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Court : Chennai

Decided On : Jan-10-1985

Reported in : (1985)IILLJ505Mad

Judge : G. Ramanujam and ;M.A. Sathar Sayeed, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 25F

Appeal No. : Writ Petition No. 42 of 79

Appellant : Mount Mettur Pharmaceuticals Ltd.

Respondent : Second Additional Labour Court, Madras and anr.

Judgement :

Ramanujam, J.

1. This appeal filed by the management of Mount Mettur Pharmaceuticals Ltd., Madras, is directed against the judgment of V. Ramaswami, J., upholding the award of the Labour Court, dated 4th May, 1978, in L.D. No. 192 of 1977.

2. The appellant, in view of the recession towards the end of 1975 and the beginning of March, 1976, effected reduction of labour and that resulted in the retrenchment of fifteen of its workers. That gave rise to a reference to the Labour Court on the question of non-employment of the said fifteen workmen and the said reference was taken on file as Industrial Dispute No. 192 of 1977. The claim petition filed before the Labour Court in the said reference by the workmen was to the effect that there had been a contravention of S. 25F of the Industrial Disputes Act in effecting retrenchment and that, therefore, all of them should be reinstated in service with full back-wages. The said claim was opposed by the appellant-management before the Labour Court on the grounds that all the petitioners were casual employees, that the retrenchment was due to bona fide reasons of recession, that there was non-availability of work and that, therefore, the petitioners are not entitled to seek relief either on the basis of the infringement of S. 25F or otherwise. The Labour Court, on a consideration of the rival contentions, held that the retrenchment effected by the management was bona fide and that out of the fifteen workers who were casual, only four had put in a service of 240 days within the twelve calendar months immediately prior to the date of retrenchment and that, therefore, except claimants 6, 11, 14 and 15, the rest are not entitled to any relief. Thus the Labour Court has proceeded on the basis that the retrenchment was justified and that though S. 25F has been violated, the claimants, other than claimants 6, 11, 14, and 15, are not entitled to any relief for violation of S. 25F for the reason that they have not worked for 240 days within the twelve calendar months preceding the order of retrenchment so as to enable them to get the benefit of S. 25F. As regards the other four workmen who were found to have worked for more than 240 days in the twelve calendar months preceding the order of retrenchment, the Labour Court held that for infringement of S. 25F, the order of retrenchment, so far as they are concerned, cannot be taken to be valid and hence they are entitled to be reinstated with full back-wages.

3. The said order of the labour Court was challenged by the management in Writ Petition No. 2775 of 1978 and Ramaswami, J., has upheld the award of the Labour Court granting to the four workmen who had put in a service of 240 days within twelve calendar months immediately prior to the date of retrenchment the benefit of reinstatement with full back-wages. It is the said order of the learned Single Judge which is under challenge before us.

4. The learned counsel for the appellant-management put forward two contentions. They are :

(1) The Labour Court having held that the retrenchment is not mala fide but one which could be justified on the facts of this case, erred in directing reinstatement with full back-wages ignoring the position which had been established by the evidence on record that the management is in doldrums and is not in a position to provide work for the retrenched personnel; and

(2) on the facts and circumstances of this case, the Labour Court is in error in awarding the relief of reinstatement with full backwages and that only on award of compensation is called for in this case.

5. Though the learned counsel for the appellant contended that the finding of the Labour Court that the concerned four workmen have put in more than 240 days of service in the year preceding the order of retrenchment is not correct, he is not able to successfully challenge that finding in view of the fact that exhibit M-8 shows exactly the number of days worked by the employees for the period from 1st April of the preceding year to 31st March of the succeeding year, while the number of days worked in the year immediately preceding the date of retrenchment will have to be taken as the relevant factor for the purpose of applying S. 25F. In this case, two statements have been filed to show the number of days worked by the 15 workmen, one by the management which is for the period from 1st April of the preceding year ending with the end of March of the succeeding year, and the other by the workmen showing exactly the number of days worked by them in the year preceding 28th February, 1976, which is the date of retrenchment. The Labour Court seems to have accepted the statement given by the workmen as it gives the number of days worked in the relevant year. The Learned counsel for the appellant would say that the exhibit having been accepted by the Labour Court itself, it cannot ignore exhibit M-8 for the determination of the number of days worked by the workmen during the relevant period. It is no doubt true that exhibit M-8 has been accepted as genuine by the Labour Court and that it taken as the basis for its finding that the management is not in a position to give sufficient work to the workmen and, therefore, there was justification for effecting retrenchment. As already stated, exhibit M-8 does not give the number of days worked by the concerned workmen during the relevant period, that is, from 1st March, 1975 to 28th February, 1976. It is for that reason that the Labour Court has not referred to exhibit M-8 for the purpose of determining the question as to how many days the workmen had been employed by the management during the one year period prior to the date of retrenchment. In this view of the matter, we are not in a position to disagree with the finding of the Labour Court that 4 our of the 15 workmen have worked for more than 240 days during the relevant period.

