



W.P.No.2193 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.2.2025

Pronounced on : 25.2.2025

CORAM:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 2193 of 2020

D.StephenUnnimon

S/o. N.S.Daniel,
2/53, Bharath Nagar,
Wellington,
Barracks,
Nilgiris District.

...Petitioner

Vs.

The Management
Wellington Gymkhana Club
Barracks Post,
Nilgiris District.

...Respondent

Prayer in W.P.2193 of 2020

To issue appropriate Writs, Orders or Directions and in particular issue a Writ in the nature of Certiorarified Mandamus after calling for the records pertaining to the Award dated 22.11.2019 in I.D.No.35/2016 on the file of the Learned Additional Labour Court, Coimbatore, quash the same and consequently direct the respondent



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management to reinstate the petitioner with continuity of service, back wages and all other attendant benefits, after adjusting the amount of Rs.25,000/- which they have paid after the award, award costs.

Appearance of Parties:

For Petitioner : Mr.R.Krishnaswamy,
M/s. R.Krishnaswamy & V.AjoyKhose, Advocates

For Respondent : Mr.T.Sella Pandian, Advocate
For M/s.J.Franklin, Karthick and S.Valarmathi, Advocates

JUDGMENT

Heard.

2. The writ petitioner in this case is the workman. He has filed the present writ petition challenging the award passed by the Additional Labour Court, Coimbatore, in I.D. No. 35 of 2016, dated 22.11.2019, at its Udagamandalam camp. By this award, the Labour Court held that instead of reinstatement, the workman would be entitled only to a compensation of Rs.25,000/-.

3. In the writ petition, notice was issued on 30.01.2020. Upon receiving notice, the respondent entered an appearance. Although time was sought for filing



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a counter affidavit, none was ultimately submitted. During the final hearing, it was

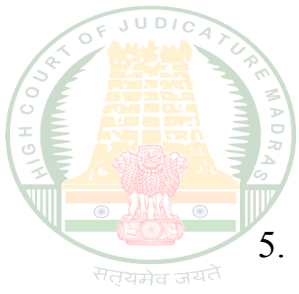
suggested that a compromise might be possible. However, even after ten days, no memo was filed in this regard.

4. The workman's case was that he was an ex-serviceman and had been appointed as a Security Guard by the respondent club on 07.05.2013. While his initial salary was Rs. 150 per day, by the time of his termination, he was earning Rs.7,152 per month. Suddenly, he was issued a termination order dated 15.12.2014.

The order, signed by the Secretary of the Club, read as follows:

1.As the security of the Club was not upto the satisfaction of the Management, the security task is being outsourced to a private security agency.

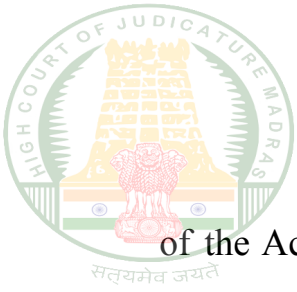
2. In view of the above, as per the terms and conditions of your temporary employment letter No. WGC/APP/130930 dated 30 Sep 2013, you are hereby given one month notice with effect from 15 Janu 2015 for termination of your temporary service with the Club.



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5. Challenging his termination, the workman raised an industrial dispute before the Government Labour Officer, Coonoor, under Section 2A of the Industrial Disputes Act. As the Conciliation Officer was unable to mediate a settlement between the parties, he issued a failure report dated 01.02.2016. Based on this report, the workman filed a claim statement before the Labour Court, Coimbatore, which was registered as I.D. No. 35 of 2016. He contended that his termination was illegal and in violation of the notice issued by the employer. There were no allegations of misconduct against him. By stating that his services were not satisfactory, and the security task was given to a private security agency, the Respondent was indulging in illegal act.

6. Upon receiving notice, the respondent entered an appearance through counsel and filed a counter statement dated 16.11.2017. It was contended that the dispute under the Industrial Disputes Act was not maintainable, as a claim under Section 2A could only be raised in cases of termination. The respondent asserted that one month's notice pay had been provided, and compliance with Section 25F

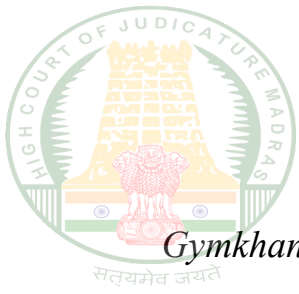


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of the Act had been ensured by issuing the requisite notice. It was further stated that security services had been outsourced to Radiant Protection Force and that the petitioner had been offered alternative employment with the outsourced agency.

