

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.8811 of 2004

and

W.P.M.P.No.10305 of 2004

Dr.Ramesh,
Dr.Ramanathan Memorial
Medical Centre,
S/o Late V.N.Ramanathan
20, 5th Cross,
Paramasivapuram,
Lalgudi-621 601.

... Petitioner

Vs.

1.Labour Court,
rep by the Presiding Officer,
Labour Court Complex,
Trichy.

2.M.Anandaraj ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the first respondent herein, pertaining to the order of reinstatement dated 29.1.2004 made in I.D.No.77 of 2000 and to quash the same.

For Petitioner : No appearance

For Respondents: No appearance for R-2

R-1 - Court

ORDER

This writ petition pertains to an industrial dispute. This writ petition has been filed by the management assailing an Award dated 29.1.2004 made in I.D.No.77 of 2000 by the Labour Court in Trichy partly in favour of the workman, who is respondent No.2 before me.

2 The petitioner before me has been described as 'Dr.Ramesh, Dr.Ramanathan Memorial Medical Centre', Lalgudi. A perusal of the writ affidavit sworn to by Dr.Ramesh does not reveal the constitution of 'Dr.Ramanathan Memorial Medical Centre'. However, in the writ affidavit, particularly, in paragraph 2, Dr.Ramesh, deponent, refers to the said medical centre as 'my hospital'. Therefore, I proceed on the basis that 'Dr.Ramanathan Memorial Medical Centre' is a proprietary concern and that Dr.Ramesh is its Proprietor.

3 Be that as it may, for the sake of convenience and clarity, the writ petitioner before me is hereinafter referred to as 'Management'. The Labour Court, Trichy, which passed the Award dated 29.1.2004 in I.D.No.77 of 2000, which is being assailed in the instant writ petition, has been arrayed as respondent No.1. Respondent No.1 has been duly served on 6.7.2004 (as per registry endorsement). In my considered opinion, in cases of this nature, the Labour Court, which passes the Award, need not be arrayed as a respondent unless malafides are attributed to the Presiding Officer and for this proposition, I draw inspiration from the judgment of a Division Bench of the Delhi High Court (presided by Hon'ble Mr. Justice A.P.Shah as His Lordship then was) authored by Dr.S.Muralidhar, J., dated 3rd September, 2008 in LPA No.313 of 2007, wherein it has been laid down that a judicial or quasi judicial body or Tribunal whose order is challenged in a writ petition (and thereafter possibly in appeal) ought not to itself be impleaded as a party respondent and the only exception would be where malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority / Tribunal, who may be impleaded as a respondent. This position is also well settled by the Supreme Court in Savitri Devi Vs. District Judge, Gorakhpur [(1999) 2 SCC 577] and Fakeerappa Vs. Karnataka Cement Pipe Factory [(2004) 2 SCC 473].

4 However, in the instant case, the Labour Court has been arrayed as first respondent and it has been duly served. At this distant point of time, I merely construe the first respondent as a formal party and leave it at that.

5 The workman, who was working as a Lab Technician in the management hospital (writ petitioner) and who raised the industrial dispute, as set out supra, has been arrayed as respondent No.2. Respondent No.2 is hereinafter referred to as 'workman' for the sake of brevity. The workman has been duly served on 6.7.2004 itself, but no one has entered appearance. The name of the workman (respondent No.2) with his father's name and address has been duly printed in the cause list today. Name called out thrice in Court and nobody is present.

6 Equally, there is no representation for the writ petitioner either.

7 Considering the facts that this writ petition is of the year 2004 (filed on 31.3.2004 to be precise), that it has been pending for more than 13 years in this Court, coupled with the fact that the writ petitioner management has obtained an interim order on 2.4.2004, which is now operating, I deem it appropriate to take up the matter on merits on the available records and dispose of the same.

8 To be noted, no counter affidavit has been filed by the workman. Obviously, no counter affidavit has been filed by the Labour Court which has been arrayed as respondent No.1 before me.

