



W.P. No.2204/2012-15002/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.2204 OF 2012 & 15002 OF 2013

W.P. No.2204 of 2012

The Managing Director
Caterpillar India (P) Ltd.
Sedarapet, Pondicherry.

.. Petitioner

- Vs -

1. II Addl. District Judge
Presiding Officer
Labour Court, Pondicherry.

2. Caterpillar Pattali Employees' Union (CITU)
18, Vallalar Street, Kosapalayam
Pondicherry.

.. Respondent

W.P. No.15002 of 2013

Caterpillar Pattali Employees' Union (CITU)
Rep. By its Secretary
18, Vallalar Street, Kosapalayam
Pondicherry.

.. Petitioner

- Vs -



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1. II Addl. District Judge
Presiding Officer
Labour Court, Pondicherry.

2. The Managing Director
Caterpillar India (P) Ltd.
Sedarapet, Pondicherry.

.. Respondents

W.P. No.2204 of 2012 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in ID No.33 of 2004 and quash its award dated 5.8.2011 insofar as it directs the petitioner to pay additional compensation over and above the closure compensation in terms of Section 25FFF of the Industrial Disputes Act.

W.P. No.15002 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to the award in ID No.33 of 2004 passed by the 1st respondent dated 5.8.2011 insofar as denying reinstatement with continuity of service, backwages and all other attendant benefits holding as if the closure of the 2nd respondent Management is genuine and also awarding only closure compensation, quash the same and consequently direct the 2nd respondent Management to reinstate the workmen concerned in Thiruvallur Unit which is also part and parcel of



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Puducherry Unit with continuity of service, backwages and all other attendant benefits and award costs.

For Petitioners : Mr. Anand Gopalan, for
M/s. T.S.Gopalan & Co. In
W.P. No.2204/2012
Mr. V.Ajay Khose in W.P.
No.15002/2013

For Respondents : Mr. V.Ajay Khose for R-2 in
W.P. No.2204/2012
Mr. Anand Gopalan, for
M/s.t.S. Gopalan & Co. In
W.P. No.15002/2013

COMMON ORDER

Challenging the award passed by the Labour Court in and by which the retrenchment of the workmen, while the Management had filed W.P. No.2204/2012 questioning the order of payment of compensation upon retrenchment, W.P. No.15002/2013 has been filed by the Union questioning the retrenchment along with compensation and praying for reinstatement of the workmen along with backwages and all other attendant benefits.



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2. For the sake of brevity, the parties to the *lis* will be referred to as management and workmen respectively.

3. The brief facts, as could be ascertained from the dispute, which has been referred to the court below, are as under :-

The employees of the Union (who will be referred to as 'workmen' hereinafter for brevity), and other workmen were originally employed in Hindustan Motors Ltd. During February, 2001, which company was taken over by the Management by absorbing all the employees. The Management began its operation with the said employees and the earlier Union under the Hindustan Motors was rechristened as the aforesaid Union by securing and protecting their statutory rights and interest in accordance with law.

4. It is the further averment of the Union that demand was raised for wage revision and non-consideration of the same led to raising of an industrial dispute in I.D. No.2/2003, which is pending adjudication and in the said backdrop, the management, without any just and lawful reasons declared closure on 26.4.2003, which act was challenged by filing W.P. No.14329/2003 and this Court finally



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disposed of the said writ petition on 7.10.2003 directing the Union to raise an industrial dispute and seek reference and the Management was directed to defer its action till final decision is taken by the Labour Court. Adhering to the said order, the Union approached the Labour Conciliation Officer and raised an industrial dispute.

5. The main ground raised in the dispute suggesting the reasons for closure and describing the same as illegal and unsustainable was premised on the fact that the correspondence between the Management and the Union would clear reveal that only to wriggle out of the statutory liabilities and lawful demands made by the workmen, vexatious and fictitious reasons have been invented for closure of the unit. It was further submitted that without obtaining any prior permission pending adjudication of I.D. No.2/2003 is highly illegal and unsustainable.

