

W.P. No.19884 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 17.02.2025

PRONOUNCED ON : 02.04.2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 19884 of 2020

and

W.M.P.No. 24549 of 2020

Management of Hyundai Motor India Ltd,
Plot No.H-1, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur,
Kancheepuram – 602 105.

...Petitioner

Vs.

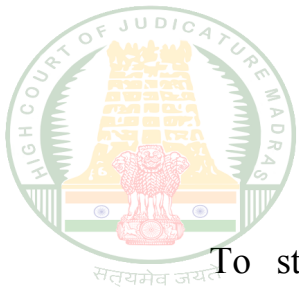
N.Perumal,
No. 88, Bajanai Koil Street,
Marudhalam Village & Post,
Ammur (Via), Walaja Taluk,
Vellore – 632 501.

...Respondent

Prayer in W.P.

To issue a Writ of Certiorari or such other order of writ to call for the records relating to the Award dated 05-03-2020 passed in I.D.No.260 of 2018 on the file of the Hon'ble Labour Court, Kancheepuram, and to quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.M.P.



W.P. No.19884 of 2020

WEB CO To stay the operation of the Award dated 05-03-2020 passed in I.D.No.260 of 2018 on the file of the Hon'ble Labour Court, Kancheepuram, to the extent of granting compensation of Rs.3,00,000/- pending disposal of the writ petition and to pass such further or other orders as may deem fit and proper in the circumstances of the case.

Appearance of Parties:

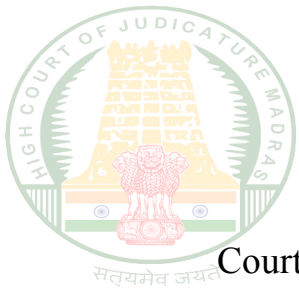
For Petitioner : M/s. D.Abdullah and M.Sethuraman, Advocates

For Respondent : M/s.Manikandan for D.Ashok Kumar, Advocates

J U D G M E N T

Heard.

2. The Management has filed the present writ petition challenging the award passed by the Labour Court, Kanchipuram in I.D. No. 260 of 2018 dated 05.03.2020. By the said award, the Labour Court held that although the termination of the respondent workman was not valid, he was not entitled to reinstatement with continuity of service, back wages, or attendant benefits. Instead, the Labour Court directed the Management to pay a sum of Rs. 3 lakhs as monetary compensation to the workman, to be paid within a period of three months. In the writ petition, notice of motion was ordered on 23.12.2020, and an interim stay was granted pending notice. Pursuant to the notice issued by this



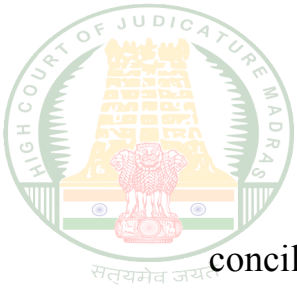
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Court, the respondent has entered appearance and is represented through counsel.

3.The case of the Management is that they are engaged in the manufacture of light motor vehicles, which necessitates the employment of skilled and trained personnel for production-related activities. The certified Standing Orders of the company (Ex.M2) also provide for the engagement of trainees for a period of up to three years. The respondent was initially engaged as an apprentice under the Apprentices Act, 1961, with effect from 27.12.2007. Thereafter, he underwent initial training for a period of one year commencing from 14.10.2009 (Ex.P8), followed by technical training for one year starting from 01.11.2010 (Ex.P10). Subsequently, he was given advanced training as a Grade III Trainee from 01.11.2011 (Ex.P11 / Ex.M3). Upon completion of the training, the respondent was issued a completion certificate (Ex.M4), following which he left the company.

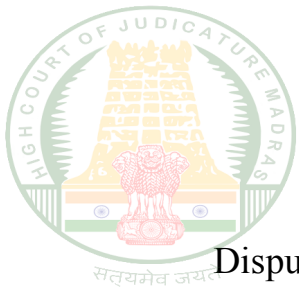
4. Notwithstanding the aforesaid facts, the respondent raised an industrial dispute before the Assistant Commissioner of Labour, Irungattukottai, challenging his termination. In the course of the



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conciliation proceedings, the Management submitted its reply dated 15.04.2013 (Ex.M5). As the conciliation officer was unable to bring about a settlement, he recorded the failure of conciliation and forwarded a failure report dated 24.06.2013 (Ex.P6). Based on the said failure report, the respondent filed a claim statement before the Labour Court at Chennai, which was taken on file as I.D. No. 314 of 2014. Upon the constitution of the Labour Court at Kanchipuram, the matter was transferred and renumbered as I.D. No. 260 of 2018. Upon receipt of notice from the Labour Court, the petitioner Management filed its counter statement dated 09.06.2015.

