

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.01.2016

Date of Reserving the Order	Date of Pronouncing the Order
21.01.2016	28 .01.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.10168 of 2011

Sorrento Homes,
Rep., by its Partner Y.P.Ravi,
No.43/11, 3rd Floor,
3rd Main Road, Gandhi Nagar,
Adayar Chennai - 20 ... Petitioner

Vs.

1.The Presiding Officer,
I Addl., Labour Court,
Chennai - 104.

2.N.Rajendran Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the reocrds in C.P.No.337/2007, on the file of the first respondent and quash the award dated 25.02.2011.

For petitioner ... Mr.S.J.Jagadev

For Respondents .. Mr.N.G.R.Prasad for
M/s.Row & Reddy for
Mr.K.Vennila for R2
R1-Court

O R D E R

The petitioner is a partnership firm and the challenge in this Writ Petition is to an order passed by the first Additional Labour Court, Chennai in C.P.No.337/2007, dated 25.02.2011 filed under Section 33C(2) of the Industrial Disputes Act (I.D.Act).

2. The petitioner is engaged in the business of construction of flats and multi-storied apartments and there are two partners, who are brothers and as of now, the partnership firm has become defunct and virtually stands dissolved. The second respondent was working as an Accountant in the office of the petitioner from 1994 on a monthly salary of Rs.5,000/-. The claim petition came to be filed by the second respondent claiming arrears of salary to the tune of Rs.16,02,000/-. The Labour Court accepted the case of the second respondent and computed the arrears of salary payable by the petitioner to the second respondent at Rs.16,02,000/-. The case of the second respondent rested upon an undertaking letter dated 21.07.2006, alleged to have been signed by the management agreeing to pay the arrears of enhanced salary. Before the Labour Court, the second respondent examined himself as WW-1 and marked 24 documents. However, the petitioner did not lead any oral or documentary evidence. The Labour Court accepted the case of the second respondent on the ground that the petitioner Management did not lead any oral evidence nor rebut the contention of the second respondent by producing their evidence. Thus, by accepting the undertaking letter dated 21.07.2006, in toto computed the salary payable to the second respondent as in the undertaking letter, wherein the Management is to have agreed to pay the enhanced salary with effect from 01.01.2000.

3. Mr.S.J.Jagadev, the learned counsel appearing for the petitioner submitted that the undertaking letter, Exhibit P3 is a fabricated document and it has been prepared in a letter pad of M/s.Sorrento Guest House and said to be signed by its Proprietor and the said M/s.Sorrento Guest House is not the employer of the second respondent and it is a sole proprietary concerned of the father of the partners of the petitioner. Further, commenting upon the tenor of the letter, it is submitted that no prudent employer will ever give such an undertaking the letter and the signature affixed therein is forged, which can be early ascertained by comparing with the admitted signature in the salary cheque. Further, it is submitted that prior to filing the petition before the Labour Court, the second respondent had sent a legal notice dated 28.05.2007, which was marked as Exhibit P5 and in the said letter while stating that he has been dismissed in an unjust manner and claimed for Rs.16,02,000/- and in the said legal notice, there is no reference to the undertaking letter dated 21.07.2006, which clearly shows that it has been fabricated subsequently for the purpose of filing the petition. Further, it is submitted that the second respondent misused the stationary which were available in the office and the letter-pad shows the telephone numbers to contain six digits only and at the relevant time, i.e., during 2006, number of digits of all the city telephone numbers were increased to seven and from these, it is clear that an old letter-pad had been used by the second respondent. Further, it is submitted that Exhibit P1 is alleged

