

GAHC010116292020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3406/2020

THE MANAGEMENT OF APOLLO HOSPITALS, GUWAHATI.
UNIT INTERNATIONAL HOSPITAL, A UNIT OF ASSAM HOSPITALS LTD.
LOTUS TOWER, G.S. ROAD, CHRISTIAN BASTI, GUWAHATI-781005, REP. BY
ITS UNIT HEAD MR. ABHIJIT SINGH

VERSUS

KAKUMONI BHUYAN AND ANR.
HOUSE NO. 8, NEAR GOPAL KRISHNA NAMGHAR, RUKMINIGAON, P.O.
KHANAPARA, GUWAHATI-781022

2:THE PRESIDING OFFICER
LABOUR COURT
ASSAM
GUWAHATI
M.G. ROAD
DEPUTY COMMISSIONERS OFFICE COMPLEX
2ND FLOOR
GUWAHATI-78100

Advocate for the Petitioner : MR S N SARMA SENIOR ADVOCATE
Advocate for the Respondent : MR S CHAKRABORTY

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 16-02-2023

Heard Mr. S. Dutta, learned Sr. counsel assisted by Mr. K. Kalita, learned counsel for the writ petitioner. Also heard Mr. S. Chakraborty, learned counsel representing the respondent/ work-lady.

2. By filing this writ petition, the management of the Apollo Hospital, Guwahati has approached this Court praying for setting aside the award dated 11-03-2020 passed by the learned Labour Court, Assam at Guwahati in Reference Case No. 01/2019, whereby all the three issues framed by the learned tribunal were answered in favour of the respondent/ (work-lady). Consequently, the order of termination from service of the work-lady issued by the management on 23-06-2018 was set aside and a direction was issued to reinstate her with the arrears of all benefits including the back-wages. During the pendency of this writ petition, the work-lady, as applicant, had approached this Court by filing I.A.(C) No. 2076/2020 with a prayer to grant her the benefits under Section 17B of the Industrial Dispute Act, 1947. Taking note of the prayer made by the applicant/ work-lady, this Court by order dated 01-02-2021 directed the management to pay her the benefits under Section 17B of the Industrial Dispute Act, 1947. Accordingly, the respondent/ work-lady has been receiving such benefits.

3. By referring to the impugned award, Mr. Dutta, learned Sr. counsel for the petitioner submits that although it may be correct that a proper charge-sheet, clearly depicting the charge brought against the respondent/ work-lady was not served upon her, yet, the management has taken a clear stand before the learned Labour Court that they are not relying upon the enquiry report. Accordingly, the management had examined two witnesses in support of the charge. However, the learned Labour Court has failed to

appreciate the evidence led by the management to show that the respondent/ work-lady was guilty of misconduct. It is also the contention of Mr. Dutta that the management did not engage a lawyer and therefore, the question of providing service of a lawyer to the work-lady did not arise in this case.

4. Referring to the findings with regard to issue No. 2, Mr. Dutta has argued that it was incumbent upon the learned Labour Court to record independent finding of fact on each issue before arriving at a conclusion that the order of termination was bad. Since no such finding has been recorded by the learned Labour Court, the impugned award stands vitiated in the eye of law and therefore, calls for interference by this Court. Alternately, it is the submission of Mr. Dutta, learned Sr. counsel for the petitioner that even if the Court finds that there are some procedural irregularities leading to the issuance of the order of termination, even then, liberty may be granted to the management to proceed afresh against the respondent/ work-lady after serving a fresh charge-memo upon her.

5. Mr. S. Chakraborty, learned counsel for the respondent/ work-lady has strongly refuted the arguments made by the learned Sr. counsel for the petitioner by submitting that the conclusion of the learned Labour Court with regard to issue No. 2 flows from and is inter-connected with the findings of facts recorded with regard to issue No. 1 and therefore, there is no irregularity in the impugned judgment. Contending that the failure on the part of the management to serve a proper memo of charge itself had a vitiating effect on the entire exercise and has been rightly pointed out by the learned Labour Court. It is also the submission of Mr. Chakraborty that although the management had the opportunity of adducing evidence before the learned Labour Court, yet, they have failed

to show that the respondent/ work-lady was guilty of any misconduct. Under the circumstances, there is no scope for this Court to interfere with the award dated 11-03-2020 in exercise of jurisdiction under Article 226 of the Constitution of India.

6. Responding to the prayer made by the learned counsel for the petitioner seeking leave to initiate a fresh proceeding against the respondent, Mr. Chakraborty has argued that the management has failed to establish the charge in a proceeding initiated under Section 10 of the Industrial Dispute Act, 1947 before the learned Labour Court. Therefore, granting another opportunity to the management to start a fresh proceeding would amount to giving a second chance to them to proceed against the respondent/ work-lady on the same set of allegations.

