

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:22/12/2014

DATED:10/02/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.27231 of 2014

and

M.P.No.1 of 2014

The Management,
Madras Race Club,
Udagamand,
Nilgris District.Petitioner

Vs.

1.L.Sreenivasan

2.The Presiding Officer,
Labour Court,
Coimbatore.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ , order, or direction in the nature of the Writ of Certiorari calling for the records of the second respondent order dated 25.02.2014 passed in I.D.No.154 of 2011 by the Labour Court, Coimbatore and quash the same.

For Petitioner : Mr.L.Dhamodaran

For Respondents: Mr.T.Sundara Vadhanan

for M/s.V.Bharathidasan for R1
Court R2

O R D E R

The short facts of the case are as follows:-

The 1st responder herein had filed a case in I.D.No.154 of 2011, on the file of the Labour Court, Coimbatore against the writ petitioner herein stating that he had worked as a Permanent Employee in the Management Club for more than 23 years. While so, on 05.05.2008 the Narcotic Intelligence Bureau, Coimbatore, has arrested the petitioner based on the false complaint lodged by the Manager of the Management Club. On the basis of the said complaint the concerned Police wing had proceeded with the criminal case against the employee. After a full fledged trial the employee was acquitted from the said criminal case. After acquittal the

employee made a request to the Management Club to provide him with a job, the same was refused, hence the above case had been levelled against the writ petitioner herein/Management.

2. The Management Club had filed a counter statement and refuted the case before the Labour Court. The Management Club stated that the employee was appointed as a Gardener on probation for a period of one year from 19.08.2007 to 18.08.2008 on the consolidated monthly salary of Rs.2,500/-. During the probation period the employee indulged in an illegal Act, hence the employer took action. The Narcotic Intelligence Bureau, Coimbatore, with a team of Inspector resisted and ceased the opium plants in the Management Club's garden. Since the employee was responsible for cultivating the opium plants, the Police arrested him and after an investigation prosecuted him before the Court. The Criminal Court acquitted the employee on the technical ground only. Therefore, the employee cannot take a plea that he is entitled for re-instatement as he was acquitted in the criminal case.

3. During the probation period the employee committed an offence punishable under law. On knowing the illegal activities of the gardener the management lost confidence and terminated the service on the eve of the Criminal Case. The Gardener has no right to claim re-employment when the Management Club is not satisfied with his conduct and character of a gardener. When a person is involved in a criminal charge, it is not a satisfactory performance, so the Gardener on his own conduct has lost the right to claim employment. Hence, the management Club prayed before the Labour Court to dismiss the employee's case.

4. The Labour Court after considering the contention of both parties had considered two issues and after recording the evidence of the employee and on marked exhibits (1) to (5) on the side of the employee besides the management had marked three exhibits, the Labour Court holds that the employee is not entitled for backwages, since he raised the Industrial Dispute but for the subsequent period he will be entitled for 25% of backwages. Further, the Labour Court directed the Management Club to reinstate the petitioner into service with continuity of service. Not being satisfied with the findings of the Labour Court, the Management Club has filed the above writ petition.

5. The highly competent counsel Mr.Damodaran, appearing for the petitioner submits that the 1st respondent was appointed as a Gardener on probation for a period of one year from 19.08.2007 to 18.08.2008 on a consolidated monthly salary of Rs.2,500/-. In order to establish that the employee was paid a sum of Rs.2,500/- as a consolidated monthly salary the exhibit M3 ie., pay slip was marked before the Labour Court. Further, the employee had been charged under the Narcotic Drug Psychotropic Substances Act and arrested him by the Special Wing Police for growing opium plants in the petitioner's garden of the Management Club, hence the employee was terminated from service, since he had taken part in illegal activities.

6. The very competent counsel further submits that the Labour Court had not considered the Management's documentary proof and nature of employment and the period of employment and also the nature of the Criminal Case. Hence, the learned counsel entreats the Court to allow the above writ petition and set aside the impugned order of the Labour Court.

