



W.P. No.19861 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 31.01.2025

ORDERS DELIVERED ON : 25.02.2025

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**W.P. No.19861 of 2018
and W.M.P.No.23307 of 2018**

The Management of Dynamatic
Technologies Limited (JKM Auto)
No.C-23 & C-24, F-67 & F-68,
JKM Park, SIPCOT Industrial Estate
Irungattukottai, Sriperumbudur,
Kancheepuram District – 602 117.

... Petitioner

Vs.

- 1.E.Seenuvaasan
- 2.V.Srinivasan
- 3.N.Sivaraj
- 4.S.Vijayan
- 5.R.Saravanan (Deceased)
- 6.G.Muni Sundaram
- 7.P.Manavalan
- 8.T.Velmurugan
- 9.R.Suresh Kumar
- 10.D.Premraj
- 11.N.Pattamuthu
- 12.Saroja
- 13.Karthiga
- 14.Shargeith



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(Petitioners 12 to 14 are impleaded as the legal heirs of 5th respondent
as per the order of this Court dated 14.02.2024 in
W.M.P.No.17776 of 2019)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the I Additional Labour Court, Chennai in I.D.No.219/2014 to I.D.No.229/2014 and quash the common award dated 11th April 2018 and pass such further order.

For Petitioner : Mr.M.Vijayan
for M/s King and Partridge
For Respondents : Mr.V.Prakash
Senior Counsel
for Ms.M.Karthikeyani

ORDER

A.The Writ Petition:

This writ petition challenges the common award of the 1st Additional Labour Court, Chennai, dated 11.04.2018, in I.D. No. 219 of 2014 and 229 of 2014. By this award, the claim petitions filed by the workmen under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter 'the Act') were allowed by the Labour Court, ordering the reinstatement of the workmen with continuity of service and back wages.



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WEB COPY 1.1. Eleven workmen are involved in these industrial disputes. Their grievances are common and identical and are taken up and disposed of by this order.

B. Case of the Workmen:

2. The case of the Workmen is that the Management is engaged in the business of manufacturing automobile spare parts and supplying them to leading automobile manufacturing industries. There are more than 1,000 workers in the Management. Meanwhile, the Workmen joined the United Labour Federation and established its branch in the factory. Consequently, the Management began threatening the workers, stating that unless they left the Union, they would be terminated from service, and resorted to several unfair labour practices to instil fear psychosis among the workers. It even removed certain machinery from its factory in Sriperumbudur to its other units, violating Section 9 (A) of the Act. To victimize the Workmen and undermine their unity, on 02.03.2013, the Management issued an order of transfer, transferring 11 Workmen to another Company in Pune, M/s Chetak Logistics, to conduct an audit and provide support



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in strengthening the systems. The Management has no manufacturing facility or office in Pune. The Workmen were transferred to Pune solely due to their trade union activities.

2.1. On 22 March 2013, the Union raised an industrial dispute regarding the transfer. Pending conciliation, Management sent reminder letters to the Workmen to report to Pune. The Assistant Commissioner of Labour recorded a failure report. Subsequently, the Government referred the matter for adjudication to the Industrial Tribunal in Chennai, which is in I.D. No. 6 of 2014. The Workmen involved were machine operators with technical qualifications and had no role or qualifications related to auditing or quality control. The transfer was issued for mala fide reasons. Additionally, there was another industrial dispute pending concerning the same Workmen regarding wage revision. While both disputes were pending, the Workmen were dismissed from service without prior permission or approval from the appropriate authority under Section 33 of the Act. This dismissal is arbitrary and unjustified. Consequently, the Workmen were not gainfully employed, and the last drawn wages for each Workman amounted to Rs. 29,880/- (varying for each individual). For these reasons, the



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Workmen individually requested an award directing Management to reinstate them with full back wages, continuity of service, and all other consequential benefits, including bonuses and costs.