7. I have considered the submission made by the learned counsel for both the sides and have also gone through the materials available on record. It appears from the materials on record that the basic allegation brought by the management of the Apollo Hospital against the respondent is to the effect that the respondent had circulated certain 'sms'/ 'mms' bringing disrepute to the hospital. The Human Resource (HR) manager of the hospital, viz. Sri Sabyasachi Roy was the central figure of such sms circulated by the work-lady. It has also been alleged that she had been indulging in similar activities even in the past and has shown intolerance toward the decision of the management. On 24-04-2018, the work-lady was placed under suspension. On the next date, i.e. on 25-04-2018 she was asked to show-cause within 48 hours as to why the intimidating/ threatening voice messages and pictures sent to the HR head in the months of December, 2017 and April, 2018 should not be treated as misconduct. The aforesaid notice was apparently

issued for violation of Clause 20.1.22 of the standing order. The respondent had submitted her reply. Notwithstanding the same, the communication dated 25-04-2018 was treated as the memo of charge and thereafter, an enquiry was conducted by the management against the respondent/ work-lady, which had led to the issuance of the order of termination dated 23-06-2018. In view of the above, an industrial dispute was raised which was referred by the Govt. of Assam to the Labour Court. Taking note of the dispute, the Govt. of Assam had framed three points for reference and referred the matter under Section 10 of the Industrial Dispute Act, 1947 to the Labour Court. Based on the above, Reference Case No. 01/2019 was registered. The learned Labour Court had framed three issues for decision in the reference, which are as follows:

- 1. Whether the Management has conducted the domestic enquiry as per provisions of law?*
- 2. If not, whether the termination is legal?*
- 3. If the termination is illegal, what relief the aggrieved workman is entitled to?*

8. As noted above, during the course of the proceedings before the learned Labour Court, the management has taken a stand that they are not relying upon the enquiry report. Accordingly, the management had led additional evidence and examined two witnesses to establish the allegation brought against the work-lady. After taking note of the materials available on record, the learned Labour Court had held that the management has failed to produce the 'sms'/ 'mms' marked as Exhibit- 3, which are stated to be the intimidating and threatening voice messages and pictures sent by the work-lady to the HR head Sri Sabyasachi Roy. It was also observed that Exhibit- 3 was not accompanied by a certificate as required under Section 64-B/ 65-B of the Evidence Act

and hence, the electronic record produced by the management would be inadmissible in the eye of law. The learned Labour Court has further observed that save and except indicating that there was an enquiry initiated against the work-lady for circulating certain messages which were intimidating and threatening in the perception of the management, there is nothing to show that there was any misconduct on the part of the work-lady. Therefore, taking note of the materials on record, the issue No. 1 was answered by the learned Labour Court in favour of the work-lady. Since the learned Labour Court was of the view that there is no material to substantiate the allegation of misconduct brought against the work-lady, the issue Nos. 2 and 3 were also answered in favour of the respondent/ work-lady.

9. By filing the writ petition, the management is calling upon this Court to reverse the finding of facts recorded by the learned Labour Court with regard to the issue Nos. 1 to 3. What would be significant to note herein that upon receipt of the letter dated 24-04-2018, the work-lady had submitted her explanation to the management on 28-04-2018, which is on record. In the aforesaid letter, although the respondent had admitted that she had forwarded the said 'sms' and 'mms', yet, the respondent has also narrated the circumstances under which those were forwarded. If the version of the respondent given in the letter dated 28-04-2018, is accepted then it has to be presumed that there is no misconduct on her part. Merely by taking note of the fact that the respondent has admitted to having circulated/ forwarded the sms/ mms, the management had concluded that she had admitted of her wrong doings which obviously is not the case. Since the work-lady had given explanation as to the circumstance, under which, those were

forwarded and according to her the same was done to protect the reputation of the hospital, it was incumbent upon the management to establish, by leading cogent evidence on record, that the said version was not correct and on the contrary the work-lady had the intention of causing injury to the interest of the hospital management. However, on a careful scrutiny of the materials available on record, I find that the management has not succeeded in establishing the said fact before the learned Labour Court. In other words, I do not find anything on record to draw the conclusion that that learned Labour Court had arrived at an erroneous conclusion in answering the issues in favour of the work-lady.

10. For the reasons stated above, this Court does not find any justifiable ground to interfere with the impugned award. Moreover, since it is a case where proper opportunity was given to the management to establish the charge of misconduct brought against the work-lady and it had failed to substantiate the allegation by leading cogent evidence, hence, I find sufficient force in the submission of Mr. Chakraborty that allowing *de-novo* proceeding against the respondent, on the same set of allegations, would be impermissible in law and if allowed, would lead to travesty of justice.

For the reasons stated hereinabove, this writ petition is held to be without any merit and the same is, accordingly, dismissed.

Send back the records.

JUDGE

GS

Comparing Assistant