



C.M.A.No.1777 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

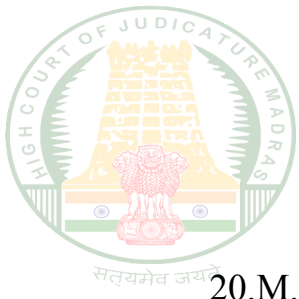
C.M.A.No.1777 of 2021 and
C.M.P.No.9494 of 2021

1. The Regional Director
Employees State Insurance Corporation , Puducherry
- 2.The Branch Manager
Employees State Insurance Corporation Puducherry.

... Appellants

Vs.

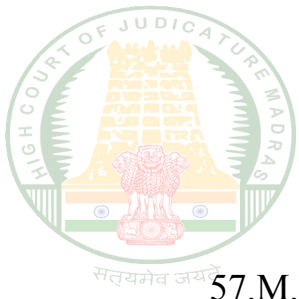
1. Leo Silvester Felician
- 2.N.Manivanna
- 3.Arogyadas Thangaraj
- 4.N.Lalbahadur
- 5.U.Ramesh
- 6.T.Ambalavanan
- 7.R.Vinothkumar
- 8.R.Sudhakaran
- 9.N.Lakshminarayanan
10. S.Arivazhagan
- 11.K.Venkata Raman
- 12.S. Gangadharan
- 13.R.Rajesh
- 14.L.Sundaramoorthy
- 15.L.Vetriselvan
- 16.S.Sundaravelu
- 17.P.Sivakumar
- 18.K.Thegarajan
- 19.S.Mohanraj



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- 20.M.T. Veeramani
- 21.S.Shanmukgaraja
- 22.K.Palanivel
- 23.R.Sugumaran
- 24.A.C. Kumar
- 25.P.Pounraj
- 26.A.Venkatesaperumal
- 27.K.Maheskumar
- 28.E.Jeyakumar
- 29.A.Viswanathan
- 30.D.Dhamodharan
- 31.Basudev Behera
- 32.P.Ragupathi
- 33.P.Balaraman
- 34.G.Muthukumaran
- 35.G.Velmurugan
- 36.R.Arumugam
- 37.M.Kannan
- 38.D.Lashmanan
- 39.M.Balachandran
- 40.S.Anandhan
- 41.N.Balasubramanian
- 42.D.Sakthivel
- 43.P.Karthikeyan
- 44.K.Dhandapani
- 45.K.Sathiyaprakash
- 46.T.K.Rajendra
- 47.D.Satish Kumar
- 48.E.Willingston Kiruba Kumar
- 49.S.Sivakumar
- 50.A.Kuppusamy
- 51.T.Vijay Ananth
- 52.J.Sasikumar
- 53.M.G.Ramesh
- 54.G.Karthi
- 55.Jaleel Ahammad
- 56.C.Murugavel



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57.M.Balasubramani

58.N.Suresh

59.A.Dhanusuraman

60.R.Eswaran

61.D.Mathivanan

62.R.Madhavan

63.T.S.Venkatesan

64.P.Danabalan

65.M.Manikandan

66.M.Vijayakumar

67.M.M.Perumal

68.A.Dharmarajan

69.R.Ramachandran

70.S.Ranjith Kumar

71.T.Prabhu

72.D.Ramamoorthy

73.P.Gopinath

74.R.Karunakaran

75.S.Angamuthu

76.Chukka Pushpa Rao

Rep By L.Sundaramoorthy, President, M/s Suzlon Thozhilalargal
Sangam (CITU) Having Office At No.32 Bharathi Mill Thittu,
Mudaliarpeta, Puducherry

77.The Managing Director
M/s Suzlon Energy Ltd Unit IV,
Thiruvandarkoil, Puducherry

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order passed in EIOP No.11 of 2017 dated 26.02.2020, on the file of the Employees State Insurance Court (Industrial Tribunal Cum Labour Court Puducherry), Puducherry.

For Appellants	: Mr.S.P.Srinivasan
For Respondents	: Mr.P.P.Thiruneelakandan for R1 to R76
	No appearance for R77



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JUDGMENT

The above appeal is filed by the appellant against the order passed in EIOP No.11 of 2017 dated 26.02.2020, on the file of the Employees State Insurance Court (Industrial Tribunal Cum Labour Court Puducherry), Puducherry.

2. The brief facts that are relevant for disposing of this appeal are as follows:

The respondents 1 to 76 herein were working under the management of respondent No.77 / management. Whiles, on 23.07.2012, the management had declared lockout on 23.07.2012. The management filed application for closure and lockout were challenged before the Labour Court, Puducherry in ID(L).No.15 and 22 of 2013. During the pendency of those two petitions, an amicable settlement was arrived at between the management and employees union on 12.12.2015; whereby, each of the employees were paid one time consolidated compensation of Rs.2,50,000/-. The employees thereafter filed ESIOP.No.11 of 2017 before the Employees State Insurance (Industrial



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Tribunal cum Labour Court), Puducherry seeking unemployment allowance for a period of one year under Rajiv Gandhi Shramik Kalyan Yojana Scheme.