C. Case of the Management:

3. The Management's position is that the Workmen joined the service in 1990 as Operator-Trainees. After successfully completing their probation, their services were confirmed effective from 01.01.2001. M/s Honey Well Turbo Technologies Limited, Pune, was one of the Management's major customers. The supply of 'compressor housing' to this company constitutes 30% of its total business and revenue. This product undergoes quality checks at three stages. However, defects were identified in certain products from specific shipments to the customer destination in Pune. In these circumstances, while these spare parts were stored with M/s Chetak Logistics at its Pune warehouse, the Management engaged M/s Tirumala Services to conduct a firewall inspection. Tirumala Services was required to perform a meticulous inspection based on various parameters to ensure that no defective product reached the customer. When this arrangement was made, personnel from the Management had to participate in the

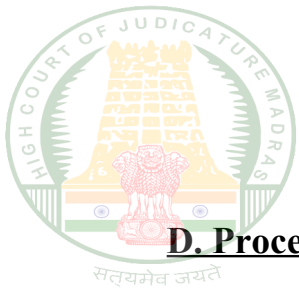


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audit and quality checking process. Consequently, the Management opted for

experienced technicians who were the Workmen involved in these disputes.

Initially, *Premraj* and five others were selected to go to Pune on duty and report to M/s Chetak Logistics to perform the aforementioned activities via an order dated 02.03.2013. Of those six employees, four were the Workmen involved in these disputes. Their needs were addressed, and additional payments were made. However, only two employees reported to Pune. Since the aforementioned four employees—*Premraj*, *Seenuvasan*, *Saravanan*, and *Sivaraj*—willfully disobeyed the transfer order, the Management had to select other experienced employees: *Manisundaram*, *Sureshkumar*, *Velmurugan*, and *Pattamuthu*. By orders dated 15.03.2013 and 26.03.2013, they were directed to report for duty in Pune. These employees also disobeyed and defied the Management's orders. With no other option, three additional experienced employees—*Srinivasan*, *Vijayan*, and *Manavalan*—were instructed to report to Pune by an order dated 02.04.2013. They too refused to go. As a result, the Management sent reminders to all eleven employees on 10.04.2013, 16.04.2013, and 07.05.2013.



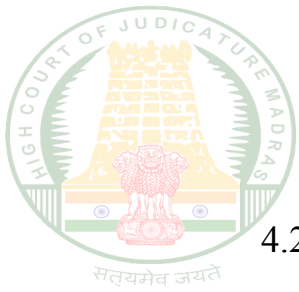
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D. Proceedings before the Labour Court:

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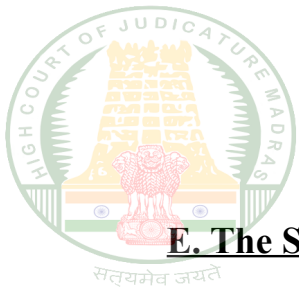
4. Based on the pleadings, the Labour Court conducted a joint trial for the Industrial Disputes. The eleven workmen involved in the disputes testified as W.W.1 to W.W.11. Five witnesses for the management were examined as M.W.1 to M.W.5. The workmen marked exhibits W.1 to W.144, while the management marked exhibits M.1 to M.45.

4.1. The Labour Court considered the parties' case and found that two conciliation proceedings were pending as of the date of the Management's order dismissing these Workmen. Initially, the conciliation regarding the wage revisions for all employees, including these eleven Workmen, was pending and ultimately concluded only on 03.10.2013. Likewise, the conciliation concerning the dispute related to the transfer of these Workmen was also pending. Therefore, the Management's actions pertained to the Workmen involved in the initial dispute, which was unrelated to the current termination. Consequently, this violated Section 33 (2) (b) of the Act as the management did not obtain any approval subsequently.



