



W.P. No.10018/12

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.03.2025	27.03.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.10018 OF 2012

AND

M.P. NO. 1 OF 2012

M/s.Vasantha Carbide (P) Ltd.
Rep. By its Director N.Vasantha
Nagore Main Road
Mela Vanjore, T.R.Pattinam
Pondicherry.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court, Karaikal.

2. K.Kaliaperumal
3. A.Balusamy
4. G.Ramakrishnan
5. V.Mahendran
6. P.Sivasankaran
7. N.Rajavelu
8. S.Kannan
9. G.Maran
10. R.Balakumar
11. M.Muthusamy
12. S.S.Ramar



W.P. No.10018/12

WEB COPY

13. C.Subramani
 14. V.Nallathambi
 15. R.Selvam
 16. M.Kannan
 17. R.S.Selvam
 18. J.James
 19. A.Mani
 20. K.Ravichandran
 21. J.Raj
 22. P.Tamilvanan
 23. J.Leninraj (Decd.)
 24. A.Mary
 25. M.Sathiyavani
 26. G.Neelavathi
 27. V.Tamilarasi
 28. M.Mala
 29. S.Sakthivel
 30. G.Gulasegaran
 31. T.Senthil
 32. G.Maheswari
 33. M.Tamilselvam
 34. Mrs. Juliet Mary
 35. Leona Lenin
- (RR-34 & 35 are substituted as
LRs of deceased R-23)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records pertaining to the impugned award dated 16.07.2011 of the 1st respondent herein, viz., the Presiding Officer, Labour Court, Karaikal, passed in I.D. No.1/2007 published in



W.P. No.10018/12

WEB COPY

Puducherry Government Gazette No.44 dated 1.11.2011 and quash the said impugned award.

For Petitioner : Mr. Subbiah, SC, for
M/s. R.Thirugnanam

For Respondents : Mr. C.K.Chandrasekar
for RR-2 to 35

ORDER

Challenging the award of the Labour Court in and by which the lay-off compensation sought for by the respondents/workmen herein stood affirmatively considered, the management has come forward with the present writ petition.

2. The facts in the present case fall within a very narrow compass. The dispute was raised by the workmen by alleging that they are the employees under the petitioner and due to disconnection of electrical supply to the petitioner for want of payment of dues, the petitioner closed the industry on 9.9.2002 without following the provisions of 20-M, 25-N and 25-O of the



W.P. No.10018/12

WEB COPY

Industrial Disputes Act (for short 'the Act'). Aggrieved by the sudden closure, the workmen approached the conciliation officer u/s 25-M (1) of the Act and as the petitioner countered the said petition by alleging that the workmen absented themselves from work resulting in heavy loss to the petitioner and inspite of calling upon the workmen to attend work, as they did not attend the work, the company was closed and, therefore, there was no lay-off as alleged by the workmen. Since the efforts for conciliation went in vain, the conciliation officer submitted his report upon which a reference was made to the Labour Court in I.D. No.1/2007.

3. Before the Tribunal, the workmen examined two witnesses, as P.W.s 1 and 2 and marked Exs.P-1 to P-7. On the side of the petitioner/management, three witnesses, viz., R.W.s 1 to 3 were examined and Exs.R-1 to R-8 were marked. On behalf of the Court, Exs.X-1 to X-4 were marked. On the basis of the oral and documentary evidence, the Labour Court held that the workmen have been denied work without notice being served on them and, therefore, the workmen are entitled for lay-off compensation as a matter of right and quantified the lay-off compensation at 50% of the total basic wages and dearness allowance



W.P. No.10018/12

WEB COPY

receivable by the workmen and an award in the above terms was passed.

Aggrieved with the said award, the present writ petition has been filed by the petitioner.

4. Learned senior counsel appearing for the petitioner submitted that out of the 32 petitioners, 12 have not raised any dispute against the petitioner and the remaining 18 have settled the matter by entering into a settlement dated 14.6.2004 u/s 18 (1) of the Act and further it is submitted that of the 40 persons listed in the Annexure to the Order of Reference, 18 had not raised any dispute against the petitioner and of the 22 remaining persons, 18 had settled the issue by entering into a settlement and, therefore, there subsists no industrial dispute for adjudication.

5. It is the further submission of the learned senior counsel that the settlement was entered into by the persons without any objection and the said persons, by their joint letter dated 14.6.2004, had sought withdrawal of their conciliation petition and when the law does not prohibit the parties from entering into a settlement u/s 18 (1), even after conciliation failure report had



W.P. No.10018/12

WEB COPY

been received by the Government, the Government ought not have acted on the said report, that too after a long delay of about three years and eight months, inspite of the fact that the Conciliation Officer had sent his letter stating that the matter need not be referred to the Labour Court as a settlement had been arrived at.