5. Before the Labour Court, the respondent examined himself as WW1 and marked twelve documents, which were taken on record as Exhibits P1 to P12. On behalf of the Management, Mr. C. Tamilanban, Assistant Manager – Employee Relations, was examined as MW1, and five documents were filed and marked as Exhibits M1 to M5. Based on the oral and documentary evidence adduced by both parties, the Labour Court held that the termination of the respondent did not amount to retrenchment within the meaning of Section 2(oo)(bb) of the Industrial



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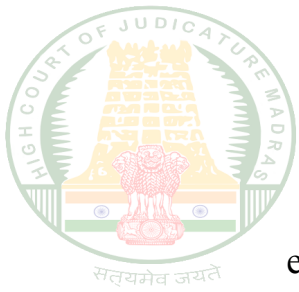
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Disputes Act, as it was effected in accordance with the terms of the contract. The Labour Court further observed that it had no jurisdiction to confer permanent status under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (T.N. Act 46 of 1981), as such powers are vested exclusively with the authorities under the Factories Department. Consequently, the Labour Court held that the respondent was not entitled to reinstatement with continuity of service, back wages, or other attendant benefits.

6. Thereafter the Labour Court held in paras 21 and 23 as follows:-

“21....The petitioner has worked for nearly about 3 years. It can be presumed that the petitioner would have worked for 3 years with a strong belief that he may be absorbed into employment after completion of training. He had completed his training on 31.10.2012. He had put in his service to the management while learning the trade as Trainee. Having regard to all these factors and the fact that labour laws is a welfare and beneficial piece of legislation for the workman, the petitioner can be granted compensation.”

“23. ...He underwent training till October 2012 for a period of three years. He was lastly drawing Rs.7,349/- per month as salary / stipend. His prospects of getting a suitable Job cannot be totally ruled out. In view of all these reasons and keeping in mind the principle applied by the apex court in AIR 2014 SC 1188 while granting compensation of one lakh for one year of service, I adjudicate that the petitioner is



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entitled to get a compensation amount of one lakh rupees for each completed year of service as Trainee and accordingly he is entitled for a compensation of Rs.three lakhs for his three years as trainee.”

7. The learned counsel for the Management assailed the award on the ground that, having found the termination to fall within the exception to the definition of "retrenchment," the Labour Court ought not to have granted any relief to the Respondent. It was further contended that the award of Rs. 3 lakhs is wholly unsustainable in law.

8. However, reliance placed on the judgment of the Hon'ble Supreme Court in **BSNL v. Bhurumal**, reported in (2014) 7 SCC 177, which has also been referred to in paragraph 23 of the award. In support of his case, the Respondent specifically relied on the following observations found in paragraphs 24 and 26 of the said judgment:

“24.Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.”



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....
“26.....In Man Singh (2011 AIR SCW 6747) (supra) which was also a case of BSNL, this Court had granted compensation of Rs.2 Lakh to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs. 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. Award of the CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the cost of Rs.15,000/- (Rupees Fifteen Thousand only) in this appeal.”

9. It becomes necessary to examine the status of the Respondent, who was designated as a Trainee by the Management. A certified copy of the Standing Orders applicable to the Management was produced and marked as Ex.M2. As per Clause 4.5 of the Standing Orders, a "workman" is defined in accordance with Section 2(s) of the Industrial Disputes Act. The said provision reads as follows:

“ "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with,



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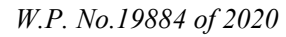
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or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person”

10. Under the classification of workman set out in paragraph 5 of the Standing Orders, clause 5(4) defines a "Trainee Workman" in the following terms:

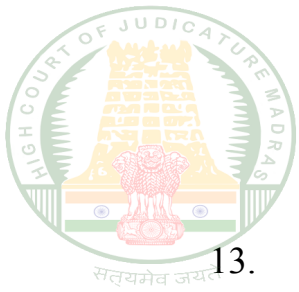
“A “Trainee workman” is one engaged with or without stipend / salary for learning any work, operation or trade for any period but not exceeding three years, subject to such terms and conditions as may be specified in the order of his employment as Trainee.”

