

(2007) 04 MAD CK 0296

In the Madras High Court

Case No : Writ Appeal No. 2183 of 2005

The Workmen, Hackbridge and Hewittic Easun Group

APPELLANT

Vs

The Management, Hackbridge and Hewettic Easun Ltd. and
The Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 02-04-2007

Acts Referred:

Citation : (2007) 04 MAD CK 0296

Hon'ble Judges : S. Tamilvanan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : K.S. Narayanan, for the Appellant; M.R. Raghavan, for the Respondent

Judgement

P. Sathasivam, J.—The Workmen, rep. by N.Madhavan, Hackbridge & Hewittic Easun Group, Chennai -600 021, aggrieved by the order of the learned single Judge dated 09.08.2005 passed in W.P. No. 14690 of 1995, have filed the above appeal.

2. Heard Mr.K.S.Narayanan, learned Counsel appearing for the appellant-workmen and Mr.M.R.Raghavan, learned Counsel for the first respondent-Management.

3. Inasmuch as the learned single Judge narrated the entire factual details in his order dated 09.08.2005, we are of the view that there is no need to traverse the same once again.

4. Mr.K.S.Narayanan, learned Counsel appearing for the Workmen, contended that the Tribunal, having found that the remaining 41 persons were entitled to reinstatement, has committed an error in granting compensation for a meagre amount. He also submitted that in view of the decision of the Division Bench in W.A. No. 149 of 1982 dated 25.07.1989 and the conduct of the Management which failed to produce the muster roll of Factory-I to prove the seniority, the Tribunal ought to have ordered reinstatement or granted full wages for the entire

period in lieu of the same.

5. On the other hand, Mr.M.R.Raghavan, learned Counsel for the Management contended that the Tribunal, taking note of totality of the circumstances, passed a reasoned order, which was rightly confirmed by the learned single Judge. He further contended that as on date, even Factory-I was closed and they are not in a position to pay even the amount awarded by the Tribunal as confirmed by the learned single Judge.

6. As rightly pointed out by Mr.K.S.Narayanan, learned Counsel for the workmen that in the order dated 25.07.1989 made in W.A. No. 149 of 1982, the Division Bench commented the Management for not furnishing seniority list of workmen in both the Units. The fact remains that inspite of the remittal order, the Management did not furnish those details. In view of the same, the Tribunal arrived at a conclusion that the respondent-Management has not filed the muster roll or any other acceptable documents to prove the seniority of the workers, who are employed in Factory-I on the date of closure of Factory-II. The further conclusion is that even after the remand, the Management has not made any attempt to produce muster roll of Factory-I or proof showing the seniority and because of the same, by drawing adverse inference, the Tribunal arrived at a conclusion that the remaining 41 persons will be entitled to an order of reinstatement. However, the Tribunal, after finding that since nearly 18 years have lapsed from the date of their retrenchment and if, they were given the relief of reinstatement at this stage, it will affect the workmen, who have been working in the Factory-I for a long period, for no fault of them and also of the fact that the 41 remaining persons have also not worked during these 18 years, instead of ordering reinstatement of the 41 persons, directed the Management to pay retrenchment compensation to them.

7. Before the learned single Judge, the very same contentions were projected by the learned Counsel appearing for the workmen. Taking note of various principles laid down by the Apex Court in a matter of this nature and considering the length of time and the failure on the part of the Management in placing relevant materials in support of seniority list, the learned single Judge, rightly accepted the alternative solution to the workmen, viz., granting statutory retrenchment compensation payable to them as on the date of closure i.e. 30.11.1976. Inasmuch as even the said compensation was not paid on the due date, the learned single Judge awarded 6% interest for the said amount. We are in agreement with the reasoning of the Tribunal as well as the course adopted by the learned single Judge.

8. Though there is no acceptable material, however Mr.M.R.Raghavan, learned Counsel appearing for the Management, on instructions, reported that even Factory-I has been closed and the same is not functioning as on date. In view of the peculiar circumstance, we agree with the conclusion arrived at by the learned single Judge and we are not inclined to enlarge the relief granted in favour of the workmen. At the same time, in view of the finding of the Tribunal to grant

retrenchment compensation to the workmen concerned and of the fact that the reinstatement is not possible in view of the length of time, and also of the fact that it is a statutory retrenchment compensation, considering the inflation in the cost of living, we are of the view that ends of justice would be met by enhancing the rate of interest to 9% instead of 6%.

9. In the light of the above discussion, we confirm the order of the learned single Judge directing the first respondent-Management to pay the retrenchment compensation as directed in the award dated 31.03.1994 passed in I.D. No. 16 of 1977 along with interest at the rate of 9% per annum from 30.11.1976 to 31.03.1994. The said direction shall be complied with, within a period of 12 weeks from the date of receipt of a copy of this order.

10. The writ appeal is disposed of on the above terms. No costs.