6. It is the further submission of the learned senior counsel that forgetting the above fact, the Labour Court had passed the order that the settlement had been arrived at only on 14.6.2004, which is subsequent to the failure report dated 11.9.2003 and, therefore, the said settlement is not binding on the employees, is wholly erroneous and perverse.

7. It is the further submission of the learned senior counsel that the settlement entered between the parties is genuine and binding on the parties, moreso, when the Labour Court had not believed the allegation of the workmen that the letter given by them for withdrawing the provident fund amounts were fraudulently used for the purpose of creating a false settlement, the Labour Court



W.P. No.10018/12

WEB COPY

ought not have held that the petitioner has indeed laid off the workmen and, therefore, they are entitled to layoff compensation.

8. It is the further submission of the learned senior counsel that the order of the reference clearly speaks that there were only 40 workmen, but not all the persons mentioned therein satisfied the condition of workmen and, therefore, in the absence of the workmen proving themselves to be workmen with the petitioner, the finding of the Labour Court and the consequential direction to pay is wholly unreasonable.

9. It is the further submission of the learned senior counsel that the invocation of Section 25-M (1) is wholly erroneous as the factory was closed only on account of electricity disconnection and the workmen were not laid off. Therefore, if at all, the workmen would be only entitled to closure compensation and would not be entitled to layoff compensation. However, without properly appreciating the above fact, lay-off compensation has been awarded, which requires to be interfered with.



W.P. No.10018/12

WEB COPY

10. It is the further submission of the learned senior counsel that the workmen did not accede to the request of the petitioner for alternative employment and absented themselves from duty and they did not present themselves at the work spot as contemplated u/s 25-E of the Act. It is therefore submitted by the learned senior counsel that assuming without admitting that there was lay-off, lay-off compensation cannot be paid as there was no question of lay-off of the workmen. Further, the workmen not having accepted alternative employment are not entitled for wages as well.

11. It is the further submission of the learned senior counsel that no order was passed by the Government on the request of the petitioner for about 3 years and 8 months and reference of the Government was made only thereafter and the delay on the said aspect cannot be put against the petitioner.

12. Therefore, it is the submission of the learned senior counsel that the award of the Labour Court directing payment of lay-off compensation is wholly perverse, arbitrary, unreasonable and unsustainable and the same deserves to be interfered with by setting aside the said order.



W.P. No.10018/12

WEB COPY

13. Per contra, learned counsel appearing for the workmen submitted that no permission for lay-off has been obtained by the petitioner as prescribed u/s 25-M of the Act and there is clear infraction of sub-section (8) of Section 25-M, which necessitated the workmen to approach the conciliation officer u/s 25-M (1) of the Act.

14. It is the further submission of the learned counsel that if at all the claim of the petitioner is even to be considered that the workmen are entitled for closure compensation and not lay-off compensation, then necessarily, the petitioner ought to satisfy the requirements u/s 25-O of the Act. However, there is no material placed by the petitioner to establish compliance of Section 25-O and, therefore, the inference drawn by the Labour Court that the workmen were laid-off is perfectly in order and does not require any interference.

15. It is the further submission of the learned counsel that though it is the claim of the petitioner that alternative employment was provided to the workmen, however, there is no material evidencing the same and till date the



W.P. No.10018/12

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petitioner factory is not functioning as admitted by them in the writ petition, as electricity connection has not been restored. Therefore, the claim of the petitioner that alternative employment was provided to the workmen, but the workmen failed to avail the alternative employment is an attempt on the part of the petitioner to wriggle out of its duty to pay lay-off compensation.

16. It is the further submission of the learned counsel that though the settlement is not admitted by the workmen, however, assuming without admitting that such a settlement was entered into by a part of the workmen, even then it is the duty of the petitioner to satisfy the requirements contained u/s 25-O and 25-N and in the present case, there being no compliance of the said provisions of the Act, the claim of settlement would not in any manner interfere with the rights of the workmen to seek for lay-off compensation. In this regard, learned counsel placed reliance on the decision of the Apex Court in ***Oswal Agro Furane Ltd. & anr. – Vs – Oswal Agro Furane Workers Union & Ors. (2005 (3) SCC 224)***.



W.P. No.10018/12

WEB COPY

17. It is therefore submitted by the learned counsel that the Labour Court has considered all the materials in proper perspective while passing the impugned award which does not require any interference at the hands of this Court.

18. This Court gave its careful consideration to the submissions made by the learned counsel appearing on either side and perused the materials available on record and the relevant provisions of law to which this Court's attention was drawn and also the decision of the Apex Court.