11. There is no doubt that the Respondent had completed his Trade Apprenticeship under the Apprentices Act, 1961 on 04.03.2009, and was issued a certificate to that effect (Ex.P7). Thereafter, he appeared for an interview on 14.10.2009 and was issued an order dated 01.11.2010 (Ex.P10), appointing him as a Technician Trainee II (TT-II) under the company's apprenticeship scheme for a period of one year. The said order also made it clear that the company's Standing Orders would apply. Upon completion of that term, he was issued a further order dated 01.11.2011 (Ex.P11), extending his training for another year on a consolidated monthly stipend of Rs. 7,349/-. It was also stated that he would be



12. During his cross-examination as PW1, the Respondent
deposed as follows:

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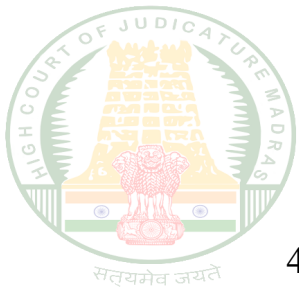


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13. The Management's witness MW1 in his cross examination gave the following answers:-

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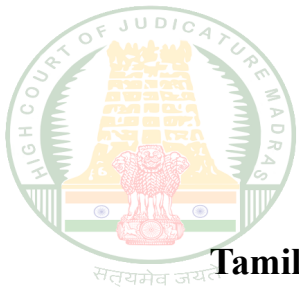
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14. In view of the foregoing evidence, it cannot be concluded that the Respondent was a mere trainee with no enforceable rights. As far as apprentices governed by the Apprentices Act, 1961 are concerned, any dispute between such an apprentice and the employer is required to be resolved exclusively by the Apprenticeship Council, in accordance with Section 20 of the said Act. However, the definition of "workman" under the Industrial Disputes Act clearly includes all apprentices other than those engaged under the Apprentices Act.

15. In fact, Justice V. Ramasubramanian (as he then was), in his detailed analysis of the status of trainees employed in textile mills, unequivocally held that such trainees qualify as "workmen" for all practical purposes and are also entitled to wages fixed by the Government under the Minimum Wages Act, 1948. In his decision in



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Tamil Nadu Spinning Mills Association v. The State of Tamil Nadu,

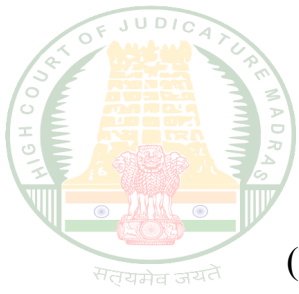
reported in MANU/TN/1081/2009, the learned Judge held in paragraph

36,37,38 and 41 as follows:

“36. Thus it is seen that in certain enactments, there is specific inclusion of apprentices, within the meaning of the word "workman" or "employee". In certain enactments, there is specific exclusion and in certain others, there is neither inclusion nor exclusion. It is the last category of enactments, where there is no specific inclusion or exclusion, which provide ample scope for lawyers to exploit.

37. Superficially viewed, the Minimum Wages Act, appear to belong to the third category of enactments, where there is no specific inclusion or exclusion of apprentices within the meaning of the word "employee". Therefore the learned Senior Counsel appearing for the petitioners laid stress on the phrase "employed for hire or reward" in Section 2(i) of the Act, to contend that unless a person is employed, signifying the relationship of master and servant, there is no scope for expanding the meaning of the word "employee" to include apprentices.

38. Though the definition of the word "employee", under the Minimum Wages Act, 1948, does not specifically include apprentices, within its meaning, there are two indications, one in the latter part of the definition in Section 2(i) and another in Section 3(3)(a)(iii) of the Act, to show that the apprentices come within the definition of the word. Section 2(i) consists of four parts viz., (a) the first part giving the meaning of the word "employee", as any person employed for hire or reward, to do any work, skilled or unskilled, manual or clerical, in a scheduled employment;



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(b) the second part including an out worker to whom any articles or materials are given, to do certain things, either in the home of such out worker or in some other premises not under the control of the person engaging such out worker; (c) the third part including an employee to be an employee by the appropriate Government; and (d) the fourth part excluding any member of the armed forces of the Union.

...

41. If the intention of the law makers, was to exclude apprentices from the purview of the Minimum Wages Act, Section 3(3)(a)(iii) would not have found a place in the statute. Therefore I am of the considered view that there is no bar under the Act, for the Government to treat an apprentice as an employee within the meaning of the Act and to issue a notification fixing minimum rates of wages for such apprentices. This is why, one of the petitioners, by way of abundant caution, has challenged the vires of Section 3(3)(a)(iii). Therefore, I am unable to sustain the second ground of attack to the notification.”