6. It was further submitted that the sudden closure of the Unit had caused non-employment of more than 200 workmen and all workmen are suffering and,



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therefore, the said declaration of closure is illegal and, therefore, direction was sought for, for reinstatement of the workmen.

7. Counter was filed on behalf of the Management that the performance of the Pondicherry Unit for the year ended December 2001-2002, upon the said unit being taken over from Hindustan Motors Ltd., having found to be not upto the expected level, it was decided in the Board Meeting to close down the said Pondicherry unit and, therefore, on 25.4.2003, notice was issued u/s 25 FFA of the Act informing the Government of Pondicherry about the intention to close down the unit with effect from 25.6.2003. The employees were exempted from reporting for duty from 25.4.2003 and they were provided with full wages upto the period 25.6.2003. It is the stand of the management that the closure of the unit was not on account of any sinister motive, but purely a commercial decision. Further, after the closure of the factory, the land and building along with plant and machinery have been sold and, therefore, the issue referred for adjudication does not survive for consideration.



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8. Upon the reference to the Labour Court, on the side of the workmen, while Exs.P-1 to P-12 were marked, however, no oral evidence was adduced. On the side of the Management, R.W.1 was examined and Exs.R-1 to R-25 were marked. On the materials placed before it, the court below approved the closure of the Management unit as justified, but however, directed payment of different retrenchment compensation to the various workmen, as evidenced from the said order. Aggrieved by the said order, the present writ petitions have been filed by the Management as well as the workmen, as stated supra.

9. Learned counsel appearing for the Management submitted that once the court below had held that the closure of the petitioner's factory is genuine and bona fide, the award of compensation is wholly erroneous as the workmen have been given compensation during the period 25.4.2003 to 25.6.2003 during which period they were not working.

10. It is the further submission of the learned counsel for the Management that the closure has become final on account of the disposal of the factory premises to the third parties and the workmen through the Union were not



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entitled to question the legality of closure, as it was beyond the scope of reference and adjudication.

11. It is the further submission of the learned counsel that the workmen have not placed any material to prove that there is viability for accommodation of the workmen, who have been retrenched at the Tiruvallur unit. It is the further submission of the learned counsel that the closure of the factory was genuine and justified and that the workmen were substantially compensated by payment of closure compensation and that being the case, the award of compensation ranging from Rs.26,000/- to Rs.75,000/- to the 53 workmen is wholly erroneous. Therefore, he prays that the order directing payment of compensation deserves to be interfered with.

12. In support of the aforesaid submissions, learned counsel for the Management relied upon the following decisions :-

- i) *Isha Steel Treatment, Bombay – Vs – Association of Engineering Workers, Bombay & Anr. (1987 (2) SCC 203);*



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- ii) *D.Ravikumar & Ors. – Vs – The Management, Diamond Chain Ltd. (2013 SCC OnLine Mad 1553); and*
- iii) *Five Members Committee of Parrys Confectionery Thozhilaalargal – Vs – The Presiding Officer, III, Addl. Labour Court & Ors. (W.A. No.516/2023 – Dated 15.11.2024)*

13. Per contra, learned counsel appearing for the workmen submitted that the business at Pondicherry cannot be said to be closed, as only the establishment at Pondicherry was closed, while the entire activities relating to manufacturing and production was carried out at Tiruvallur. Therefore, there is no real, genuine and bona fide closure as held by the court below. It is therefore submitted that the workmen ought to have been given employment at Tiruvallur and it is not necessary for the workmen to prove that whether there were vacancies in Tiruvallur which could be used to accommodate the retrenched workmen.

14. It is the further submission of the learned counsel that only to defeat the claim for wage revision in the pending ID No.2/2003, the management has



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merely changed the place of business and the management has not closed down the establishment in toto by stopping its business and the taking away of the livelihood of the workmen is only for the personal gain of the management from paying increased wages in I.D. No.2/2003. It is the further submission of the learned counsel that the court below was in error in holding that prior permission u/s 33 (1)(a) was not required and also was not correct in holding that such permission was required only in case of dismissal or discharge.

