



W.P.No.16269 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.04.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.16269 of 2018

and

W.M.P.No.19374 of 2018

M/s.IL and FS Maritime Infrastructure Company Limited,
Plot No.C-22, G Block, Bandra Kurla Complex,
Bandra East,
Mumbai-400 051.

...Petitioner

*(*Petitioner amended as per the order dated 22.02.2024 in W.M.P.No.1431 of 2024 in W.P.No.16269 of 2018*)*

Vs.

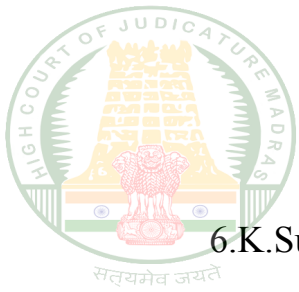
1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.S.Kumar

3.S.Manikandan

4.S.Gomathi Shankar

5.K.T.Mohan Dass



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6.K.Subramanian

7.M.Munian

8.M.Murugan

9.N.P.Suresh Kumar

10.T.Paramasivam

11.S.Sasikumar

12.The Management of G4 Services Private Limited,
Old No.7, New No.19, Gokulam,
Sri Mahadevan Nair Road,
Mahalingapuram,
Chennai-600 034.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the award of the first respondent dated 16.03.2018 passed in I.D.No.133 to 142 of 2007 and quash the award.

For Petitioner : Mr.K.Ragesh
for M/s.Jayaraman and Associates

For Respondents : R1-Court
Mr.V.Prakash
Senior Counsel for
Ms.M.Karthikeyani for R2 to R11



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ORDER

Aggrieved by the order of the Labour Court directing the petitioner to reinstate the respondents 2 to 11 in service with backwages, continuity of service and other consequential benefits, the present writ petition has been filed.

2. For the sake of convenience, the respondents 2 to 11 will be referred to as workmen.

3. It is the case of the petitioner that an industrial dispute was raised by the workmen alleging that their services were illegally terminated by the petitioner and further alleging that though the workmen were employed under the petitioner, all of a sudden from August, 2001, their salary was paid by the 12th respondent and though it was objected to by the workmen, the said objection was not considered. It is the further averment of the workmen that all of a sudden, on 9.11.2004, the 12th respondent herein terminated the services of the workmen against which the workmen raised a dispute and failure of conciliation led to the dispute being referred for adjudication before the Labour Court.



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4. Before the Labour Court, the workmen examined W.W.1 and marked Exs.W-1 to W-15. On the side of the petitioner, M.W.1 was examined and Exs.M-1 to M-4 were marked. Based on the oral and documentary evidence, the Labour Court held that the termination has been illegally made by the 12th respondent herein, though the workmen were employed under the petitioner and directed reinstatement with backwages and continuity of service. Aggrieved by the said order, the present writ petition has been filed.

5. Learned counsel appearing for the petitioner submitted that the workmen have not placed any materials to show that the petitioner and Ovira Logistics Pvt. Ltd. are one single entity. It is the further submission of the learned counsel that even when the dispute was raised both the companies were very much functioning as distinct entities at the relevant point of time, but the Labour Court has not properly considered the same and has passed the order directing reinstatement along with backwages and continuity of service, moreso, when the workmen have not established their case with regard to their continuous employment with the petitioner.



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Accordingly, he prays for interference with the order passed by the Labour

WEB COURT.

6. Per contra, learned senior counsel appearing for the workmen submitted that the distinctiveness of the two entities have not been established before the Labour Court. It is the further submission of the learned senior counsel that though the workmen were employed under the petitioner, however, their termination has been at the hands of the petitioner, but through some other entity. It is the further submission of the learned senior counsel that the reason for the above act of not terminating the workmen by the petitioner is only to circumvent the necessity to make the workmen permanent as any termination at the hands of the petitioner would play to the benefit of the workmen as their employment with the petitioner would stand established. Having analysed all the materials, the Labour Court has passed the impugned order, which is to the benefit of the workmen, which does not require any interference at the hands of this Court.



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7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The whole dispute revolves around the relationship between the petitioner and Ovira Logistics Pvt. Ltd., and the further fact that the termination has been at the hands of the 12th respondent. The said Ovira Logistics, according to the petitioner, is a distinct entity and there is no intellectual relationship between the petitioner and Ovira Logistics. Though such a contention is advanced by the petitioner, however, it is to be noted that no material whatsoever has been placed by the petitioner to substantiate the said contention. It is easier to claim distinctiveness between the two entities, but it should necessarily be backed by some material. It is merely the contention that they are two distinct entities, but no material in the form of incorporation of the company or any document from the Registrar of Companies or the likes of it had been placed to substantiate the said contention. In the absence of any material, the contention cannot be the basis to hold that there is no distinctiveness.