16. No doubt, the Respondent contended that his case amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, and that, due to the employer's failure to comply with the mandatory conditions under Section 25-F(a) and (b), he was entitled to reinstatement along with all consequential benefits. However, the Labour Court rejected this plea by invoking the newly introduced exception under Section 2(oo)(bb). That said, the said provision cannot be



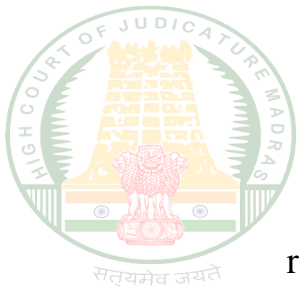
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interpreted in the manner sought to be projected by the employer.

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17. In this context, reference may be made to the judgment of the Punjab and Haryana High Court in **Balbir Singh v. Kurukshetra Central Co-operative Bank Ltd.**, reported in 1990 (1) LLJ 443, wherein the Court in paragraph 7 and 8 held as follows:

“7.....Sub-clause (bb) to Clause (oo) of Section 2 of the Act, which was added in 1984 by an amendment, cannot be so construed as to drastically restrict the orbit of the term of "retrenchment". Clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which may nullify or curtail the ambit of the principal clause. No doubt, the intention of the Parliament in enacting clause (bb) was to exclude certain categories of workers from the term of retrenchment but there is nothing in this clause which allows an outlet to unscrupulous employers to shunt out workers in the garb of non-renewal of their contract even when the work subsists. This clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in letter and spirit. If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (bb) and the definition of term 'retrenchment' has to be given full meaning. The contractual clause enshrined in Clause (bb) cannot be resorted to frustrate the claim of the employee against his uncalled for retrenchment or for denying other benefits. It cannot be so interpreted as to enable an employer to resort to the policy of hire and fire and to confer unguided power on the employer to renew or not to



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renew the contract irrespective of circumstances in which it was entered into or ignore the nature and extent of work for, which he was employed.

8. In fact clause (bb), which is an exception, is to be so interpreted as to limit it to cases where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues the non-renewal of the contract on the face of it has to be dubbed as malafide. It would be fraud in law if it is interpreted otherwise.”

18. A Division Bench of the Bombay High Court, in its decision in **Dilip Hanumantrao Shirke and Others v. Zilla Parishad, Yavatmal & Others**, reported in 1990 (1) LLJ 445, made the following observations:

“... A stipulation in the contract that the employment would be for a specific period or till completion of the work may also fall within the scope and ambit of this sub-clause. But if the employer resorts to contractual employment as a device to simply take it out of the principle clause (00) irrespective of the fact that the work continues or the nature of duties which the workman was performing are still in existence, such contractual engagements will have to be tested on the anvil of fairness, propriety and bona fides. May be that such fixed tenure employments are made to frustrate the claim of the workman to become regular or get himself confirmed as a permanent employee either under the Rules applicable to such employment or even under the Standing Orders. It is always open to the Court adjudicating the dispute to



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examine each and every case in its proper perspective and to protect the workman against the abuse of the amended provision. If this protection is not afforded, the benefit flowing from retrenchment, to which every termination succumbs, would be rendered nugatory. The amended sub-clause (bb) would apply only to such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and bonafide.”

19. A learned Judge of this Court, in **K. Rajendran v. Director (Personnel), Project and Equipment Corporation of India Ltd.**, reported in 1992 (1) LLN 150, cited with approval the aforementioned two decisions.

20. In the present case, the Labour Court did not base the grant of relief on the ground of violation of Section 25-F of the Industrial Disputes Act. Instead, it independently exercised its discretion, taking note of the fact that the Respondent had been engaged for over three and a half years under the guise of a trainee and was thereafter relieved without being extended any benefits. As already noted, the Respondent is governed by the certified Standing Orders (Ex.M2). Under these Standing Orders, the services of a workman can be terminated only in accordance with Clause 19, which deals with discharge or termination,



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and in cases of misconduct, disciplinary action can be taken under Clause

22, following the procedure prescribed therein.

21. Para 19 of the Certified Standing Orders applies as follows:-

“Discharge & Termination:

1) Subject to the provisions contained in the Standing Order 21, the services of a workman with not less than one year of continuous service shall not be dispensed with except for a reasonable cause and without giving such workman atleast one month's notice or wages in in lieu such notice.