15. It is the further submission of the learned counsel that the appointment of the workmen provides for transfer from one unit to the other and that being the case, instead of retrenching the workmen, the workmen could have been transferee from the unit at Pondicherry to the unit at Tiruvallur. However, this crucial fact has been lost sight of by the court below and without the management seeking permission u/s 25 (O) of the Act, the court below ought to have directed reinstatement of the workmen with backwages and continuity of service and, therefore, the impugned order is liable to be interfered with, with a further direction to the management to reinstate the workmen with continuity of service and backwages.



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16. This Court gave its anxious consideration to the submissions advanced on behalf of the respective parties and perused the materials available on record.

17. There is no quarrel with the fact that a notice u/s 25 FFA of the Act was given to the Government of Puducherry before resorting to closure of the factory. Upon the factory being closed, the workmen employed therein ought to be paid retrenchment compensation as provided for u/s 25-FFF (1) of the Act. Section 25 FFF (1) provides that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched.

18. From the above, it is evident that notice of such closure ought to be given to the workmen and compensation in accordance with provisions of Section 25-F ought to be paid. Therefore, payment of compensation to retrenched



workmen is guided by Section 25-F, which, for better clarity, is quoted hereunder

:-

“25F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry 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 one month's 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:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and*

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

19. There is no quarrel with the fact that the workmen were given notice u/s 25 F (1) of the Act and wages for the said period has also been paid, as according to the Management, the services of the workmen were dispensed with



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from 25.4.2003 to 25.6.2003 during which period, they were paid the wages. The said fact is not disputed by the workmen as well.

20. Clause (b) of sub-section (1) of Section 25-F of the Act provides for paying retrenchment compensation equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months. Though as stated above, compensation for the notice period has been paid, however, there is no clarity with regard to payment of retrenchment compensation.

21. Be that as it may. The factum of the closure of the unit, as stated above, has been done after following the procedures and safeguards prescribed under the Industrial Disputes Act, which has also been discussed in detail by the court below. Though it is claimed by the workmen that they could have very well been accommodated in the Tiruvallur unit, however, the fact remains that it is within the realm of the management to decide about the accommodation of the employee, based on the workforce required and the vacancies existing. The workmen from one unit cannot be thrust upon on the other unit, merely at the



behest of the workmen. Further, when there is no material placed by the workmen to establish that there were vacancies in Tiruvallur unit, the management cannot be expected to absorb the workmen at the Tiruvallur unit.

22. When this Court pointed out that there are no infirmities in the order passed by the court below with regard to upholding the retrenchment and only that the fixation of the retrenchment compensation is not as per the provisions of Section 25-F of the Act and when this Court also pointed out that the closure of the unit was in the year 2003 and two decades have passed since the said closure and, therefore, no useful purpose would be served in directing reinstatement of the workmen, as even if such a direction is issued, it would be only on the basis of 'No Work- No Pay' concept and when this Court also pointed out to the learned counsel for the Management that payment of retrenchment compensation u/s 25-F (1)(b) of the Act has not been spelt out and if at all this Court could remand the matter to the court below only for the purpose of arriving at the retrenchment compensation, which would be nothing but an extended delay in disposal of the dispute, learned appearing on either side fairly submitted that this



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Court may fix the retrenchment compensation to the workmen, so as to balance the scales of justice.

23. In such view of the matter, without entering into the factual disputes, as put forth before this Court, these writ petitions are disposed of with a direction to the management to pay seven times the compensation computed by the court below to each of the workmen in lieu of retrenchment compensation as provided for u/s 25-F(1)(b) of the Act. There shall be no order as to costs in these petitions.

05.02.2025

Index : Yes / No

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To

The II Addl. District Judge
Presiding Officer
Labour Court, Pondicherry.



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M.DHANDAPANI, J.

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**W.P. NO. 2204 OF 2012
AND
W.P. NO.15002 OF 2013**