19. The point that arises for determination in the present case is –

“Whether on the closure of the petitioner factory, on the facts and circumstances of the case, the workmen are entitled to lay-off compensation or closure compensation”.

20. It is not in dispute that electricity disconnection in the petitioner industry had led to its closure, though it is the case of the petitioner that the workmen were offered alternative employment, but they did not turn back to



W.P. No.10018/12

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take up the alternative employment and, therefore, they are not entitled to any compensation and also wages. However, even at the very outset it could be safely concluded that there is no material placed by the petitioner either before the Labour Court or before this Court with regard to providing alternative employment to the workmen and inspite of the same, they did not turn up for the same. In the face of the aforesaid facts and materials, the claim of the petitioner that the workmen were provided with alternative employment is grossly unacceptable and rightly so, it has not been accepted by the Labour Court and, therefore, no interference is warranted with the same.

21. Insofar as the compensation to which the workmen are entitled, viz., lay-off compensation or closure compensation, the relevant provisions of the Act, viz., 25-M, 25-N and 25-O, which have a bearing on the decision, are quoted hereunder for better appreciation :-

"25M. Prohibition of lay-off.-

(1) No workman (other than a badly workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except with the prior permission of



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the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workman (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen



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concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:



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Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of subsection (1), or, as the case may be, subsection (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

(10) The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation.--For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or



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previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

25N. Conditions precedent to retrenchment of workmen.-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,--

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner



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stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under subsection (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified

authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and



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binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of subsection (1) shall not apply in relation to such establishment for such period as may be specified in the order.



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(9) Where permission for retrenchment has been granted under subsection (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

25-O. Procedure for closing down an undertaking.-

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under subsection (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the



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workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refused to grant such permission and a copy of such order shall be communicated to the employer and the workman.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.



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(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."



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22. There is no quarrel that there is no retrenchment and therefore the application of Section 25-N of the Act can be safely negated. In the said background, the closure of the petitioner industry would enure as lay-off compensation to the workmen or closure compensation to the workmen alone requires consideration.

23. As extracted above, Section 25-M relates to prohibition of lay-off while Section 25-O relates to procedure for closing down an undertaking. Sub-section (1) to Section 25-M mandates that no person shall be laid-off by the employer except with the prior permission of the appropriate government or such other authority as may be specified by this Government by notification in the official gazette. Sub-section (2) of Section 25-M provides for the manner in which such lay-off is intended to be made by the employer. Sub-section (8) of Section 25-M mandates that where no such application for permission under sub-section (1) of Section 25-M or where no application for permission under sub-section (3) is made within the period specified therein, or where permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which



W.P. No.10018/12

WEB COPY

such workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force.

24. Coming to the issue relating to the procedure for closing down an undertaking, sub-section (1) mandates an employer, who intends to close down an undertaking of an industrial establishment, shall, in the prescribed manner, apply for prior permission atleast ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen. Sub-section (2) to (5) relates to the power and duties of the Government with regard to the manner in which the application for closure has to be dealt with. Sub-section (6) provides that where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.



W.P. No.10018/12

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25. From a careful reading of the provisions of Section 25-M and 25-O, which have been specifically spelt out above, it manifestly reveals that irrespective of lay-off or closure, prior permission of the appropriate Government is mandatory. In the present case, though the petitioner claims that the industry is closed only because of disconnection of electricity, notwithstanding the said fact, the workmen have not been provided work and have not been paid and, therefore, the grievance sought to be ventilated by the workmen before the conciliation officer cannot be held to be erroneous.

26. Now the application of 25-M or 25-O to the facts of the present case requires to be adjudicated. The provisions of Section 25-M and Section 25-O which have a bearing on the adjudication of the case have been detailed above.

27. For laying-off any workmen, sub-section (1) of Section 25-M clearly mandates that the prior permission of the appropriate Government is required, whereas sub-section (1) of Section 25-O spells out that if the industry intends to



W.P. No.10018/12

WEB COPY

close down, an application has to be filed before the appropriate Government 90 days before the date on which the intended closure is to become effective.

28. It is not the case of the petitioner that any such application as provided for under sub-section (1) to Section 25-O has been filed before the appropriate Government. Though the petitioner claims that if at all the petitioner industry has been closed, the workmen would be entitled to closure compensation alone stands defeated on the ground that no application has been made to the appropriate Government prior to such closure. The mandate is very specific that an application has to be made ninety days before the date of intended closure and in the present case, there being no application for such an intention to close, the closure of the petitioner industry cannot be said to closure within the meaning of Section 25-O of the Act and, therefore, payment of closure compensation to the workmen would not arise.