6. The Labour Court has also found specifically that though there was justification for retrenchment, the retrenchment has not been effected following the procedure in S. 25F and, therefore, the persons who have put in 240 days of service in the relevant period are entitled to claim relief on the basis of the infringement of S. 25F. The learned counsel for the appellant is not in a position to challenge the finding of the Labour Court that there has been a violation of S. 25F in this case. We have to, therefore, proceed on the basis that there is, in fact, a violation of S. 25F while retrenching all the 15 workmen.

7. The question which remains for consideration is as to whether the four workmen who are found to have put in 240 days of service in the relevant period are entitled to claim reinstatement with full back-wages as has been directed by the Labour Court. The learned counsel for the appellant contends that since the company is not in a sound financial condition and that it is also not possible to provide work for these workmen continuously, the Labour Court should not have awarded the relief by way of reinstatement with full back wages but instead it should have awarded some compensation for the concerned four workmen who

are only casual employees. In support of this submission, the learned counsel refers to the decision of this Court in Coimbatore Pioneer B Mills Ltd. v. Labour Court, Coimbatore 1979-I L.L.J. 41, wherein a Division Bench of this Court has clearly ruled that in a case where to the satisfaction of the Court it is established that there was need and necessity for retrenchment in the industry, and the management, for valid and legal reasons, decided to retrench, the Labour Court would have to consider whether it will be just and reasonable to order reinstatement while it gives a finding that S. 25F has not been complied with and that it cannot be said that the Labour Court has no option except to order reinstatement with back wages in all cases of non-compliance with S. 25F, even in a case where the Labour Court finds that there was cause for retrenchment and that the retrenchment has been bona fide. The Court further held that in cases where there is need for retrenchment and the management have acted bona fide in effecting retrenchment, non-compliance with S. 25F will give the Labour Court a discretion either to order reinstatement or payment of compensation in lieu of reinstatement, depending on the facts and circumstances of each case. In this case, the question is whether the Labour Court considered the facts and circumstances of this case while ordering reinstatement with full back-wages. As a matter of fact, the Labour Court in its award has specifically held that the retrenchment effected by the management was justified and it is not mala fide and it is only on that basis the claims made by the other workers were dismissed. Having come to the conclusion that there has been an infringement of S. 25F by management in the process of effecting retrenchment, the Labour Court straightaway proceeded to award the relief to reinstatement with full back-wages without exercising its discretion either to direct reinstatement with full wages or direct payment of compensation in lieu of reinstatement. According to the learned counsel for the appellant in this case, since the company is in doldrums it has resorted to retrenchment and that retrenchment has been found by the Labour Court to be bona fide. In such cases, to direct reinstatement with back-wages would virtually drive the management to close its undertaking because of the additional burden caused by giving effect to the judgment of the Labour Court directing reinstatement with full back-wages. On the materials, the Labour Court itself found that the affected workmen are casual workmen and the management is not in a position to provide work for the retrenched personnel. In the face of such finding, to direct the management to reinstate the concerned workmen with back-wages cannot be taken to be just and reasonable. In cases where the Labour Court specifically finds that the retrenchment effected by the management is justified and not mala fide, the Labour Court should exercise discretion and pass, instead of directing reinstatement with full back-wages, an award directing a just amount of compensation in lieu of reinstatement. As already stated, it is not the law that in every case of infringement of S. 25F. the award of reinstatement with back-wages is a must by the Labour Court. In cases where the management is found to be justified in effecting retrenchment and its decision to effect retrenchment is not mala fide, the Labour Court will be exercising its discretion properly if suitable compensation in lieu of reinstatement with back-wages is ordered. In this case, the Labour Court has proceeded on the basis that since there is infringement of S. 25F, it should straightaway grant the relief of reinstatement with back wages, ignoring the fact that discretion if left with the Labour Court either to direct reinstatement with back wages or to award compensation instead. Since the Labour Court has not directed its mind to this aspect as to the relief to be granted to the concerned four workmen, we set aside the order of the learned Judge and also the award passed by the Labour Court and direct the Labour Court to pass fresh orders fixing suitable compensation in lieu of reinstatement for these four workmen.

8. The writ appeal is allowed accordingly. There will be no order as to costs.