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4.2. The second industrial dispute is directly related to the matter of termination; therefore, prior permission was necessary under Section 33 (1) (b) of the Act. The Labour Court determined that the orders were issued in violation of Section 33 (1) (b) of the Act. It found that the orders amounted to deputation to a different legal entity than the Management. Furthermore, there was no compelling need to send these Workmen. The Management did not clarify whether the exercise of power was perennial or temporary. Additionally, the Labour Court found that the Workmen/respondents lacked the capacity to address the issues raised by the Management and considered the oral evidence presented. Consequently, it ruled that the order of transfer/deputation was discriminatory, absurd, and arbitrary. It also concluded that the Management's actions constituted victimization. Based on this, the Labour Court held that the non-employment was unjustified. It subsequently assessed the Workmen's service and their claims regarding being out of gainful employment and determined that the Workmen were entitled to reinstatement, full back wages, and continuity of service. Accordingly, it allowed the Claim Petitions filed by the Workmen. The Management, dissatisfied with this decision, has brought the matter before this Court.



E. The Submissions:

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5. *Mr. M. Vijayan*, the learned counsel representing the Management, submits that the Labour Court's finding—that the Management's actions violate Section 33 of the Act is incorrect in law. He argues that there was no pleading, particularly concerning the dates on which the conciliation commenced and concluded. The conciliation ended on 01.07.2013, and the dismissal occurred only on 03.07.2013. Furthermore, the Labour Court's conclusion that the transfer was illegal and malafide exceeds its jurisdiction, as the Workmen themselves raised a dispute regarding the transfer under Section 2(k), which was referred by the appropriate Government for adjudication and remained pending in a different industrial dispute bearing I.D. No. 6 of 2014. Therefore, the matter can only be decided by the Industrial Tribunal in the said 2(k) reference. Ultimately, the 2(k) reference was not addressed and was closed. Consequently, the Labour Court should not have rendered any finding regarding the transfer order in the current Claim Petitions under Section 2(A)(2) of the Act. Additionally, the Labour Court erred in asserting that the transfer order was malafide, as no one from the Management was impleaded in their individual capacity to respond to the allegations of malafide. Thus, the Labour Court's finding regarding malafide is



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incorrect in law. The Management possesses the authority to transfer Workmen

for bona fide purposes. The bona fides were thoroughly explained in both the counter statement and the evidence provided by the Management. The details of various activities that had to be undertaken by the Tirumala Agencies, which were engaged by the Management, and the nature of the defects are clearly established before the Labour Court, confirming that the order was bona fide.

5.1. Even though the Labour Court ordered reinstatement with back wages, there is a valid transfer of undertaking effective 31.12.2018, and the new Management has taken over. Therefore, the relief had to be restricted only until 31.12.2018. Subsequently, if the Workers are aggrieved, they are entitled to compensation under Section 25 (FF) of the Act.

5.2 In support of his submissions, the learned counsel relies on the judgment of the Hon'ble Supreme Court of India in ***Rajneesh Khajuria Vs. Wockhardt Ltd. & Anr.***¹ specifically referring to paragraphs 18 to 20 for the proposition that, when malafides are alleged, the person against whom these

¹ (2020) 1 SCR 1005



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allegations are made must be impleaded as parties to enable them to respond to

the charges; otherwise, findings related to malafides cannot be established. The

judgment in ***General Manager, Electrical Rengali Hydro Electric Project,***

Orissa and Others Vs. Giridhari Sahu and Others², particularly paragraph Nos.

44 to 49, is cited to support the proposition that even in industrial adjudication,

proper pleading is essential, and evidence must be presented based on such

pleadings. The judgment of the Hon'ble Supreme Court of India in ***Regional***

Manager, SBI Vs. Rakesh Kumar Tewari³ is referenced to argue that while the

Industrial Tribunals are not strictly bound by all the technicalities of Civil Court,

they still cannot reach conclusions disregarding established procedures.

Paragraph Nos. 15 and 16 are employed in this regard. In ***Cipla Ltd. Vs.***

Jayakumar R. and Another⁴ specifically paragraph No. 12, is cited to assert that

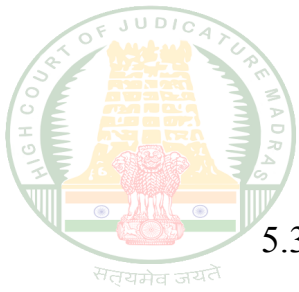
as long as there is a provision in the appointment order allowing for transfers

between departments of the Management, such an exercise of power is valid.

