



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-01-2024

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.3517, 3229, 3233, 3216 & 3258 of 2023

The Area Manager,
Food Corporation of India,
District Office, Post Box No.2911,
Tatabad, Coimbatore - 641012. ...

Appellant in W.A.Nos.3517,3229 &
3233/2023

-VS-

1.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court, Shastri Bhavan,
Chennai.

2.Ms.S.Sharmila ...

Respondents in W.A.No.3517/2023

1.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court, Shastri Bhavan,
Chennai.

2.Ms.K.Dhanalakshmi ...

Respondents in W.A.No.3229 &
3233/2023



K.Dhanalakshmi

...

Appellant in W.A.No.3216/2023

S.Sharmila

...

Appellant in W.A.No.3258/2023

-VS-

1.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court,
I Floor, B Wing,
26, Haddows Road, Shastri Bhavan,
Chennai - 6.

2.The Area Manager,
Food Corporation of India,
District Office, Post Box No.2911,
Tatabad Post,
Coimbatore – 641 012.

...

Respondents in W.A.Nos.3216 &
3258/2023

W.A.No.3517 of 2023 is filed under Clause 15 of the Letters Patent against the order, dated 25.07.2023, passed in W.P.No.10746 of 2017.

W.A.No.3229 of 2023 is filed under Clause 15 of the Letters Patent against the order, dated 24.07.2023, passed in W.P.No.6342 of 2017.

W.A.No.3233 of 2023 is filed under Clause 15 of the Letters Patent against the order, dated 24.07.2023, passed in W.P.No.7304 of 2017.

W.A.No.3216 of 2023 is filed under Clause 15 of the Letters Patent against the order, dated 24.07.2023, passed in W.P.No.6342 of 2017.

W.A.No.3258 of 2023 is filed under Clause 15 of the Letters Patent against the order, dated 25.07.2023, passed in W.P.No.10482 of 2017.



For Appellant in W.A.Nos.3517,3229 & 3233/2023 &
Respondent No.2 in W.A.Nos.3216 & 3258/2023 :
Mr.M.Imthias

For Appellant in W.A.Nos.3216 & 3258/2023 &
Respondent No.2 in W.A.Nos.3517,3229 & 3233/2023 :
Mr.Balan Haridas

COMMON JUDGMENT

(By *S.Vaidyanathan,J.*)

For the sake of convenience, the parties are referred to as "the workmen" and "the management".

2. According to the workmen, they have been working with the management continuously without break till they were verbally terminated from service; the management has violated Section 25F of the Industrial Disputes Act,1947, in short, "the Act", and, therefore, they are entitled to be reinstated in service with all benefits. It is further stated that even though they have been employed as casual labourers, the Management Witnesses have admitted that there is acute shortage of hands and that the job is perennial in nature and hence they should have been reinstated as permanent employees under the management. It is also their case that copy of the Attendance Register is also marked before the Labour Court, but, the Labour Court has unfortunately deprived them of the benefit of reinstatement; the Labour Court held that



there is non-compliance of Section 25F of the Act; that, as the workmen have worked only for a shorter duration, they are not entitled to be reinstated; that the work was not available; hence, the question of putting the workmen back in service was not permissible, and, accordingly, awarded a compensation of Rs.75,000/- to K.Dhanalakshmi and Rs.1.25 lakhs to S.Sharmila.

3. Mr.M.Imthias, learned counsel for the management, would contend that though the casual employment is not disputed, the workmen have hardly worked for 15 months, and, when there is no exigency of work, there is no need to put the workmen back in service. According to him, the award of the Labour Court in granting compensation itself is excessive and the learned single Judge ought not to have enhanced the compensation to the workman from Rs.75,000/- to Rs.1.25 lakhs in the case of K.Dhanalakshmi and confirmed Rs.1.25 lakhs in the case of S.Sharmila. He also drew the attention of this Court to a decision of the Supreme Court in *Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh*, 2013 (5) SCC 136, and referred to Paragraphs 28 and 29 thereof, which are extracted below :

"28. We may also refer to a recent decision of this Court in Bharat Sanchar Nigam Limited v. Man Singh. That was a case where the workmen, who were daily wagers during the year 1984-85, were terminated without following Section 25-F. The industrial dispute was raised after five years and although the Labour Court had awarded reinstatement of the workmen which was not interfered by the High Court,



WEB COPY

this Court set aside the award of reinstatement and ordered payment of compensation. In paragraphs 4 and 5 (pg.559) of the Report this Court held as under:

“4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as “daily wagers” and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.”

29. In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the appellant to the respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the respondent within six



weeks from today failing which the same will carry interest @ 9 per cent per annum."