7. Before the Labour Court, the workman had examined himself as WW1 and submitted 11 documents, which were marked as Exhibits W1 to W11. On behalf of the respondent, one Douglas Groven was examined as MW1. Based on the evidence presented by both sides, the Labour Court concluded that the activities of the club fell within the definition of "industry" under Section 2(j) of the Industrial Disputes Act and that the provisions of the Act were applicable.

8. In this context, it must be stated that the Supreme Court, in *Bangalore Water Supply and Sewerage Board v. R. Rajappa*, reported in (1978) 2 SCC 213, provided a broader interpretation of the term "*industry*" under Section 2(j) of the Industrial Disputes Act. In doing so, it overruled the earlier decision in *Madras*



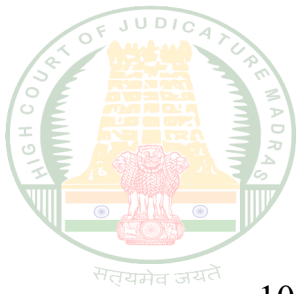
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Gymkhana Club Employees' Union v. Management of the Gymkhana Club,

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reported in AIR 1968 SC 554. Consequently, the issue is no longer *res integra*, as it is settled by the larger bench judgment of the Supreme Court. Furthermore, based on the facts, the Labour Court found that the club engaged in systematic activities and possessed substantial funds collected through its operations.

9. Having held that the respondent falls within the scope of the Industrial Disputes Act, the Labour Court examined the petitioner's appointment order, marked as Ex.W1, which indicated that he was a temporary employee and could be discharged with one month's notice. The Labour Court noted that this condition had been fulfilled through the issuance of Ex.W8 and the payment of the remaining 15 days' wages for the notice period. It further held that no prejudice was caused by providing two half-months' wages. Since the termination was in accordance with the terms of the appointment order and the stipulated conditions had been met, the Labour Court accepted the respondent's action as valid.

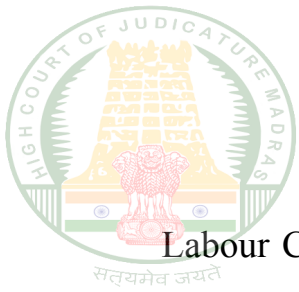


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10. The Labour Court found that the workman initially joined as a daily wage labourer on 07.05.2013 and was later appointed as a Security Guard on a temporary basis from 01.10.2013. His employment continued only until 31.12.2014. Although he had expressed his desire for permanent employment, it was not granted. The Labour Court further held that the requirements of Section 25F of the Industrial Disputes Act had been duly complied with, and therefore, the termination could not be deemed illegal.

11. After addressing the main issue, the Labour Court also noted that the management had decided to outsource security services to a private agency, which led to the discontinuation of the workman's employment. During cross-examination, the workman admitted that he was aware of the outsourcing arrangement and that he had been offered employment with the outsourced agency. His argument that security work could not be outsourced to a private contractor was not accepted. However, while he was found ineligible for reinstatement, the



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Labour Court, considering his 19 months of temporary service and the prolonged pendency of the dispute for over three years, directed the payment of Rs. 25,000/- as compensation in full settlement of all claims.

12. Challenging this decision, the present writ petition was filed, as previously noted. The learned counsel for the workman contended that the Labour Court had adopted an erroneous approach in its findings. In support of this contention, the counsel referred to the Supreme Court judgment in *Devinder Singh v. Municipal Council, Sanaur* (2011 (6) SCC 584) and specifically relied on the observations made in paragraphs 19 to 21, which are as follows:

“19. Section 25 couched in negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the

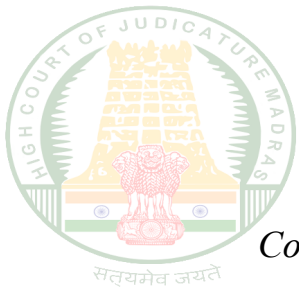


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reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

20. This Court has repeatedly held that the provisions contained in Section 25F (a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative--State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610, Bombay Union of Journalists v. State of Bombay AIR 1964 SC 1617, State Bank of India v. N. Sundara Money (supra), Santosh Gupta v. State Bank of Patiala (1980) 3 SCC 340, Mohan Lal v. Bharat Electronics Ltd.(1981) 3 SCC 225, L. Robert D'Souza v. Southern Railway (supra), Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour



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Court (1980) 4 SCC 443, Gammon India Ltd. v. Niranjana Dass

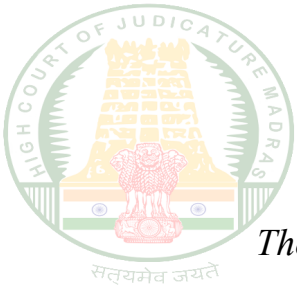
(1984) 1 SCC 509, Gurmail Singh v. State of Punjab (1991) 1 SCC

189 and Pramod Jha v. State of Bihar (2003) 4 SCC 619.