2 (2019) 10 SCC 695

3 (2006) 1 SCC 530

4 (1999) 1 SCC 300



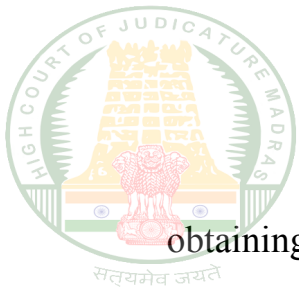
5.3 The Judgment in *Maruti Udyog Ltd. Vs. Ramlal and Others*⁵ is

referred to, particularly paragraphs. 21 to 23, to argue that once there is a transfer of undertaking, the workman will only be entitled to compensation under Section 25 (FF) of the Act. The judgment of this Court in *PM Raju Vs. Presiding Officer, Labour Court, Madurai and Another*⁶ is also cited to argue that an allegation not pleaded, and even if evidence is presented regarding it, cannot be examined because the opposing party has no notice of it.

5.4. *Per contra*, Mr. V. Prakash, the learned Senior Counsel, would submit that the management's contention that there is no pleading is factually incorrect and that there are pleadings both in the claim statement and that the Management has duly countered the same with reference to the violation of Section 33. There were two industrial disputes pending; therefore, the first dispute relating to wage revision is admittedly pending, and there is no defense for the Management regarding the violation of Section 33 (2) (b) of the Act. Concerning the second dispute, the failure report should have reached the Government only from the concerned conciliation officer. The Management itself engaged in the process of

⁵ (2005) 2 SCC 638

⁶ (2001) 4 LLN 903



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obtaining a copy and submitting it on 01.07.2013, and there is no evidence that the official report of the conciliation officer reached the Government on that date.

5.5. The learned Senior Counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in *Workers of the Industry Colliery Vs. Industry Colliery*⁷ and Judgment of this Court in *the Management of Alpha Helical Pumps Vs. The Presiding Officer and Others*⁸ for the proposition that in any even the conciliation cannot be deemed to have ended as on 03.07.2013.

5.6. Regarding the argument that the transfer order is not subject to review by the Labour Court due to a separate dispute pending under Section 2(k) of the Act, the Senior Counsel argues that the Management has not taken a specific plea in this regard. By relying upon Section 2(A) of the Act, he submitted that the issue of transfer constitutes a deemed dispute. Since the non-employment arises from non-compliance with the illegal transfer, even within the claim petition under Section 2(A)(2), the Labour Court retains the authority to assess the

⁷ (1952) 2 SCC 734

⁸ MANU/TN3867/2011



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validity of the transfer. This exercise of power targets the Workman for joining the trade union. They were not involved in quality control. The initial transfer orders indicated they should report for work, which is described as deputation. If the assignment is only for a specific period to assess quality in particular lots sent to third parties, then the Management should not label it as a transfer or deputation. The Management lacks the authority to send these Workmen to Pune. The clause in the appointment order allows for transferring Workmen between Departments but not to an unrelated location or third-party premises. Concerning back wages, the Senior Counsel acknowledges that there has indeed been a transfer of undertaking effective from 13.12.2018. The relief can be limited to the payment of back wages up to the date of the transfer of undertaking, that is, until 31.12.2018. It will be the responsibility of the Workmen to approach the new Management for reinstatement or any other relief allowed by law.

5.7. I have considered the rival submissions from both sides and examined the material records of the case.



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F.The Questions:

6. The following questions arise for consideration in the instant case,

(i) Were there pleadings by the parties regarding the violation of Section 33 of the ID Act?

(ii) Was the conciliation/dispute pending as of 03.07.2013, and did the Management's action violate Section 33 of the ID Act?