salary certificate and it has been prepared in a letter-pad of petitioner firm and the phone numbers are 8 digits phone numbers and in Chennai city 8 digit numbers was introduced only in the year 2002, whereas the letter is dated 11.03.1999. Further, it is submitted that in the claim petition as well as in the proof affidavit, the stand taken by the second respondent is that the petitioner/employer insisted him to continue his employment and do his duties. This stand is contrary to the stand taken by the second respondent while issuing the legal notice dated 28.05.2007, (Exhibit P5). Thus, it is submitted that the second respondent has pleaded an inconsistent case, which was not taken into consideration by the Labour Court. Further, at the very first instance, the petitioner sent a reply notice to the counsel for the second respondent on 01.06.2007, categorically stating that the claim made is false and fictitious. Since the second respondent did not refer to the alleged undertaking letter dated 21.07.2006 in his legal notice, dated 28.05.2007, (Exhibit P5), there was no occasion for the petitioner to state that the undertaking letter was a forged and fabricated document. Further, it is submitted that M/s.Sorrento Guest House has been leased out to a third party by lease deed dated 15.11.2000, executed by the father of the partners of the petitioner and there was no occasion for the said concern to give any undertaking letter to the second respondent. Further, it is submitted that the Labour Court ought to have rendered a specific finding with regard to termination or otherwise of the services of the second respondent, more so, when the contradictory stand had been taken by the second respondent. With the above submissions, the learned counsel prayed for setting aside the impugned order.

4. Mr.N.G.R.Prasad, learned counsel appearing for the second respondent, after elaborately referring to the factual matrix invited the attention of this Court, to the finding recorded by the Labour Court in the impugned order, and it has been submitted that the Labour Court took into consideration the oral and documentary evidence produced by the second respondent and rendered a finding and when the petitioner did not choose to get into the box, they cannot assail the correctness of the impugned order on the grounds raised in the Writ Petition. Thus, the order having been passed based on the oral and documentary evidence, this Court should not interfere with the same.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. The fact that the second respondent was an Accountant in the petitioner firm is not in dispute. The second respondent filed the claim petition claiming difference in wages with retrospective effect. His claim was that he is entitled to a sum of Rs.16,02,000/- being the arrears of salary. Prior to filing

the claim petition, the second respondent issued a legal notice dated 28.05.2007, stating that at the first instance he was paid monthly salary of Rs.5,000/- per month and on 01.01.2000, he was promised salary of Rs.12,000/- per month, but actual payment of Rs.5,000/- alone was paid and there was a promise to pay difference of Rs.7,000/- per month at a future date. Further, it was stated that when he made a demand for payment of the arrears of salary during 2007, the amount was not paid and the petitioner stopped the second respondent from service with a view to defeat the claim for arrears of salary. It was stated that the second respondent was abruptly dismissed from service from 01.03.2007 and the dismissal is unjust. Thus, the second respondent claimed, apart from the difference in salary, compensation of Rs.10,00,000/- and in all Rs.16,02,000/-. Thus in terms of legal notice dated 28.05.2007, (Exhibit P5), the second respondent accepted that he was dismissed from service. The petitioner sent a reply notice dated 01.06.2007, (Exhibit P6) stating that the second respondent stopped attending work from 01.03.2007 and for the service rendered by him, he has been paid salary dues and the other allegations were denied. After the reply notice was sent, the second respondent moved the Labour Court by filing the petition to compute his wages. Interestingly in paragraph 5 of the claim petition, the second respondent took a diametrically opposite stand stating as if the management was insisting him to continue in employment. Thus, it is the admission of the second respondent that there was no termination of his employment. For the first time in the claim petition, there was a reference to an undertaking given on 21.07.2006. This letter was not referred to in the legal notice (Exhibit P.5) and produced before the Labour Court for the first time.

