changed circumstance. From the beginning, the management believed that the order was erroneous and it challenged the same and started operations after obtaining interim orders from this Court. It had even given an undertaking that it will call back all the workmen once the activity commences. It is useful to consider the dictum laid down by the Hon'ble Supreme Court of India in **General Labour Union, Bombay -Vs- B.V. Chavan and Others**⁵ where the issue is considered in detail and the relevant portion of paragraph 11 reads as follows :

“11.Therefore the true test is that when it is claimed that the employer has resorted to closure of industrial activity, the Industrial Court in order to determine mine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether the closure was a device or pretence to terminate services of workmen or whether it is bona fide and for reasons beyond the control of the employer. The duration of the closure may be a significant fact to determine the intention and bona fides of the employer at the time of closure but is not decisive of the matter. To accept the view taken by the Industrial Court would lead to a startling result in that an employer who has resorted to closure, bona fide wants to reopen, revive and restart the industrial activity he cannot do so on the pain that the closure would be adjudged a device or pretence. Therefore the correct approach ought to be that when it is claimed that the employer is not guilty of imposing a lockout but has closed the industrial

⁵ (1985) 1 SCC 312



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activity, the Industrial court before which the action of the employer is questioned must keeping in view all the relevant circumstances at the time of closure decide and determine whether the closure was a bona fide one or was a device or a pretence to determine the services of the workmen. Answer to this question would permit the Industrial Court to come to the conclusion one way or the other.”

Thus, it can be seen that when the activities resumed, the management is duty bound to continue the services of the workmen who are laid off. But it miserably failed to do so and sought to use the opportunity to unjustly non-employ them. The management had dared to do the same, despite its undertaking given before this Court in M.P. No. 3 of 2007 in W.P. No. 18483 of 2007. It used the statutory order as a device and pretence to keep the workmen at bay. Thus, the argument that there was closure and there was no non-employment by the management is rejected. It is a case of non-employment.

Point No. (ii)

12. Only to highlight that the management did not follow any procedure as contemplated under Section 25F of the Act, such a pleading is made in the Claim statement. A proper and complete reading of the claim statement would only



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convey that the workmen are complaining about non-employment and are praying for reinstatement with back wages and not compensation. Thus, I answer the question that there was no closure, but the management had non-employed the workmen illegally, and hence, the workmen are entitled to reinstatement.

Point No.(iii):

13. To consider back wages, this Court takes into consideration the period of service. All the workmen are said to have put in more than 10 years of service as of the date of non-employment. Secondly, the period of non-employment and pendency of the dispute from 2006 till date is also considered. The unfair action of the management to try to use the opportunity of sealing by the Pollution Committee to illegally get rid of its employees is also taken into account. The management had continued to take its chance and keep the workmen at bay even after its own undertaking before this Court is also considered. Considering the totality of all the above circumstances, I am of the view that the workmen shall be entitled to 50% of the back wages.



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14. In the result, the writ petition is allowed in part on the following terms :

- (i) The award of the Labour Court made in I.D. No.18 of 2009 dated 19/02/2013 is upheld in as much as it orders reinstatement with continuity of service;
- (ii) The award is modified with respect to back wages. Instead of the full back wages granted, the workmen will be entitled to 50% of the back wages;
- (iii) The management shall comply with the award, reinstate the workmen and pay all the benefits due, within 12 weeks from the date of production of the website-uploaded copy of this order, without waiting for the certified copy of the Order;
- (iv) The connected miscellaneous petitions are closed. No costs.

16.12.2024

Neutral citation : Yes
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D.BHARATHA CHAKRAVARTHY, J.,

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To
The Presiding Officer
Labour Court,
Puducherry.

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