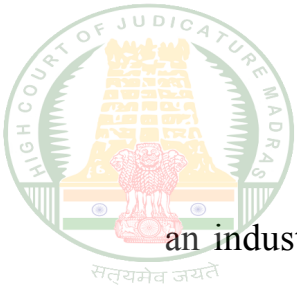
(iii) Could the Labour Court have examined the validity of the transfer?

(iv) If so, is the finding of the Labour Court that the transfer is malafide and arbitrary sustainable?

(v) To what relief are the workmen entitled?

G. Question No. (i) :

7. A review of the identical Claim Petitions filed by the Workmen reveals in paragraph No. 6 that on 22.03.2013, the union raised an industrial dispute concerning the transfer of the respondents, while other Workmen also initiated



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an industrial dispute for wage revision and improvements in service conditions

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before the Assistant Commissioner of Labour. It is asserted that pending conciliation, the opposite party – Management began sending reminders to the Workmen to report to Pune. The pendency of I.D. No. 6 of 2014 is also noted. In paragraph No. 7, it is specifically stated that while the issue of transfer was pending before the conciliation officer, alongside the industrial dispute for wage revision, the Management hastily chose to dismiss the Workmen from service, completely disregarding the principles of natural justice, without conducting an inquiry, and in violation of Section 33 (1) of the ID Act. Therefore, the learned counsel for the petitioner's assertion that there is no pleading is factually incorrect. In fact, the Management also addressed this matter in detail in paragraph Nos. 26 and 27 of the counter statement filed before the Labour Court. It is explicitly denied that the Workman was dismissed during the pendency of the conciliation proceedings, and it is asserted that the conciliation proceedings ended on 01/07/2013 and the dismissal was on 03/07/2013. As such, I answer the question that there were pleadings by the parties.



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H. Question No.(ii) :

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8. Admittedly, two industrial disputes were raised. The first dispute concerned wage revision and the improvement of other service conditions. This dispute was ultimately referred for adjudication via G.O.(D).No.585 dated 11.11.2013. Regarding this dispute, the conciliation concluded only on 03.10.2013, as marked in Ex.W.15. A perusal of this document shows that the conciliation began with the Management's petition on 24.06.2013 and, after discussions on various dates, the final attempt at conciliation occurred on 18.09.2013, with the failure report issued only on 03.10.2013. Thus, it is evident that the conciliation, which also involved the Workmen, was still pending. However, this conciliation was not directly related to the impugned exercise of power, and as such, the management was liable to seek subsequent approval of its action as per Section 33(2) of the Act.

8.1 Regarding the other conciliation, the Management has produced the communication indicating that it obtained a copy of the failure report and submitted it to the Government on 01.07.2013. Once the report reaches the



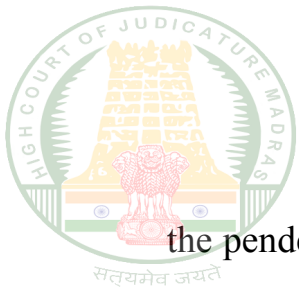
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Government, whether through the Management or directly from the conciliation officer makes no material difference. The Act contains a legal fiction under Section 20 concerning the commencement and conclusion of the conciliation proceedings. This question was examined in detail by a Division Bench of this Court in *Arasu Viraiyu Pokkuvarathu Oozhiyar Sangam v. State Express Transport Corporation, Ltd.*⁹ where it was held that it is a legal fiction created by the act and one has to go by the Act in determining as to the commencement and conclusion of the conciliation proceedings.

8.2. In any event, even assuming that the report submitted by the Management to the Government should be taken into account, even then as per the Judgment of the Hon'ble Supreme Court of India in *Workers of the Industry Colliery's case* (cited supra), it is clear that the time given to the appropriate Government to consider the failure report that is the period of 7 days should also be taken into account, while considering whether the conciliation proceedings are pending or not. As a matter of fact, in the matter of *the Management of Alpha Helical Pumps's case* (cited supra), it is held that the dealing fiction as to

⁹ 2006 SCC OnLine Mad 335



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the pendency of conciliation extends till a reference is made to the Labour Court and the adjudication starts from the day of reference made to the Labour Court.