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WEB COPY 9. On the side of the workmen, materials to establish their association with the petitioner has been filed. Documents to support the agreement between Ovira Logistics and the 12th respondent has been filed, but there is no material, which is filed to show that Ovira Logistics and the petitioner are different entities. There are adequate materials to show that the petitioner has engaged the services of the workmen after 2002, but the termination has been made without following the procedure contemplated under the Industrial Disputes Act. The petitioner has not dwelled much on the non-compliance of the provisions of the Industrial Disputes Act. The whole case of the petitioner is premises on the intellectual relationship between the petitioner and Ovira Logistics, which has not been established and such being the case, the order passed in favour of the workmen cannot be said to be erroneous.

10. However, it is to be pointed out that the termination has taken place in the year 2004 and more than two decades have passed and at this distant point of time, reinstatement of the workmen with backwages would



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not be in the interest of either parties. Further, the concept of 'No Work, No Pay' would also be a determinant factor to be taken into consideration in addition to the age of the workmen.

11. Where the reinstatement of the workmen would be of no avail and would not be in the interest of the parties, payment of a lumpsum compensation has been one of the methods which has been worked out by the courts to meet the ends of justice.

12. It would be prudent to refer to the decision of the Apex Court in ***O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Ors.*** (1986 (4) SCC 337 :: MANU/SC/0475/1986), wherein, the Apex Court considering the beneficial aspect in respect of both the employer and the employee and without there being any hard feelings, though it fit to grant compensation in lieu of reinstatement, considering the length of service put in and the attainment of superannuation by most of the persons therein. In this regard, the Apex Court held thus :-

“7. So far as the facts of this case are concerned, we are satisfied that this is a fit case for granting



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compensation in lieu of reinstatement, instead of granting 'reinstatement'. For, it cannot be said that the apprehension voiced by the respondent-Corporation as regards the negative consequences of reinstatement is unreasonable. We do not propose to pronounce on the validity or otherwise of the allegations and counter allegations made by the parties in their respective affidavits. Suffice it to say that the relations between the parties appear to have been strained beyond the point of no return. The Trade Union of the employees has lodged a strong protest and even held out a threat of strike, in the context of some acts of the Appellant. Such unrest among the workmen is likely to have a prejudicial effect on the working of the undertaking which would prima facie be detrimental to the larger National interest, not to speak of detriment to the interest of concerned undertaking. We are not impressed by the submission that the Union is virtually a 'company's Union. In any case such disputed questions of facts cannot be resolved in this forum. We are prima facie satisfied that the apprehension is not ill-founded. What is more, reinstatement is perhaps not even in the interest of the appellant as he cannot give his best in the less-than-cordial-atmosphere and it will also result in misery to him, let alone the other side. Neither the undertaking



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nor the appellant can improve their image or performance, or, achieve success. In fact it appears to us that both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in lieu of reinstatement, and not reinstatement, is warranted in the circumstances of the present case.”

13. Yet again, in ***Workmen and Ors. Vs. Bharat Fritz Werner (P) Ltd. and Ors. (1990 (3) SCC 565 :: MANU/SC/0470/1990)***, the Apex Court, reiterating the benefits of granting compensation in lieu of reinstatement, taking cue from the decision in *Bhandari's case (supra)*, held as under :-

“21. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or when though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry (Hindustan Steel Ltd. v. A.K. Roy MANU/SC/0315/1969 : (1970)ILLJ228SC . In cases where it is felt that it will



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not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment.

* * * * *

23. In O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. MANU/SC/0475/1986 : (1986)IILLJ509SC this Court has held that compensation equivalent to 3.33 years' salary (including allowances) as admissible on the basis of the last pay and allowances would be a reasonable amount to award in lieu of reinstatement. In that case the Court has taken into consideration the fact that the corpus, if invested at the prevailing rate of interest (15%), will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages :

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

(iii) If he had been reinstated he would have earned the salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not



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only beyond the date of superannuation, for his life time (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.”

14. Considering the passage of time between the termination of workmen from service and the present day and also taking note of the strained relationship that would have arisen due to the continuous litigation, this Court deems it fit that lumpsum compensation could be ordered in lieu of reinstatement.

15. Accordingly, this Court, to strike a balance between the two parties, fixes an amount of Rs.75,000/- per workmen as one time lumpsum compensation without interest in lieu of reinstatement, which shall be paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Failing payment of the said lumpsum compensation within the period aforesaid, the workmen would be entitled to interest at 7.5% p.a. from the date of award till the date of payment. The Writ Petition



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is disposed of with the aforesaid directions. Consequently, connected

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miscellaneous petition is closed. There shall be no order as to costs.

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NCC : Yes / No

Speaking Order : Yes / No

Index : Yes / No

To

The Presiding Officer,
II Additional Labour Court,
Chennai.



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M.DHANDAPANI, J.

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