

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9296 of 2011

R.Madhavi

... Petitioner

Vs

1.The Special Officer,
Triplicane Urban Co-operative Society (TUCS)
No.119, Big Street,
Triplicane, Chennai 600 005.

2.The Presiding Officer,
III Additional Labour Court,
Chennai 600 104. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the entire records of the proceedings in I.D.No.392 of 2004 dated 24.06.2010, from the file of second respondent Labour Court and quash the same in so far as it relates to rejection of relief of back wages, continuity of service, other benefits and consequently direct the first respondent management to give back wages, continuity of service and other benefits.

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.V.Selvaraj

Additional Government Pleader for R1

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O R D E R

Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mr.V.Selvaraj , learned Additional Government Pleader appearing for the first respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to

call for the entire records of the proceedings in I.D.No.392 of 2004 dated 24.06.2010, from the file of second respondent Labour Court and quash the same in so far as it relates to rejection of relief of back wages, continuity of service, other benefits and consequently direct the first respondent management to give back wages, continuity of service and other benefits."

3. The case of the petitioner is as follows:-

The petitioner was employed as Sales Assistant since 24.02.1986 in the first respondent Society. According to her, she was affected by Jaundice and in view of the same, she had to remain absent for some time. She seems to have submitted leave application, informing the Society about her illness and requested the first respondent to sanction leave. Even though the petitioner sent leave application, the first respondent did not pass any order regarding leave.

4. In the said circumstances, a charge memo was issued on 18.12.2001, charging her for unauthorised leave without pre-sanction of leave since 09.02.2001. In response to the charge memo, the petitioner had submitted a reply on 29.12.2001, denying the charges stating that she had to be absent because of her illness. Not satisfying with the explanation, an enquiry was held into the charges and according to the petitioner, an enquiry was conducted on 11.02.2002, on the same day, the same was completed without giving proper opportunity to the petitioner. The enquiry report was submitted on 20.02.2002 and the Enquiry Officer, infact recommended for reinstatement of the petitioner as her absence for the relevant period did not cause any loss to the Society.

5. In view of the admission of the absence by the petitioner herself, the Society vide proceedings dated 03.12.2002, dismissed the petitioner from service. Thereafter, an Industrial Dispute was raised in I.D.No.392 of 2004 by the petitioner. The second respondent-Labour Court, before which, the dispute was referred to, after adjudication and after adverting to all the materials and pleadings placed on record, partially allowed the dispute by ordering reinstatement of the petitioner without continuity of service, back wages etc., The said award of disallowing the continuity of service and back wages is put to challenge in the present writ petition.

6. The learned counsel for the petitioner, at the outset, would submit that the award of the Labour Court insofar as it denied the benefit of continuity of service and back wages, cannot be countenanced both in law and on facts, for the reason that the findings by the Labour Court was entirely in favour of the petitioner and in such circumstances, the denial of continuity of service and back wages is without any justification and the same cannot stand the test of judicial scrutiny of this Court, exercising its jurisdiction under Article 226 of the

Constitution of India.

7. The learned counsel for the petitioner would draw the attention of this Court to the relevant findings of the second respondent-Labour Court, in which, it is clearly held that in the past, the petitioner had not remained absent and it was the first time when she remained absent which became the subject matter of the charge memo, which culminated in the order of dismissal from service. This fact has not been disputed by the first respondent Society.

8. Upon notice, learned Additional Government Pleader appearing for the first respondent entered appearance and filed a counter affidavit. The learned counsel for the first respondent Society would submit that even after the reinstatement was ordered by the second respondent-Labour Court, the petitioner never reported for duty, even though Management offered to take her back, when the matter was referred before Lok Adalat on 08.08.2015. In spite of the offer by the Management, she did not report for duty. Only on the intervention of this Court, at last, she reported for duty on 15.12.2017. Thereafter, she was allowed to join the duty.

9. The learned counsel for the petitioner is unable to give any satisfactory explanation for the conduct of the petitioner. Be that as it may, this Court is entrusted with the task of judicial review of the award passed by the second respondent-Labour Court dated 24.06.2010. The second respondent-Labour Court after referring to some of the judgment of the Court held that the punishment of dismissal from service for unauthorised absence was found to be disproportionate. Moreover, as rightly contended by the learned counsel for the petitioner that the petitioner did not remain absent in the past and it was the first time that she remained absent and a solitary act of misconduct cannot result in punishment of dismissal from service.

10. Therefore, to that extent, the Labour Court interfered with the quantum of penalty and ordered reinstatement in service. However, the Labour Court while ordering the same and denying the continuity of service and back wages, had fallen into error by not granting at least the benefit of continuity in service, if not for back wages. The petitioner had entered as early as in 1986 and continued to work as such till 03.12.2002, when she was dismissed from service for the misconduct of unauthorised absence, even assuming the absence is unauthorised, it cannot result in such harsh punishment at the hands of the Management.

11. Therefore, this Court is in agreement with the view taken by the Labour Court of ordering reinstatement, at the same time, the denial of continuity of service in the facts and circumstances of the case is without any justification, particularly, in view of the fact that the petitioner had not committed any such misconduct in the past. Therefore, wiping out

her entire past service, will result in serious adverse financial and career implication for the petitioner. Therefore, this Court is unable to countenance such view taken by the second respondent-Labour Court.

12. While concluding so, this Court is also of the considered view as far as the back wages is concerned, since the conduct of the petitioner was not proper, in view of not reporting for work as averred in the counter affidavit. No part of back wages is liable to be ordered on the ground that "no work, no pay".

The petitioner has to be imposed with some punishment for her laxity in not pursuing her carrier diligently and regularly with the Management.

13. In the said circumstances, this Court in the fitness of things, allows the writ petition partially to the extent that the award of the Labour Court in I.D.No.392 of 2004 dated 24.06.2010 is modified, holding that the petitioner is entitled to continuity of service. However, the petitioner is not entitled to any back wages till the time she reported out for work on 15.12.2017, on the ground that "no work, no pay".

14. With the above direction, the writ petition is partially allowed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1.The Special Officer,
Triplicane Urban Co-operative Society (TUCS)
No.119, Big Street,
Triplicane, Chennai 600 005.

2.The Presiding Officer,
III Additional Labour Court,
Chennai 600 104.

+1cc to Mr.V.Vijay shankar, Advocate SR.No.92106

+1cc to Mr.V.Selvaraj, Advocate SR.No.91934

W.P.No.9296 of 2011

RJ(CO)

GN(24/01/2018)