Useful reference can be made to paragraph No.20 of the said Judgment and the same is extracted hereunder:-

“20. With reference to conciliation, it is stipulated that the conciliation will be deemed to be completed only when a reference is made to the Labour Court and the adjudication starts from the day of the reference made to the Labour Court. The fact that the summons were received from the Labour Court subsequent to the dismissal and that the management was not aware of the pendency of the dispute cannot hold water because the management had participated in the conciliation proceedings and there was running a battle between the management and the union. In fact the management itself had come to this Court with W.P.No.30300 of 2002 seeking for police protection for running the industry and also obtained interim injunction on 25.07.2002. Subsequently in their letters dated 13.09.2002 and 15.12.2002 addressed to the Conciliation Officer, they wanted to bring the conciliation to an end stating that there is no conciliation possible.”

8.3. In this case, aside from the official communication from the conciliation officer, the Management communicated the failure report to the Government only on 01.07.2013, and within two days, it issued the termination order. Therefore, it should be considered that the conciliation was pending as of 03.07.2013. Consequently, the dispute directly relates to the action taken by the Management and thus, it falls under Section 33 (1) of the Act, making prior permission necessary even to initiate disciplinary proceedings or impose



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punishment. In light of this, the question is answered affirmatively. The exercise

of power is during pending conciliation proceedings and therefore, it violates

Sections 33 (1) (b) and 33 (2) (b) of the ID Act.

I. Question No.(iii):

9. In this case, management engaged in the exercise of sending the workmen from the Sriperumbudur Unit to Pune. Management refers to this exercise using various terminologies such as ‘placement in duty’, ‘transfer’, ‘deputation’, etc., in different parts of its communications, as well as in the impugned order and the pleadings. It is true that the trade union raised a dispute regarding this transfer under Section 2(k) of the Act, and it was pending. During the pendency of these proceedings, based on non-compliance with the transfer/deputation order, the workmen were treated as guilty of misconduct of insubordination, resulting in their punishment and termination from service. In this context, it is pertinent to refer to Section 2(A) of the Act, which is extracted below:-

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—(1) Where any employer



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discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]”

(emphasis supplied)

9.1. Thus, a plain reading would make it clear that when the employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual Workman, any dispute or difference between that Workman and his employer connected with or arising out of the same would also be deemed to be an industrial dispute within the meaning of Section 2 (A) of the Act. Therefore, if an order for transfer or deputation is issued and, for non-compliance with it, the

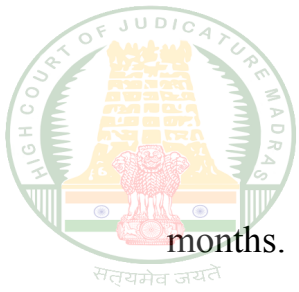


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Workman is non-employed, then certainly the question of whether the transfer/deputation was in accordance with the law can also be examined by the Labour Court in a petition under Section 2 (A)(2) of the Act. Merely because a 2 (k) reference was separately pending, it would not preclude the Labour Court from addressing the issue. In fact, the 2 (k) reference was subsequently closed, given that the issue itself has been decided in the present 2 (A) petition. Therefore, the contention of the learned counsel for the Management in this regard is liable to be rejected, and accordingly, this question is answered.

J. Question No.(iv):

10. The orders issued by Management is similar in the case of all the Workmen. For instance, the order related to Mr. Srinivasan on 02.03.2013, the first paragraph suggests that it is a temporary arrangement and the Workman is assigned to duty. However, a closer reading of the next paragraph indicates it presents itself as a permanent transfer. It states that the Workman is expected to settle smoothly into the new posting. It notes that accommodation will be provided for an initial period of 15 days, and the Workman is responsible for finding regular housing in Pune, with the Company covering expenses for three



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months. The conclusion of the transfer order implies a deputation, and a

deputation allowance of Rs.1,000/- is also included. The entire order is extracted

hereunder:-

“Sir,

Further, to our personal discussion on the above subject, you are hereby requested to report for carrying out audit and support to strengthen the systems. Hence, you are hereby requested to proceed to Pune with effect from Tuesday the 5th of March 2013. This on duty is applicable for you till the further orders.

