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Court : Chennai

Decided On : Jul-11-2001

Reported in : [2002(93)FLR898]; (2002)IILLJ188Mad

Judge : D. Murugesan, J.

Acts : Industrial Disputes Act, 1947 - Sections 25F

Appeal No. : W.P. No. 16706/1994

Appellant : Selvam A. and ors.

Respondent : Management C. Abdul Rahman and Co. and anr.

Advocate for Def. : S. Venkataraman, Adv.

Advocate for Pet/Ap. : S. Thamizharasi, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

D. Murugesan, J.

1. All the three petitioners were appointed as stacking section operators in the 1st respondent management on July 10, 1980. June 3, 1980 and February 15, 1980 respectively and all of them were lastly paid Rs. 50.25 per day as wages and they

were not paid the wages as per law. Hence, all the three petitioners filed petition under Section 2(k) of the Industrial Disputes Act, 1947 hereinafter referred to as the 'Act' before the Labour Officer, Vellore through P.T.U.C. A conciliation was held which ended in failure and all the petitioners were stopped from service from January 23, 1991. Therefore, the petitioners filed petitionunder Section 2A of the Act. In the said petition the petitioners have claimed for reinstatement with back wages and attendant benefits. The dispute continued in I.D. Nos. 490/1993, 491/1993 and 489/1993 and by a common award dated January 31, 1994 the Presiding Officer, Labour Court, Vellore rejected the request of the petitioners. Aggrieved by the said award, the present writ petition has been filed.

2. Learned counsel for the petitioners would contend that the petitioners even though were appointed in the year 1980, they were paid daily wages at Rs. 50.25 per day and they werenot given sufficient work from January 1, 1990 onwards. The failure to provide work to the petitioners would amount to retrenchment and the 1st respondent has not served notices on the petitioner under Section 25 of the Act. According to the learned counsel, the 1st respondent during the course of enquiry marked Exs. M3, M5 and M7 dated January 25, 1991 relating to the respective petitioners and claimed those exhibits as the notices issued under Section 25-F of the Act. A reading of the said exhibits would reveal that the same cannot be considered as notices issued under Section 25-F of the Act. Hence, the learned counsel submitted that in the absence of the compliance of Section 25-F of the Act would render the retrenchment of the petitioners as invalid. In support of the said submission the learned counsel would rely upon judgment of the Supreme Court Workmen of Subong Tea Estate Indian Tea Employees Union v. Subong Tea Estate, : and a Division Bench judgment of the Patna High Court Somu Kumar Chatterjee v. District Signal Tele-Communication Engineer

3. Learned counsel for the 1st respondent on the other hand would contend that Exs. M3, M5 and M7 could be construed as compliance of the provision of Section 25-F of the Act wherein all the three petitioners were informed that since there was no work to be provided to the petitioners from January 24, 1991, a demand draft for a sum of Rs. 9,789/-, Rs. 9413.85 and Rs. 10,392/- respectively have been sent to the petitioners by letter sent through registered post dated January 25,

1991 being the amount towards bonus, service compensation, gratuity, casual leave and notice salary. Therefore, the learned counsel submitted that when there is a compliance of the provisions of Section 25-F the petitioners cannot have any grievance over their non employment. The learned counsel would also submit that once the retrenchment is found bonafide, no interference is called for on the ground of non-compliance of Section 25-F of the Act. For the said purpose the learned counsel relied upon a judgment of the Supreme Court in Workmen of Coimbatore Pioneer BMills Ltd. v. Presiding Officer, Labour Court,Coimbatore, : The learnedcounsel would also rely upon a Division Benchjudgment of this Court in Mount MetturPharmaceuticals Ltd. v. Second AdditionalLabour Court, Madras . The learned Counsel would also relyupon another judgment of the Bombay HighCourt in International Industries, Bombay v. K.G. Sawant 1984 (1) LLN 506. Hence, theearned counsel submitted that thenon-employment of the petitioners is justified.

4. The short question that arises for consideration in the writ petition is as to whether Exs. M3, M5 and M7 dated January 25, 1991 issued to the petitioners respectively would constitute the sufficient compliance of the provisions of Section 25-F of the Act. Section 25-F of the Act reads as under:

'Conditions precedent to retrenchment of workmen : No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been given, one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority, as may be specified by the appropriate Government by notification in the Official Gazette).'

Since all the three exhibits have the same contents, Ex. M3 alone is extracted as follows:

(Vernacular matter omitted) A reading of the above Exs. M3, M5 and M7 indicates that one month notice salary and compensation have been specifically stated in the said notices which according to the 1st respondent are the notices under Section 25-F of the Act. The said exhibits would also indicate that more than what is required under the provisions of Section 25-F of the Act was paid to the petitioners. The 1st respondent management has also sent the amount towards bonus, service compensation, gratuity, casual leave, etc. Therefore, in my considered view the said notice would be considered as sufficient compliance of the provisions of Section 25-F of the Act and hence the contention of the learned counsel for the petitioners that there was no notice under Section 25-F of the Act cannot be accepted.

5. Further, as per the submission of the learned counsel for the 1st respondent that when the order of retrenchment was bona fide, even in the absence of notice under Section 25-F of the Act would not invalidate the retrenchment as invalid. The Supreme Court in the judgment reported in Workmen of. Coimbatore Pioneer B Mills Ltd. v. Presiding Officer, Labour Court, Coimbatore (supra) while considering a similar question has held that when the retrenchment was found by the Labour Court as bona fide, in the absence of notice under Section 25-F, the retrenchment itself cannot be considered as invalid requiring reinstatement of the workmen. A Division Bench of this Court in the judgment reported in Mount Mettur Pharmaceuticals Ltd., v. Second Addl. Labour Court, Madras has held that when the retrenchment was found bona fide, the award of reinstatement is not called for.

Similarly, the Bombay High Court in the judgment reported in International Industries, Bombay v. K.G. Sawant (supra) also held that retrenchment made bona fide affords an exception to the rule to reinstate. In this case, the Labour Court on facts have held that there was no job for the 1st respondent management to offer work to all the 150 employees who were in its roll. For want of work orders, the 1st respondent management also retrenched the 80 workmen and except 7 or 8 workmen, all others have collected their amounts due and left the job. The

Labour Court also found that on facts the 1st respondent management did not have sufficient work order even to provide the work to the remaining workmen. In view of the said factual position the Labour Court found that the retrenchment was bona fide. In view of the categorical finding of the Labour Court that the retrenchment was bona fide retrenchment made bona fides affords an exception to the rule to reinstatement and mere non compliance of Section 25-F of the Act in non payment of retrenchment compensation would not itself result in reinstatement of the petitioners. Moreover, on facts, once this Court comes to the conclusion that Exs. M3, M5 and M7 would constitute sufficient compliance of the provisions of Section 25-F of the Act, the challenge to the retrenchment must fail. In view of my above findings, the judgments relied upon by the learned counsel for the petitioners are of no use to the petitioners. That apart, on facts the said retrenchment is held to be bona fide. Therefore, in my considered view I do not find any merit in the writ petition and the same is dismissed. No costs.

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