

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.10392 of 2004

Management

Hotel Central Tower

17/2, Poonamallee High Road

Chennai 600 003

.. Petitioner

-vs-

1. The Presiding Officer
The Principal Labour Court
Chennai

2. T.M.Hussain Rowthar

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records in the award dated 17.11.2003 made in I.D.No.701 of 1997 on the file of the Principal Labour Court, Chennai viz., the first respondent and to quash the said award.

For Petitioner :: Mr.R.Thirugnanam

For Respondents :: Mr.K.Bharathi for
Mr.S.Kumarasamy for R2
R1-Court

ORDER

This writ petition has been directed against the impugned award passed by the Principal Labour Court, Chennai in I.D.No.701 of 1997, in and by which the Labour Court held that the non-employment of the second respondent was not justified, as a result, he was entitled to the relief of reinstatement with continuity of service, full backwages and other attendant benefits.

2. Mr.R.Thirugnanam, learned counsel for the petitioner-Management of Hotel Central Tower situated at No.17/2, Poonamallee High Road, Chennai submitted that the second respondent, having joined as a Cook in the petitioner hotel from 10.11.96 with a salary of Rs.1,367/-, had a wound in his right leg and the same became septic. In view of that, the Corporation Health Inspector, who

visited the petitioner-hotel, objected to his presence in the hotel. Therefore, the petitioner hotel paid his salary on 31.7.97 for the month of July, 1997 and Rs.1,000/- for his treatment expenses with an advise to take treatment and report for duty thereafter. But he did not report for duty. When he himself stayed away from work, question of termination does not arise. On the other hand, the claim of the second respondent was that he was working in the petitioner-hotel from 15.1.96 continuously with a salary of Rs.2,500/- per month and that he took leave from 20.6.97 to 3.7.97 with the permission of the petitioner and after the expiry of leave, when he came back to the hotel on 4.7.97, he was denied employment on the ground that his services were terminated without any reason. Further claiming that he had sent a letter dated 16.7.97 to the petitioner-hotel requesting a job, finding no response, raised an industrial dispute on the ground that the termination of his service without any reason was illegal, unlawful, against the principles of natural justice and violative of Section 25-F of the Industrial Disputes Act. Although the petitioner hotel filed a detailed counter affidavit contending that the second respondent joined only as a Cook from 10.11.96 and his last drawn salary was Rs.1,367/- and not Rs.2,500/- per month as claimed by him and that only in view of the wound he had in his right leg becoming septic, on the objection raised by the Corporation Health Inspector, he was paid with the salary for the month of July, 1997 along with Rs.1,000/- towards treatment and was advised to take treatment and return for work thereafter. After leaving the hotel, the second respondent did not join. But this has not been properly considered by the first respondent Labour Court. Adding further, he has stated that when the second respondent claimed that he joined duty as a Cook on 15.1.96, the petitioner management produced the service register, Ex.M5 to show that he joined duty only on 10.11.96. Ignoring even the valid and documentary evidence, the first respondent Labour Court has wrongly come to the conclusion that the second respondent had worked for 240 days from 15.1.96, till he was allowed to go for taking treatment on 31.7.97, without there being any oral or sufficient documentary evidence. Therefore, the impugned award, he pleaded, is liable to be set aside. Concluding his arguments he has stated that although the second respondent had obtained an order of reinstatement from the first respondent Labour Court, the subsequent events had made the petitioner hotel impossible to employ him, since the hotel itself had been closed down due to the metro rail project implemented in the city of Chennai. As the petitioner is not having any hotel, question of reinstatement does not arise. Adding further, he also stated that the second respondent also had reached the age of superannuation. On this basis, he has further submitted that when the writ petition was admitted by this Court on 19.4.2004, a direction was given to deposit the entire backwages within a period of eight weeks and the said amount running to Rs.1,18,929/- having been deposited by the petitioner on 17.11.2004 and that the second respondent was also permitted to withdraw 50% thereof pursuant to the order of this Court dated 4.4.2005, leaving the balance 50% alone

lying in deposit. Since the proprietor of the hotel is no more, the learned counsel submitted that the second respondent may be permitted to withdraw the said amount and the matter may be closed.

3. In reply, the learned counsel for the second respondent submitted that when the first respondent Labour Court disbelieved the story of the petitioner hotel that he was not sent on 31.7.97 for taking treatment for his septic wound in his right leg and finally ordered reinstatement giving a finding that he had worked for more than 240 days, therefore, when his non employment has to be construed as violative of Section 25-F of the Industrial Disputes Act, the petitioner has no other option except to settle the entire backwages along with a reasonable amount. The learned counsel further fairly submitted that the proprietor of the hotel is no more. However, his son has taken another hotel on lease. Therefore, a direction should be given to his son Mr.N.Faizal being the legal heir of the proprietor, who is no more.

4. This Court is unable to give any direction to the petitioner's son, since the proprietor of the hotel died during the pendency of the writ petition. In view of the subsequent events that had taken place, namely, that the proprietor of the petitioner hotel passed away during the pendency of the writ petition, that the hotel itself has been closed down in view of the implementation of the metro rail project in the Chennai city and that the second respondent himself had reached the age of superannuation, this Court, to meet the ends of justice, permits the second respondent to withdraw the entire balance amount deposited to the credit of the I.D.No.701 of 1997, along with a copy of this order, with a proper application before the first respondent Labour Court, to give a quietus to the dispute. With this observation, the writ petition stands disposed of. Consequently, W.P.M.P.Nos.12113 & 29185 of 2004 and W.V.M.P.No.444 of 2005 are closed. No costs.

Sd/- सतयमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Principal Labour Court
Chennai

+ 1 cc to Mr.S.Kumarasamy, AdvocateSR.11455

W.P.No.10392 of 2004

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