In order to facilitate yourself to settle down smoothly in your work place of posting, we are happy to inform you that, the following arrangements have been made:-

1. On arrival at Pune, you will be provided accommodation for the initial period of 15 days to facilitate yourself to find out your regular housing at Pune and the company will bear the expenses for the three months.

2. An one-time expense of Rs.3,000/- will be given to you towards all incidental and miscellaneous expenses. This is not to be quoted as a precedent in future or referred to any other cases.

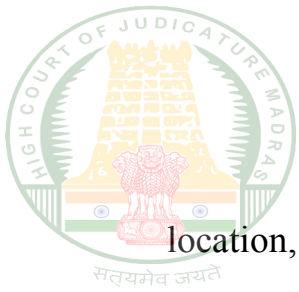
3. We are sure you will add value to the place wherever you are posted.

4. All other terms and conditions of your Appointment Order dated remain unaltered.

Please meet Mr.Sanjay Shinde, M/s. Chetak Logistics Ltd, 29 Milestone, Pune Nasik Highway, Kuruli Village, Coposite – Gabrial Shock Absourbers Ltd.,.

As a deputation allowance an amount of Rs.1000 is increased.”

10.1. Therefore, it is clear that the Workman was ordered to report to M/s Chetak Logistics Limited. Once the Workman was sent to the third party's



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location, that is from *Chennai* to *Pune*, and the Management itself referred to it

as deputation, then this should not have been done without the Workman's

consent. The Management is relying on the following clause in the offer of appointment, which reads as follows:-

“3) During the continuance of your employment with us:

a) You will be liable to be transferred to any department, office or establishment of this company and you will abide by the working hours of the department, office or establishment concerned without any extra remuneration.”

10.2. Thus, it can be seen that the power was solely to transfer the Workman to any department, office, or establishment of the Management itself. Admittedly, the impugned exercise was not to the establishment of the Management but rather to a third-party establishment. Therefore, on the face of it, the exercise was without any power and is, as such, illegal. The transfer of the Workmen over such a long distance without any authority would, by itself, amount to non-employment. Secondly, it can be observed that when the primary purpose is to carry out an audit and support the strengthening of systems regarding the products sent to the said warehouse, and when the defect is known to the management and could be rectified at the factory level, it is not expected to be a perpetual issue. At best, it could have been addressed in relation to the



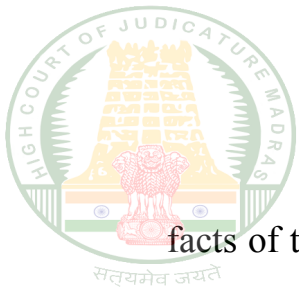
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stocks that have already been moved to the warehouse. Therefore, the reason can

only be temporary in nature. For a temporary cause, there was no need for a permanent transfer or deputation.

10.3. On the contrary, it directed the Workmen to find regular housing and further stated that the Company would bear the expenses only for three months. Additionally, the deputation allowance was increased, which clearly and categorically suggests that the posting was permanent. Therefore, this exercise of power is malafide. Furthermore, the Workmen have clearly and categorically stated their qualifications. They were machine operators. They had nothing to do with audit or quality control this is a colourable exercise of power.

10.4. As a matter of fact, in this case, it is alleged that the Management, in order to victimize the employees, has resorted to a malafide exercise of transfer. It is not alleged against any particular individual; therefore, the entire argument of the learned counsel for the Management that the concerned individual should be impleaded in their individual capacity is entirely irrelevant to the context and



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facts of the case. Consequently, the finding of the Labour Court that the exercise carried out by the Management was without any power, arbitrary, and malafide is justified, as the Labour Court made its determination after thoroughly examining the oral and documentary evidence and appreciating the same. This findings cannot be termed as perverse or incorrect in law. Accordingly, this question is answered.