21 In Anoop Sharma v. Executive Engineer, Public Health Division, Haryana (supra), the Court considered the effect of violation of Section 25F, referred to various precedents on the subject and held the termination of service of a workman without complying with the mandatory provisions contained in Section 25-F (a) and (b) should ordinarily result in his reinstatement.”

13. The learned counsel also cited the Supreme Court judgment in *Novartis India Limited v. State of West Bengal & Others* (2009 (3) SCC 124), emphasizing that even if an employee is transferred or fails to join the new post, termination without conducting a proper inquiry is not permissible. In support of this argument, reliance was placed on paragraphs 14 and 16 of the judgment, which state as follows:

“14....., even after the direction went against the employees, respondents did not join their services at their transferred places.



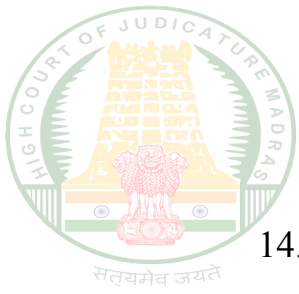
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They might have committed a misconduct. Their services, however, were terminated without holding any domestic inquiry. Only a month's wages were paid. It is not in dispute that after passing of the orders of transfer till the orders of termination, no amount by way of salary or otherwise has been paid to them. No disciplinary proceeding was initiated. No subsistence allowance was also paid.

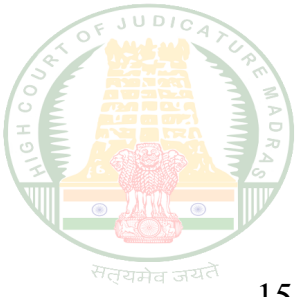
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16. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. Appellant precipitated the situation by passing a post haste order of termination of their services.”



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14. In the present case, it is undisputed that the workman was employed from 07.05.2013 to 15.12.2014, serving for approximately 19 months, albeit in a temporary capacity. At the time of his termination, he was informed that his role had been outsourced to a private agency and was given the option to join that agency. He was issued a notice along with 15 days' wages, with the remaining amount stated to have been paid later. However, no compensation for his 19 months of service, as mandated under Section 25F(b) of the Industrial Disputes Act, was offered or paid, resulting in a clear violation of the provision. When work is continuous and uninterrupted, there is no requirement to prove that the worker had completed 240 days of service, The definition of the term “continuous service” provided under the I.D.Act in Section 25B will clearly show that it is only in case of broken service the actual service of 240 days will have to be completed. While the respondent asserted that the workman was employed on a temporary basis, it was never contended that his appointment was intermittently broken before his termination.



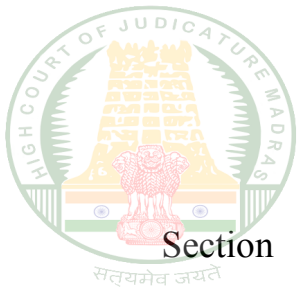
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15. The management's clear position was that the workman's employment was discontinued due to the outsourcing of security services. Whether such a work done by the employee of the club can be outsourced and what are the legal requirements are also to be considered. As per Section 9A of the Industrial Disputes Act, any proposed change in the service conditions of a workman concerning matters listed in the Fourth Schedule requires prior notice. This notice must be issued in the prescribed form, provided to the workman, and must allow a minimum of 21 days before implementation. Item No. 10 in the Fourth Schedule of the Act is as follows:

“Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;”

16. Failure to issue notice under Section 9A before reducing the workforce and implementing changes in the employment system constitutes a violation of the provision, rendering any consequential retrenchment invalid for infraction of

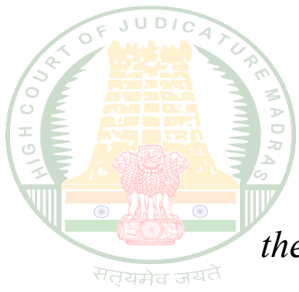


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Section 9A. The Supreme Court, in *Lokmat Newspapers Pvt. Ltd. v.*

Shankarprasad (1999 (6) SCC 275), reaffirmed this principle, holding as follows:

“Point No, 5:..... The Industrial Court, on the other hand, came to an equally erroneous finding on the applicability of item 10 of [Schedule IV of the I.D. Act](#) when it held that the said item would apply not at the time when the rationalisation scheme was introduced, but at the time when the employer desired or decided to terminate the services of the employees. This reasoning of the Industrial Court is contrary to the very scheme of item 10 of [Schedule IV of I.D. Act](#) and totally ignores the term 'likely to lead to retrenchment' as found in the said item. The reasoning of the Industrial Court almost amounts to rewriting the said phrase as "decide to retrench the workmen". These patent errors of law committed by the Labour Court and the Industrial Court were totally bypassed by the learned Single Judge while he dismissed the Writ Petition. These patent errors of law, therefore, were rightly set aside by the Division Bench of the High Court in the Letters Patent Appeal. It could not, therefore, be said that the impugned judgment had tried to interfere with the pure findings of the fact reached by

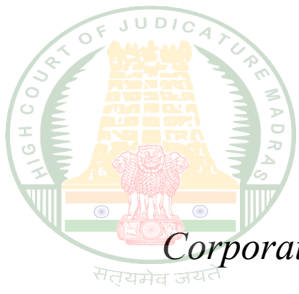


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the authorities below on evidence against the respondent. It was perfectly open to the Appellate Court in the hierarchy of proceedings to interfere with such patent errors of law and to correct them, otherwise it could have been said that it had failed to discharge its duty and that would have also amounted to failure to exercise jurisdiction on its part. The aforesaid point is, therefore, answered in affirmative against the appellant and in favour of the respondent by holding that the Appellate Court had corrected patent errors of law and had not interfered with the pure findings of the facts not connected with the relevant questions of law with which they were intertwined.”

17. Therefore, the termination of the workman by the respondent club on the ground that his work was outsourced constitutes a clear violation of Section 9A of the Industrial Disputes Act. The Supreme Court has held that when there is a breach of Section 9A, it is unnecessary to examine the merits of the change, as the mere failure to issue the required notice is sufficient to render the action void in law. This principle was reaffirmed in *Management of Indian Oil*



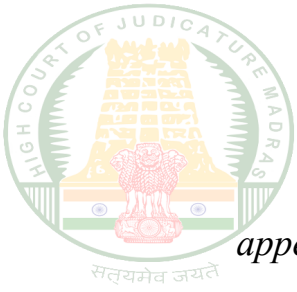
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Corporation v. Its Workmen (1976 (1) SCC 63), where the Court observed as

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follows:

“....even if s. 9A of the Act applied, the Tribunal should have gone into the question on merits instead of giving the award on the basis of non-compliance with the provisions of s. 9A. This argument also appears to us to be equally untenable. On the facts and circumstances of the present case the only point that fell for determination was whether there was any change in the conditions of service of the workmen and, if so, whether the provisions of s. 9A of the Act were duly complied with. We cannot conceive of any other point that could have fallen for determination on merits, after the Tribunal held that s. 9A of the Act applied and had not been complied with by the appellant.”

It was also faintly suggested that there was no question of a customary claim or usage because the period during which the compensatory allowance was granted and withdrawn was too short. It is, however, not necessary to take any notice of this argument, because counsel for the respondents Mr. Sen Gupta fairly conceded that he had not based his claim on any customary claim at all. It was argued by Mr. Sen Gupta that after the Central Government notification of September 3, 1957, the



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appellant took an independent and voluntary decision on their own to give the facility of the Assam Compensatory Allowance as an implied term of the contract and having done so they could not wriggle out from the provisions of s. 9A of the Act.”

18. Although the respondent management contended that the issue of outsourcing cannot be examined in a dispute under Section 2A of the Industrial Disputes Act, it is essential to note that every workman is entitled to a notice of change under Section 9A, and failure to issue such notice in the prescribed manner renders the termination order invalid. Furthermore, as established in the judgments cited by the petitioner’s counsel, any violation of Section 25F(b) of the ID Act—particularly the failure to provide the mandated compensation for the workman’s service—renders the termination *void ab initio*. Consequently, the workman is entitled to the standard relief of reinstatement with continuity of service and back wages.



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19. At the time of filing the writ petition, the workman was 57 years old, and by now, he would have reached the normal age of retirement. Consequently, reinstatement is not a feasible remedy. Under these circumstances, while setting aside the award in *I.D. No. 35/2016* dated 22.11.2019, it is directed that instead of reinstatement with back wages, the workman shall be paid full wages for the period from his termination on 15.12.2014 until the date of his retirement.

20. The writ petition, *W.P. No. 2193 of 2020*, is allowed on the above terms.

However, there shall be no order as to costs.

25.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Copy to:

1. The Presiding Officer,
Additional Labour Court,
Coimbatore.
(with records if any)
2. The Management
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DR.A.D.MARIA CLETE, J.

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Pre-delivery Judgment in
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25.02.2025