2) In cases of retrenchment as defined in section 2(oo) of the Industrial Disputes Act, 1947, the provisions of the said Act shall apply.

Provided that no such notice shall be necessary in the case of Badli and Apprentices.

3) No order of termination of services of a workman shall be made unless the workman is informed in writing of the reasons for the termination of his services and is given an opportunity to show cause against such termination. A copy of the said order shall be communicated to the workman.

4) Where the employment of any workman is terminated by or on behalf of the industrial establishment, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated or the same shall be made available to him by the drawer or the wages, in case he does not turn up for receiving the wages.”



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22. The Respondent had specifically raised this issue in paragraph 15 of his claim statement filed before the Labour Court, which reads as follows:

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23. In response to the above averment, the Petitioner Management, in their counter statement filed before the Labour Court, stated as follows:

“With regard to the averments made in paragraph 15 of the claim statement, it is submitted that Clause 19(3) of the Certified Standing Orders of the Respondent Company does not apply to the present case as it is applicable only to cases involving termination on misconduct. In the Standing Orders of the Respondent, it is clearly mentioned that employment of the Trainees are governed by the terms and conditions as specified in the Order of his employment as a Trainee. The Petitioner’s engagement ceased on completion of training, which is a separate contract of employment and therefore compliance of Clause 19(3) of the Standing Orders, does



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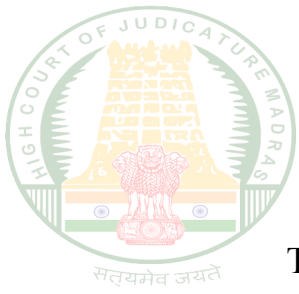
not arise.”

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24. The issue is no longer *res integra*. The Hon'ble Supreme Court has categorically held that once the terms and conditions governing workmen are laid down in Standing Orders duly certified by the competent authority, no separate contract can be read into or override those terms. In **Western India Match Co. Ltd. v. Workmen**, reported in (1974) 3 SCC 330, the Supreme Court observed as follows:

“In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith. Later generations discovered that the workman did not possess adequate bargaining strength to secure fair terms and conditions of service. When the workmen also made this discovery, they organised themselves in trade unions and insisted on collective bargaining with the employer. The advent of trade union and collective bargaining created new problems of maintaining industrial peace and production for the society. It was therefore considered that the society has also an interest in the settlement of the terms of employment of industrial labour. While formerly there were two parties at the negotiating table the employer and the workman..

...



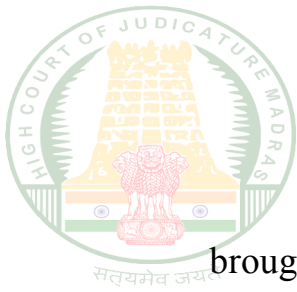
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The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. We have already held that. It plainly follows from sections 4, 10 and 13(2) that the inconsistent part of the special agreement cannot pre- vail over the Standing Order. As long as the Standing Order is in force, it is binding on the Company as well as the workmen. To uphold the special agreement would mean giving a go by to the Acts principle of three party participation in the settlement of terms of employment. So we are of opinion that the inconsistent part of the special agreement is ineffective and unenforceable.”

25. Therefore, the Management's contention that Clause 19 of the Certified Standing Orders does not apply to the Respondent is liable to be rejected. The termination of the workman, regardless of the label of 'trainee' used, cannot be sustained in law. Consequently, the workman is entitled to appropriate relief. In the present case, the Labour Court has granted relief by way of compensation. Considering that the Management is a multinational company engaged in the manufacture of light motor vehicles—each of which is valued significantly higher than the compensation awarded—it does not appear appropriate for the Management to have challenged the Labour Court’s award before this Court and to persist with the litigation. The Management ought to have availed the mediation opportunity earlier directed by this Court and



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brought the matter to an amicable conclusion.

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26. In light of the above findings, the writ petition in W.P. No. 19884 of 2020 stands dismissed. Consequently, the Miscellaneous Petition in W.M.P. No. 24549 of 2020 is closed. However, the Petitioner Management is directed to pay a sum of Rs. 5,000/- towards costs, quantified as legal fees, to the counsel appearing for the Respondent.

02.04.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

The Presiding Officer,
Labour Court,
Kancheepuram

DR. A.D. MARIA CLETE, J

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W.P. No.19884 of 2020

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Pre-Delivery Judgment made in
W.P.No. 19884 of 2020
and
W.M.P.No. 24549 of 2020

02.04.2025