K. Question No.(v):

11. Regarding the relief that can be granted to the Workmen, both sides' learned counsel admit that there was a transfer of undertaking effective from 31.12.2018. Therefore, in this case, the Workmen cannot claim reinstatement with the current Management, namely, M/s Dynamatic Technologies Limited, and the relief must be limited only up to 31.12.2018. Consequently, the Workman will be considered reinstated into service and deemed to have been in service until 31.12.2018, thus entitled to all back wages and other benefits until that date. Therefore, the relief granted by the Labour Court is modified in light of subsequent developments, allowing the Workman reinstatement and back wages



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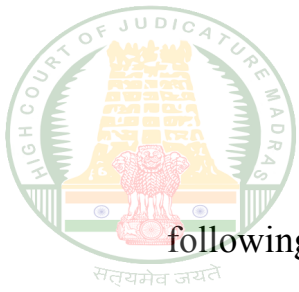
up to 31.12.2018, as if they had been in continuous service until that date.

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11.1. Subsequently, the contention of the learned counsel for the Management is that the Workmen can only seek compensation under Section 25 (FF) of the Act. In contrast, *Mr. Prakash*, the learned Senior Counsel for the Workmen, argues that the Workmen are deemed to be in service as of the date of the transfer of undertaking, and they are entitled to seek reinstatement with the new Management.

11.2. This is yet another issue, and it is up to the Workman to claim such benefits from the new Management. The decision rests with the new Management, and in their absence, these questions cannot be resolved. It is not for the present Management to make any claims in that regard. Therefore, those questions remain open.

11.3 The question also needs to be considered regarding whether the Workmen will be entitled to full back wages. In this case, I consider the



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following factors:

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- (i) The Workmen were all engaged in the year 1999 or thereabout;
- (ii) They have put in approximately 13 years of service and were in the prime of their lives at the time they were unemployed;
- (iii) The management's attitude, marked by a preconceived notion to hastily approach the conciliation officer for a report of failure and submit it to the government on 01.07.2013, followed by the dismissal of the workmen on 03.07.2013 without conducting any inquiry into the alleged misconduct of insubordination, is taken into account;
- (iv) When the transfer or deputation is not genuine and serves only to victimize the workers, given the facts and circumstances of the case, they are entitled to full back wages.

L. The Result:

12. As a result, this Writ Petition is disposed of on the following terms:

- (a) The common award of the Labour in I.D. Nos. 219/2014 to I.D. No. 229/2014, dated 11.04.2018, is upheld, as it declares that the non-employment of



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the 11 workmen involved in these disputes is unjustified.

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(b) With reference to the relief that is granted, it is modified to the effect that the Workmen are entitled to reinstatement into service with continuity of benefits and full back wages, and are deemed to have been in service up to 31.12.2018. The Management shall pay all arrears of back wages up to 31.12.2018, by treating the services of the Workmen as continuous;

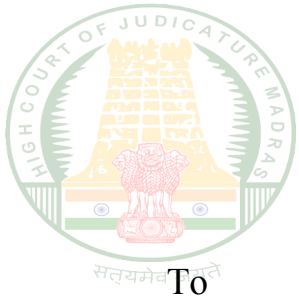
(c) The total arrears shall be paid within eight weeks from the date of receiving or producing the web copy of this order, without awaiting the certified copy;

(d) The Workmen would have the opportunity to claim additional benefits with the current Management, which had taken over the undertaking through a transfer, in accordance with the law;

(e) No costs. Consequently, the connected miscellaneous petition is closed.

25.02.2025

Neutral citation: Yes
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To

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- 1.The Presiding Officer
I Additional Labour Court, Chennai.
- 2.The Section Officer
V.R.Section
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.,

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