

R. Sekar Vs. Presiding Officer, First Additional Labour Court and anr.

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Court : Chennai

Decided On : Jan-31-2000

Reported in : [2000(85)FLR781]; (2000)IILLJ694Mad

Judge : R. Balasubramanian, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 18(1), 25F and 25H

Appeal No. : W.P. No. 21336/1992

Appellant : R. Sekar

Respondent : Presiding Officer, First Additional Labour Court and anr.

Advocate for Def. : D. Meenakshisundaram, Adv. for Respondent No. 2

Advocate for Pet/Ap. : K.M. Ramesh, Adv.

Disposition : Petition dismissed

Judgement :

R. Balasubramanian, J.

1. Heard Sri. K.M. Ramesh, learned counsel appearing for the writ- petitioner and Sri D. Meenakshisundaram, learned counsel appearing for the second respondent. The writ-petitioner was retrenched from the second respondent establishment. Thereafter noticing that the second respondent continues to employ fresh hands,

the writ-petitioner sought for the benefit conferred on such retrenched worker under Section 25-H of the Industrial Disputes Act. This dispute was taken on file as I.D. No. 171 of 1989 and the Labour Court by judgment, dated July 24, 1991, dismissed the said dispute. The present writ petition is against that award.

2. Sri. K.M. Ramesh, learned counsel appearing for the writ- petitioner, would contend that once a retrenchment under the Act is established then irrespective of the fact whether the worker got only the compensation as provided for under Section 25-F of the Act or he negotiated with the employer for a higher compensation and obtained the same by way of a settlement entered into under Section 18(1) of the same Act, the worker would be entitled to be re-employed as provided for under Section 25-H of the Act. According to the learned counsel for the writ-petitioner, the liability of the employer to provide employment to the retrenched worker as contemplated under Section 25-H of the Industrial Disputes Act is absolute and no circumstance will disable a retrenched worker from getting the benefit conferred on him under such sections. In other words, according to the learned counsel for the writ-petitioner, though in this case the workman was given a monetary benefit of more than what he is entitled to under Section 25-F of the Act pursuant to the settlement entered into between him and the employer under Section 18(1) of the said Act, still as a matter of right, since the circumstances enumerated under Section 25-H of the Act had been established, the employer has no other option except to re-employ the writ-petitioner. Contending contra the learned counsel for the second respondent would contend that the workman in this case had received more than what he is entitled to towards retrenchment compensation under Section 25-F of the said Act. Further in the settlement entered into between the employer and the worker, the worker had given up his rights in respect of all claims that are available to him in law against the employer. Since the Courts have always been holding that such settlement must be placed on a high pedestal even higher than judicial adjudication, the terms of the settlement must be strictly adhered to and if so done, it is clear that the retrenched worker in this case had given up all his rights under Section 25-H of the said Act against his employer.

3. In the light of the arguments advanced by the learned counsel for the writ-petitioner as well as the learned counsel for the second respondent, I perused the award challenged in this writ petition as well as the settlement arrived at between the employer and the worker under Section 18(1) of the said Act. It appears that on retrenchment, a compensation as provided for under Section 25-F of the said Act was offered to as many as 38 workmen, including the writ petitioner and they refused to receive the same. It also appears that the employer and the workmen had entered into negotiations. The result of the negotiation was that, an agreement between the employer and each of the worker was arrived at under Section 18(1) of the said Act. The settlement is on record and a copy of the same has already been forwarded to all the appropriate authorities as provided for under Section 2(p) of the Act. Therefore on and from the communication of the settlement as contemplated under Section 2(p) of the said Act, the settlement referred to above had become a binding settlement between the employer and each of the workers. I perused the terms of the settlement. Under the settlement referred to above, the writ-petitioner was given a monetary compensation, more than what he is entitled to, under Section 25-F of the said Act. At the foot of the settlement, it is recorded as follows:

'Received the above amount in full and final settlement of all my claims and I have no further claim against the company under any head.'

4. This, according to the learned counsel for the second respondent would amount to the writ-petitioner giving up all his rights, including the right conferred on him under Section 25-H of the said Act. It is not disputed by the learned counsel for the writ-petitioner that a worker can lawfully give up his right under Section 25-H of the Act. According to him in this case actually the worker had not given up his right. Going by the terms of the settlement referred to above, I am unable to agree with the submission made by the learned counsel for the writ- petitioner and I am in entire agreement with the learned counsel for the second respondent that by entering into such a settlement, the writ-petitioner had given up all his rights, not only monetary claims but also his right to have re-employment based on Section 25-H of the Act. Inasmuch as Courts have always been honouring such a settlement entered into between the employer and the workman, I am of the

opinion that the terms of the settlement should be given its due weight. If so given, it is clear that the writ-petitioner is not entitled to re-employment based on Section 25-H of the said Act. That is what exactly the Labour Court has done in this case. Accordingly I find no error in the award of entering into the Section 18(1) settlement, the workman had waived his right to claim re-employment based on Section 25-H of the Act. This writ petition is dismissed accordingly and there will be no order as to costs.

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