3. Counter was filed by the appellants herein contending that the employees are not eligible to any allowance because of their contradictory claim made before the Tribunal and application made before the second appellant herein. In the application filed before the second appellant, the employees claimed the said benefit for the period from 23.07.2012 to 22.07.2013, however, in the original petition before the Tribunal, they claimed employment allowance for the period between 18.03.2013 and 17.03.2014. Because of this contradiction, the respondents contended that the employees are not entitled for unemployment allowance from them.

4. The appellants also took the stand that the one time consolidated compensation of Rs.2,50,000/- covers the unemployment allowance also.



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5. The management filed a formal counter claiming that they are only formal party and it is for the insurance company to honour the claim made by the insurance company.

6. On the side of the employees, one witness was examined and 14 documents were marked. On the side of the insurance company, Branch Manager was examined and 8 documents were marked. Appreciating the oral and documentary evidence placed before it, the Tribunal allowed the claim of the employees in part and whole that the insurance company was liable to pay the unemployment allowance for a period of four months and four days. Challenging the said order, the present appeal has been filed.

7. Heard the learned counsel for the appellants / ESIC and the employees namely respondents 1 to 76 and perused the materials available on record.

8. The main argument put forth by the learned counsel for the appellants is that the employees cannot saddle unemployment allowance



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during lockout period. The learned counsel vehemently contended that the employees themselves are not sure for what period they should claim unemployment allowance. In the claim petition before the Corporation, they have claimed unemployment allowance for the period between 23.07.2012 and 22.07.2013; whereas, in the claim petition they have claimed for the period between 18.03.2013 and 17.03.2014.

9. The learned Tribunal has grossly erred in taking into account the overlapping period between the two claimants and it strangely arrived at a new claim period of four months and four days. The learned counsel submitted that the period calculation is wrong and same requires interference by this Court.

10. The learned counsel for the employees submitted that the order of the Labour Court is justified and it requires no interference.

11. The Tribunal had framed three points for determination:

(i) Whether the claim application was maintainable;



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(ii) Whether the claim application became inadmissible due to layoff temporary closure of factory of establishment;

(iii) Whether the claim petition became barred by limitation.

12. The Tribunal has traversed to answer each of the points and the Tribunal based on the evidence of R.W.1 had held that the claim petition was maintainable and the claim made by the employees was only for the period when they were retrenched.

13. The learned Tribunal placed reliance on Ex.R6, to the effect that the one time consolidated compensation of Rs.2,50,000/- was given to the workers as “a full and final settlement of any and all claims, under any nomenclature including but not limited to retrenchment / closure compensation, unpaid salary / wages except EPF”.

14. Therefore, the Tribunal held that the said compensation amount did not include unemployment allowance and therefore the claim petition was admissible.



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15. Placing reliance on the evidence of R.W.1, the Tribunal had also held that the claim was fully justified and the employees were claiming unemployment allowance only for the period when the factory was closed. While discussing the important point, whether the claim petition become barred by limitation, the Tribunal held that the period of unemployment would start from 12.12.2015 namely the date on which the settlement was arrived at between the management and the employees.

16. The Tribunal has extracted Section 2(oo) of the Industrial Disputes Act, which defines the meaning of retrenchment.

17. The learned Labour Court has found that the employees herein neither opted for VRS nor they retired on superannuation, but they were retrenched because of closure of the factory. Therefore, the period of limitation, according to the Tribunal would start only from 12.12.2015 and therefore, the claim was well within the period of nine months as stipulated in the scheme.



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18. Having answered each of the points in favour of the employees strangely, the Labour Court has arrived at a new period of four months and four days. The Labour Court has confused itself by taking the overlapping period between the two claims made by the employees, one in the application and another in the claim petition and the Tribunal has conveniently come to a new period of 18.03.2013 and 22.07.201. Indeed had the employees filed the cross objection or appeal challenging the order of the Labour Court, this Court would have allowed the original petition.

19. This scheme was enacted/formulated to benefit those employees who had suffered retrenchment.

20. There are umpteen number of judgments which state that mere quoting of wrong provision should not defeat the rightful claim of the parties.

21. Even in criminal cases, though the accused might have



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been charged for a harsher crime, if the court is of the view that the said crime would not be attracted, would punish the accused for a lesser offence.

22. In this case, the Labour Court ought to have granted unemployment allowance for one full year, taking into consideration the date mentioned in the original petition.

23. Hence, this Court has no hesitation to confirm the order passed by the Labour Court. In result the appeal fails and same is dismissed, confirming the award passed by the tribunal in EIOP.No.11 of 2017 dated 26.02.2020. No costs. Consequently, connected miscellaneous petition is closed.

06.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

1. Motor Accidents Claims Tribunal, Sub Judge, at Perundurai.
2. The Section Officer, V.R.Section, High Court, Madras.

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