

(2019) 12 CAL CK 0067
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 254 Of 2018

Secretary, Malabar Coconut Farming Society Limited	APPELLANT
Vs	
P.Markar	RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Citation : (2019) 12 CAL CK 0067

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Krishna Rao, G.Binnu Kumar

Final Decision : Dismissed

Judgement

Debangsu Basak, J

An award dated July 18, 2018 passed by the Labour Court in ID case No.02 of 2012 is under challenge in this writ petition.

Learned advocate appearing for the petitioner submits that, the Labour Court acted with material irregularity in arriving at a finding that the petitioner did not comply with the provisions of Section 25A of the Industrial Disputes Act, 1947. He submits that, the workman was initially engaged as a labourer in 1993. His services were terminated in 2007. The workman was reengaged in 2008 as tractor driver. The workman was finally terminated in 2010. The petitioner complied with Section 25F of the Act of 1947 and paid the petitioner salary for one month along with the compensation equivalent to 15 days average pay for every completed year of continuous service. He draws the attention of the Court to the cheque issued by the petitioner. He submits that, the Labour Court did not take such facts into account and therefore, the impugned order of the Labour Court stands vitiated.

Learned advocate appearing for the workman submits that, the petitioner herein admitted before the Labour Court that, the petitioner did not pay the workman

the entirety of compensation in terms of Section 25F of the Act of 1947. He submits that, the workman was initially engaged in 1993. Although there was a letter of termination issued to the workman in 2007, on the application of the petitioner for reinstatement, the petitioner reengaged the workman. Therefore, according to him, the workman is in continuous service from 1993. Therefore, the petitioner erred in paying compensation to the workman in terms of Section 25F of the Act of 1947 while seeking to retrench the workman. Consequently, according to him, since the mandatory provisions of Section 25F of the Act of 1947 was not complied with, the impugned decision cannot be faulted.

It appears from the records made available to the Court that, the workman was initially appointed as Assistant Jawabdar by the petitioner on December 24, 1992 and thereafter the workman was appointed as helper in mill section on November 23, 1995. The workman was appointed as Jawabdar temporarily on November 25, 1995 and thereafter appointed as driver on August 5, 1996. The workman was regularised against the post of driver on July 10, 1999. A notice of termination was issued to the workman in 2007. The workman requested for reinstatement which was granted by the petitioner. The workman is to be treated in continuous service. Since the initial appointment on December 24, 1992 till the purported retrenchment on August 16, 2010. On August 16, 2010, when the petitioner was retrenching the workman, the petitioner was required to comply with Section 25F of the Act of 1947. The petitioner paid a sum of Rs.70,000/- and odd to the workman as compensation and paid in lieu of notice under Section 25F of the Act of 1947. In the proceeding before the Labour Court, the petitioner admitted that, the compensation paid was inadequate. The petitioner agreed to pay the balance of the compensation to the workman. Such finding is recorded in the impugned order. The petitioner is not challenging the recording of the impugned order to that effect, the petitioner agreed that the entire compensation amount under Section 25F of the Act of 1947 was not paid.

Be that as it may, by no stretch of imagination it can be said that when the workman considered to be in continuous service from December 24, 1992, the entire compensation in terms of Section 25F of the Act of 1947 was paid to the workman by payment of the sum of Rs.70,000/-and odd given the salary of the petitioner.

The impugned order of the Labour Court proceeds on the basis that since, the entire compensation in terms of Section 25F of the Act of 1947 was not paid and since the payment of compensation is a mandatory component of Section 25F of the Act of 1947, and since the petitioner did not comply with the same, the retrenchment of the workman was held to be invalid.

The Labour Court proceeded to grant reinstatement of the workman with full backwages subject to adjustments of the sum received by the workman, if the workman did not return the same to the petitioner.

In the factual background of the present case, therefore, I find no ground

requiring the writ Court to interfere with the award. The parties were heard by the Labour Court. They were allowed to lead evidence. The impugned order is well reasoned. The impugned order does not suffer from any perversity.

WP No.254 of 2018 is dismissed. No order as to costs. Urgent website certified copy of this order, if applied for, be given to the parties, upon compliance of usual formalities.