7. The very competent counsel Mr.L.Sundara Vadhanan, appearing for the 1st respondent submits that the employee had been appointed as a Gardener. After 23 years the petitioner had terminated the employee on the ground that he had indulged in illegal activities by growing opium plants on the premises of the Management's Garden for which a Criminal Case had been levelled against the employee. After trial the employee was discharged from the Criminal Case as an innocent. Subsequently, the prosecution had not filed any appeal or revision against the acquittal of the employee since there is no prima facie case for filing an appeal, as such the acquittal of the employee has become final. Therefore, the Gardener of the management is entitled for reinstatement with backwages and with continuity of service but the same was not granted, instead the Labour Court directed the Management to reinstate him without full backwages but the Labour Court ordered 25% backwages for a limited period. The highly competent counsel further submits that the Management Club had not conducted initially a domestic enquiry before passing order of termination, as such the principle of natural justice has been violated in the instant case. Hence, the learned counsel made a deep request to dismiss the above writ petition.

13. From the above discussions, this Court is of the view that:

(i) The employee had stated that he rendered service for more than 23 years before the termination of service was served. In order to prove the same no documentary proof was marked before the Labour Court. The Management had marked Exhibits M1 and M3 i.e., date of employment and last pay drawn salary respectively. As such, the petitioner had joined duty as a Gardener on 19.08.2007 and rendered service upto 05.05.2008, therefore the petitioner has rendered garden service at the Management Club for around one year. Therefore continuity of service ordered by the Labour Court is not appropriate;

(ii) The petitioner had been arrested by the Special Wing Police under Narcotic Drug Psychotropic Substances Act, subsequently prosecution went on, this was an admitted fact, therefore domestic enquiry is not required in the instant case. Therefore, the termination order is suitable for execution;

(iii) In the interest of natural justice, the petitioner shall be allowed to receive 25% backwages from the date of termination i.e., 05.05.2008 to date of disposal of the above writ petition i.e., upto 10.02.2015.

14. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers and the views of this Court in (i) to (iii), the above writ petition is allowed on condition that the Management Club shall pay 25% backwages on his last drawn salary from 05.05.2008 to 10.02.2015 within a period of one month from the date of receipt of this order by way of pay order in the name of the employee. Both parties are not permitted to file an appeal against this Court order.

15. In the result, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed. Accordingly ordered.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

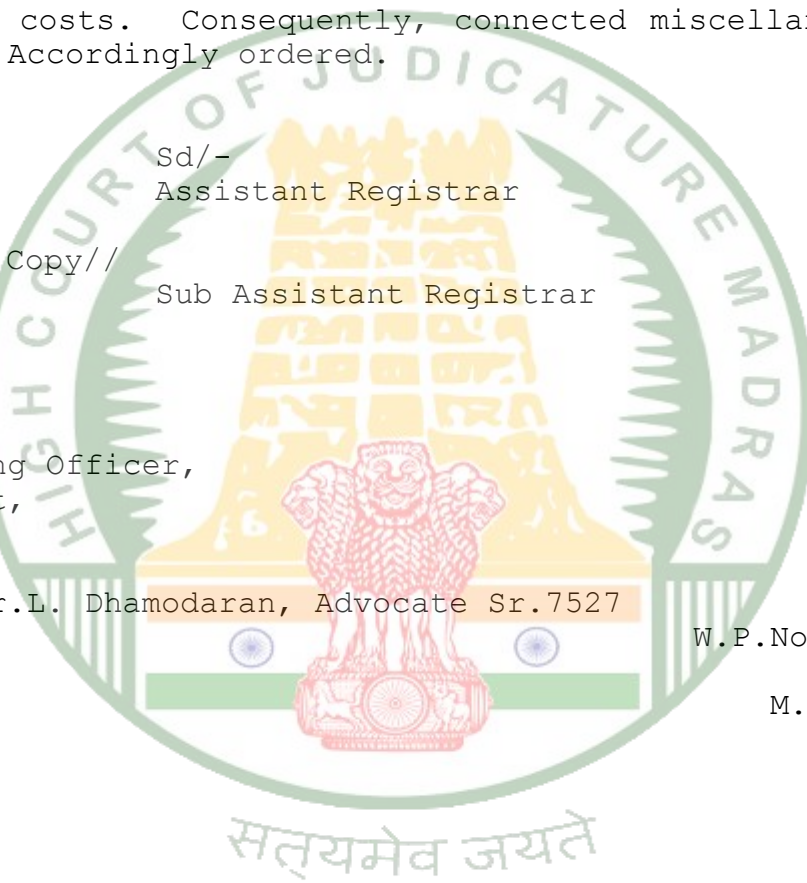
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To

The Presiding Officer,
Labour Court,
Coimbatore.

+ 1 cc to Mr.L. Dhamodaran, Advocate Sr.7527

W.P.No.27231 of 2014
and
M.P.No.1 of 2014

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