WEB COPY

According to him, when there is violation of Section 25F of the Act, the question of automatic reinstatement is not correct and the Apex Court has interfered with the reinstatement with 25% back wages in the said case and awarded only Rs.50,000/- as compensation. Further, he would contend, that, in the present case, the workmen have worked for lesser duration and, even assuming there is violation of Section 25F, the question of reinstatement does not arise. He also did not agree with the contention of Mr.Balan Haridas, learned counsel for the workmen, that the workmen are willing to give up back wages provided they are reinstated.

4. We have heard both sides.

5. The fact that the two workmen herein have joined the management as casual labourers and rendered service for more than one year is not in dispute. The Labour Court has come to the conclusion that there is violation of Section 25F of the Act and awarded compensation, which is referred to supra, but, however, it did not provide the workmen the employment on the ground that the work was not available. For the sake of convenience, the evidence tendered by the Management Witness in I.D.No.120/2015 is scanned below :



WEB COPY

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

ID 120/2015 Dated 06.07.
Witness For: MW1

Name : C. SARAVANAN
Father/Husband's Name : I. CHANDRASHEKAR
Age : 46
Religion : HINDU
Occupation : ALM (H) FCI
Address : REGIONAL OFFICE
NO-8 - SETHUPATHY
CHETPAT, Chennai

Date: 06.07.2015

WITNESS SWORN

Witness sworn

Affidavit in lieu of Chief Examination filed by the witness

Documents particularly described in the affidavit are marked as Ext. M1.

Cross-Examination

Petitioner was engaged in the godown for collection of spillage and for cleaning the godown. As per the service regulations FCI has the post of Sweeper. The qualification for the post of Sweeper in the Respondent establishment is that the person should be able to write and read. The petitioner was engaged in the godown at Peelamedu, Coimbatore. FCI complex at Peelamedu is a very big complex and contains 22 godowns and there are open plinth godowns too. All the godowns are used for storing grains. There are Direct Payment System (DPS) labourers in the godown for collecting the spillage and doing the cleaning. In addition to that whenever heavy work is there we

[Signature]
-17/16



WEB COPY

From the above evidence, it is clear that there is acute shortage of manpower.

Therefore, we are of the view that when there is an admission that no compensation has been paid to the workmen and that the job is perennial in nature, they should have been continued in service on account of shortage of manpower. In our opinion, the decision, referred to by Mr.M.Imthias in *Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh*, referred to above, is not applicable to the facts of this case.

In that case, the workman was a daily rated employee and there was no proof that the job was perennial in nature. However, in the present case, as admitted by the management in evidence, the job is perennial in nature and, therefore, the finding of the Labour Court that the management was justified in depriving the employment to the workmen on the ground that there was no work available is perverse. In the light of the decision of the Supreme Court in *Padmasundara Rao (dead) & Others v. State of Tamil Nadu & Others*, 2002 (3) SCC 533, we are of the view that the decision of the Apex Court referred to by Mr.M.Imthias is distinguishable on facts. Here, the workmen have been disengaged in the year 2013. Normally, in the present set of facts, workmen should have been reinstated with all benefits. Taking note of the decision referred to by Mr.M.Imthias, we could have deprived entire back wages to the workmen and put them back in service as permanent employees. However, in order to give a finality to the matter and bring down the life of the litigation, we are of the view that the



compensation of Rs.2.5 lakhs to each of the workmen would be sufficient. We make it clear that if the amount mentioned supra towards compensation is not paid within a period of three months from the date of receipt of this order, it will fetch interest 7.5% per annum from the date of the award.

6. Before parting with this judgment, we are reminded of the judgment of the Apex Court in the case of *Workmen of The Food Corporation of India v. Food Corporation of India*, 1985 (2) SCC 136, wherein, against the very same Management, which is before this Court, the Court criticized the action of the Management in trying to convert the Direct labourers into one of Contract labourers. Even in a recent decision of the Apex Court in Civil Appeal Nos.10499, 10511 of 2011 and 7961 of 2014, dated 20.08.2018, the same view was reiterated. In the light of the evidence let in by the Management in the present case, Food Corporation of India must ensure, that, for the job of perennial nature, Direct Labour is to be recruited and their services are to be continued. Under the Constitution of India, the Government should not only provide education to children but also provide opportunity for public employment, ensuring livelihood of the citizens, which alone will give safety to dependants of labourers, once they grow up.



WEB COPY

11/12

W.A.No.3517/2023 & Batch



7. Writ Appeals are disposed of as above. No costs. Consequently, the connected C.M.P.Nos.28743, 26413 and 26431 of 2023 are closed.

Index : Yes/No
Internet : Yes/No
dixit

(S.V.N.,J.) (K.R.S.,J.)
02-01-2024

To

1.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court, Shastri Bhavan,
Chennai.

2.The Area Manager,
Food Corporation of India,
District Office, Post Box No.2911,
Tatabad Post,
Coimbatore – 641 012.



WEB COPY

12/12

W.A.No.3517/2023 & Batch



S.VAIDYANATHAN,J.
AND
K.RAJASEKAR,J.

dixit

W.A.No.3517 of 2023 & Batch

02-01-2024