29. Turning back to prohibition of lay-off u/s 25-M, the industrial establishment which indents to lay-off any workman, prior permission of the appropriate Government is necessary, which is evident from sub-section (1) of



W.P. No.10018/12

WEB COPY

Section 25-M. There is no application for permission to lay-off, but curiously, severance of electricity connection has resulted in the closure of the industry and laying off all the workmen. There being no prior permission obtained from the appropriate Government, the entitlement of the workmen to lay-off compensation would enure from the date on which the workmen had been laid-off by applying sub-section (8) to Section 25-M of the Act, as the said closure and the consequential lay-off is deemed to be illegal in the absence of any application or permission from the appropriate Government.

30. Though it is the claim of the petitioner that a settlement has been entered into between a major portion of the workmen and the petitioner, whilst after the submission of failure report and reference of the industrial dispute to the Labour Court, as the conciliation officer has recommended the settlement, however, it is to be pointed out that once a failure report is submitted by the conciliation officer to the Government, the conciliation officer becomes functus officio and in the absence of any reference or application for conciliation before him, the conciliation officer cannot assume jurisdiction to entertain the



W.P. No.10018/12

WEB COPY

settlement and make a report to the Government pointing out the said settlement.

31. Further, as pointed out by the learned counsel for the workmen and also taken note of by the Labour Court, the settlement is subsequent to the failure report and even with regard to the settlement, there are certain disputes as not all the workmen had entered into the settlement and the act of the management in misutilising the signed papers of the workmen for drawing the provident fund is alleged. Therefore, that issue being disputed, this Court cannot go into the same. However, notwithstanding the said dispute, the settlement being posterior in point of time to the failure report, the settlement would have no sanctity in the eye of law insofar as the present dispute is concerned and the Labour Court has rightly appreciated the said fact and negated the said contention, which does not call for any interference.

32. The decision of the Apex Court in *Oswal Agro case (supra)*, relied on behalf of the workmen would also support the aforesaid view of this Court, wherein, the Apex Court has held that though a settlement within the meaning of



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Section 18 (2) r/w 2 (p) of the Act undoubtedly binds the workmen, but this would not mean that thereby the provisions contained in Sections 25-O and 25-N are not required to be complied. In the said context, the Apex Court held thus :-

“14. A bare perusal of the provisions contained in Sections 25N and 25O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25N of the Act provides for conditions precedent to retrenchment; Section 25O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25N and 25O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement,



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however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25N and 25O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

16. It is trite that having regard to the maxim "ex turpi causa non oritur actio", an agreement which opposes public policy as laid down in terms of Sections 25N and 25O of the Act would be void and of no effect. The Parliament has acknowledged the

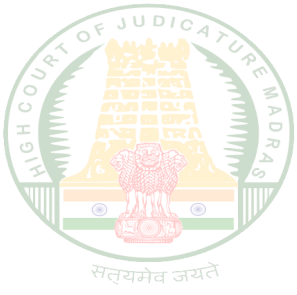


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governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub-section (7) of Section 25N and sub-section (6) of Section 25O, a legal fiction has been created. The effect of such a legal fiction is now well-known. [See East End Dwellings Co. Ltd. v. Finsbury Borough Council, (1951) 2 All ER 587, Om Hemrajani v. State of U.P. and Anr., MANU/SC/1002/2004 : 2005CriLJ665 and Maruti Udyog Ltd. v. Ram Lal and Ors., MANU/SC/0056/2005 : (2005)ILLJ853SC.]

(Emphasis Supplied)

33. Drawing analogy from the aforesaid proposition propounded by the Apex Court, which, in full force, applicable to the present case, as the provisions contained in Section 25-M requires due compliance even if a posterior settlement binds the workmen. In the absence of such a compliance, the mere allegation of entering into a settlement will not be sufficient to rob the workmen of the right, which stood protected u/s 25-M. This Court, in the earlier portion of the order has held that the settlement posterior in point of time would in no way have a bearing on the dispute raised by the workmen for the reasons shown above and the aforesaid decision only aids the decision of this Court.



W.P. No.10018/12

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34. For the reasons aforesaid, there being no illegality or perversity in the impugned order passed by the court below, this writ petition deserves to be dismissed and, accordingly, the same is dismissed confirming the order impugned herein. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

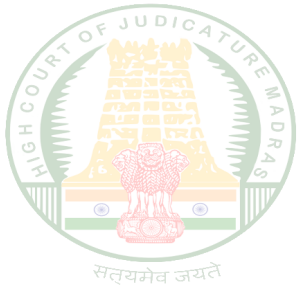
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Index : Yes / No

GLN

To

The Presiding Officer
Labour Court, Karaikal.



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W.P. No.10018/12

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 10018 OF 2012**

Pronounced on



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W.P. No.10018/12

27.03.2025