7. The claim petition was resisted by the Management contending that the undertaking letter Exhibit P3 is a fabricated document. Their stand was that M/s.Sorrento Guest House is a proprietorship concern and nothing to do with the petitioner and the property which was owned by the said M/s.Sorrento Guest House was leased out to a third party by father of the partners of the petitioner on 15.11.2000 itself. Further, it is more interestingly to note that the second respondent produced the copy of the agreement for lease dated 15.11.2000, which was marked as Exhibit P23. During the course of arguments this Court posed a question to the learned counsel for the second respondent as to how the second respondent could have retained a copy of said lease document. Further, this Court pointed out that the second respondent was one of the attesting witness to the said document and it is not known as to how he could have retained a photostat copy of the document with himself when he had nothing to do with the property. That apart, with regard to the undertaking letter dated 21.07.2006, the specific case of the management is that the letter-pad contains the phone numbers with six digits and as on 2006, there was seven digits in the city

phone number and it is a old letter-pad utilised by the second respondent. This was also the stand taken with regard to Exhibit P1, the alleged salary certificate, which is dated 11.03.1999 and the letter-pad contains eight digits telephone numbers which was introduced only in the year 2002. When these issues were pointed out by the management in their counter affidavit clearly taking a stand that the documents are forged, the Labour Court did not make any endeavour to examine those aspects. It may be true that the petitioner did not produce any oral or documentary evidence, but their case was based on the documents exhibited by the second respondent himself and there was intrinsic evidence to show that the documents are forged or fabricated. That apart, when the management pointed out the inconsistency in the stand taken by the second respondent in the legal notice and in the computation petition wherein he admitted that he was directed to continue in service, the Labour Court should have endeavoured to ascertain as to whether there was any termination of service or whether it was a case of a dismissal from service or a case of voluntarily not reporting for duty. These issues would be very relevant as it would touch upon the jurisdiction of the Labour Court to entertain a Claim Petition under Section 33C(2) of the I.D.Act. However, the Labour Court did not endeavour to proceed in any of these directions, which it was required to do. In fact, there is no discussion on this aspect in the impugned order and the only paragraph in which reasons have been assigned is paragraph 10 of the impugned order and even in the said paragraph, the sole reason for allowing the claim petition is because the Management did not examine any witness on their side. The findings rendered by the Labour Court is utterly perverse and the Labour Court failed to take into consideration the admissibility of the documents produced by the second respondent especially when the fraud is alleged. All these would render the impugned order as perverse and hence, calls for interference. Surprisingly, the second respondent has exhibited income tax returns filed by the petitioner as his document. The second respondent having worked as Accountant could have had access to those documents. However, he can never retain copies of the Income Tax returns, the receipt issued by the Income Tax Department to the petitioner firm or its partners and having retained the same it would in effect amount to a breach of trust on the part of the second respondent. This Court does not propose to express anything more on this aspects.

8. Pursuant to the interim orders granted by this Court on 26.07.2013, a portion of the amount ordered to be paid, was directed to be deposited by this Court and the second respondent was permitted to withdraw a portion of the same. Accordingly, a sum of Rs.4.00 lakhs was deposited, and the petitioner challenged the said order before a Division Bench, which passed an order, not permitting withdrawal of the said amount, by the second respondent. There was a further direction to deposit some more amount. However, when the Demand Draft was presented, the Labour

Court raised certain technical objections, and there was delay in deposit. Consequently, as on date, a sum of Rs.4.00 lakhs is lying in deposit, before the first respondent-Labour Court.

9. Considering the fact that the second respondent has been in employment of the petitioner since 1994, this Court, by exercising its discretion, is of the view, that he be permitted to withdraw the amount of Rs.4.00 lakhs, which is lying in deposit to the credit of C.P.No.337 of 2007 on the file of the first respondent-Labour Court; and, that over and above that, there is no other entitlement to the second respondent.

10. In the result, this Writ Petition is allowed, and the order impugned is quashed. However, the amount of Rs.4.00 lakhs, stated above, is permitted to be withdrawn by the second respondent, by filing an appropriate application before the first respondent-Labour Court. No costs. Consequently, the connected M.P.Nos.1 of 2011 and 1 of 2013 are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

pbn

To

The Presiding Officer,
I Addl., Labour Court,
Chennai - 104.

2 ccs Mr.K. Vennila, Advocate, sr. 5669
1 cc to Mr.S.J. Jagadev, Advocate, . Sr. 5486

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