

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
21.03.2016	31 .03.2016

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.29959 of 2014

Sri Ramu College of Arts and Science
Rep., by its Secretary,
S.Ramasamy,
N.M.Sungam,Vadesanthur,
Pollachi - 642 002,
Coimbatore District.

... Petitioner

Vs

1. M.Annalakshmi
2. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the entire records of the Labour Court in ID.No.623 of 2008, dated 30.12.2013 and quash the same.

For petitioners : Mr.C.Veeraraghavan

For Respondents : Mr.G.B.Saravanabhavan for R1
R2 Court

O R D E R

The petitioner is an educational institution and they have filed this Writ Petition for issuance of a Writ of Certiorari, to quash the award of the Labour Court, Coimbatore in I.D.No.623 of 2008, dated 30.12.2013.

2. The petitioner would state that the first respondent was employed as a daily wager in the institution and she was in the habit of quarrelling with the students and teaching and non-teaching staff without any rhyme or reasons. On account of which, the Management had questioned about her conduct and on and from 01.08.2006, the first respondent did not report for duty. The first respondent being only a daily wage employee and as she did not report for duty on her own volition, the petitioner Management had no occasion to initiate any disciplinary action. While so, after a lapse of more than one year, the petitioner Management received a notice from the Assistant Commissioner of Labour, Coimbatore, dated 18.12.2007, stating that the first respondent has raised a dispute regarding her denial of employment and called upon the petitioner to attend conciliation proceedings. It appears that the petitioner Management attended the conciliation proceedings and as there was no consensus and conciliation was closed. Thereafter, the first respondent raised a dispute before the Labour Court, which was taken on file as I.D.No.623 of 2008. The Labour Court by impugned award, set aside the alleged oral termination and directed reinstatement of the first respondent with continuity of service, which is challenged in this Writ Petition.

3. The learned counsel for the petitioner submitted that the Labour Court ought to have taken note of the fact that the first respondent on her own volition failed to report for work from 02.08.2006 and she was not a permanent employee of the institution and was only a daily wage employee. Further, the learned counsel submitted that the first respondent was contesting in the local body election and without considering the said fact, the Labour Court directed reinstatement. It is submitted that the Labour Court failed to properly appreciate Exhibit M-1, which the Management had produced to establish that the first respondent was not reporting for duty and this fact is very relevant to decide the conduct of the first respondent. Further, it is contended that the first respondent never worked continuously in the petitioner institution and she is not a permanent employee and therefore, the relief granted to the first respondent is not tenable. On the above submissions, the learned counsel sought for setting aside the impugned award.

4. The learned counsel for the first respondent reiterated the contentions raised before the Labour Court stating that the first respondent was working for more than 10 years and her monthly salary was Rs.1452/- and when she reported for duty on 02.08.2006, she was denied employment, which amounted to termination and the Management terminated the services of the first respondent without following any procedure and therefore, the first respondent approached the authorities and since

conciliation had failed, she had raised the dispute. Further, it is submitted that the Labour Court after considering the facts and circumstances as well as oral evidence of the first respondent, passed the award, which is valid and proper.

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

6. Before the Labour Court, the first respondent examined herself as WW-1 and she marked four documents of which Exhibit W-1 was an identity card and Exhibit W-2 was salary certificate, dated 22.09.2005. The other two Exhibits W-3 to W4, were the advocate notices with acknowledgement and the Conciliation failure report. On the side of the petitioner Management, there was no oral evidence, but one document was marked as Exhibit M-1, which was the newspaper report. After considering the fact and oral and documentary evidence, the Labour Court framed two questions for consideration as to whether the first respondent was entitled for reinstatement and other consequential relief; and to what relief the first respondent is entitled to. The Labour Court came to the conclusion that unless the first respondent was a permanent employee, she would not have received the salary on monthly basis by referring to Exhibit W2. In my view, such presumption is not legally tenable, since that by itself will not make the first respondent a permanent employee and there is no other document be placed to show that the employee was a permanent employee. Furthermore, the Exhibit W-2 was only a salary certificate and not a salary slip issued to a permanent employee, where would contain several details including the Employee Number, ESI Code Number, EPF Code Number, the break up details of the salary, Income Tax if any deducted at source etc. Therefore, Exhibit W-2 cannot be stated to be a salary slip, but it is a certificate, dated 22.09.2005, certifying that the first respondent is an Attender drawing a monthly salary of Rs.1452/-. The Management pointed out that in the cross examination, the first respondent admitted that she had obtained Exhibit W-2, certificate for the purpose of getting benefit from the Government. In fact, the Labour Court accepted this fact and recorded that the first respondent has admitted in her cross examination that she received Exhibit W-2 certificate for getting benefits from the Government.

7. Having held so, the Labour Court committed a gross error in coming to the conclusion that merely because of such admission, the contents of the certificate will not become false. However, the Labour Court misdirected itself in rendering such a finding, when the issue is whether Exhibit W-2 certificate would be sufficient to show that the first respondent is a permanent employee, unless such fact was proved,

then alone the question of examining as to whether there was a termination from service and whether the petitioner Management ought to have followed a procedure would arise.

8. The case of the Management is that she did not report for duty. However, the Workman could not establish that though she reported for duty, she was denied employment. That apart, one more important fact is that she has contested in the local body election and this has not been disputed by her. In such circumstances, the Labour Court erroneously directed reinstatement of the first respondent with continuity of service.

9. One more issue is that though the case of the first respondent is that she reported for duty on 02.08.2006 and she was denied employment, for more than one year, no action was initiated by her and parallelly she was contesting the local body election. In fact, the first respondent admitted that she contested in the election and this fact was taken note of by the Labour Court to deny backwages.

10. In the light of the above discussion, it is clear that the Labour Court failed to appreciate the oral evidence of the first respondent in a proper perspective, misdirected itself in applying incorrect test and passing the impugned award. Thus, the award suffers from perversity and on the given facts and circumstances, no such relief could have been granted by the Labour Court.

11. For all the above reasons, the Writ Petition is allowed and the impugned award is set aside and the claim petition in I.D.No.623 of 2008, dated 30.12.2013, on the file of Labour Court, Coimbatore, stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

pbn

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Coimbatore.

W.P.No.29959 of 2014

VSN(CO)
CA(13/04/2016)