9 It is the case of the management that in April 1999, when the workman was working as Lab Technician in the management hospital, he made advances towards a woman nurse, who complained to the management. It is the further case of the management that the workman was summoned on 9.4.1999 and was enquired about the complaint. The management would go on to say that the workman did not say anything in his defence, but left the premises and never returned thereafter.

10 It is the further say of the management that the workman thereafter caused a legal notice dated 14.4.1999 to be issued to the management, claiming that he is entitled to be reinstated. The management would also say that it sent a reply dated 6.5.1999.

11 According to the management, conciliation talks were held by the Assistant Commissioner of Labour, Trichy, but nothing fruitful emerged. Notwithstanding the position that nothing fruitful emerged in the conciliation talks before the Assistant Commissioner of Labour, it is the specific case of the management that the workman met the management again, agreed to receive a sum of Rs.15,000/- in full quit of all his claims and wrote a letter to this effect to the Assistant Commissioner of Labour, Trichy, but thereafter retracted the same.

12 The above resulted in a failure report which culminated in an industrial dispute. The Industrial dispute was before the Labour Court, Trichy, which is respondent No.1 before me (hereinafter referred to as 'said labour court' for the sake of brevity, convenience and clarity).

13 It is seen from the records that before the said labour court, as many as 20 exhibits were marked on the side of the workman and 10 exhibits were marked on the side of the management. Relevant file of the Assistant Commissioner of Labour, Trichy was marked as court document and assigned exhibit number being Ex.X.1. Besides these documentary evidence, the workman himself was examined as WW1 and as many as four witnesses were examined on behalf of the management. To be noted, the deponent of the writ affidavit Dr.Ramesh had examined himself as MW1 and one Thenmozhi, who according to the management is the Nurse towards whom advances were made by the workman, has been examined as MW2.

14 However, a perusal of the Award of the said Labour Court dated 29.1.2004 in I.D.No.77 of 2000, (hereinafter referred to as 'impugned award' in this order for the sake of brevity, convenience and clarity) would reveal that no finding

whatsoever has been returned regarding the alleged incident of the workman making advances towards a woman nurse. The impugned award of the said Labour Court is pivoted on the sole point that the management ought to have issued a notice to the workman before actually terminating him from service, as the workman had abandoned his service. The Labour Court has noticed that in this case, the workman only has chosen to send a legal notice dated 14.4.1999 referred to supra, which has been marked as Ex.W.1 before the said labour court.

15 The labour court had also gone on to hold that the workman had voluntarily failed to turn up for duty from 10.4.1999 onwards.

16 Noticing all that have been alluded to supra, the Labour Court has come to the conclusion that there cannot be any direction qua backwages. On this principle, the said Labour Court held partly in favour of the workman with a direction to the management to reinstate the workman without continuity of service and backwages.

17 On perusal of the records available before me, I am of the view that this approach of the said labour court in passing the impugned award on this technicality alone without returning a factual finding on the allegation against the workman that he purportedly made advances towards a woman nurse is ex facie unacceptable.

18 It is also seen from the grounds urged in the writ petition by the writ petitioner management that one of the pivotal grounds on which the writ petition has been predicated is that having regard to the nature of offence imputed, it was not an appropriate case for reinstatement.

19 As alluded to supra, the said labour court has not returned any finding whatsoever regarding the alleged misbehavior of the workman with his woman colleague. Therefore, the said labour court obviously did not have any occasion to weigh the nature and seriousness of the offence and the other determinants so as to arrive and strike at a balance.

20 Owing to all that I have set out supra, I have no hesitation in persuading myself that the said impugned award is flawed and is liable to be set aside. It is also seen from the nature of the impugned award that reinstatement without continuity of service and backwages has been ordered. There is nothing on record to show that the workman has assailed this impugned award. Therefore, the only point that remains is of reinstatement. As reinstatement is the only point, the labour court ought to have returned a finding about the nature and seriousness of the allegation against the workman and should have then come to the conclusion regarding whether the workman is entitled to be reinstated.

21 In the light of all that have been alluded to supra, the impugned award of the said labour court, being Award dated 29.1.2004 in I.D.No.77 of 2000 is set aside and the writ petition is allowed. Considering the nature of the matter and trajectory the writ petition has taken, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

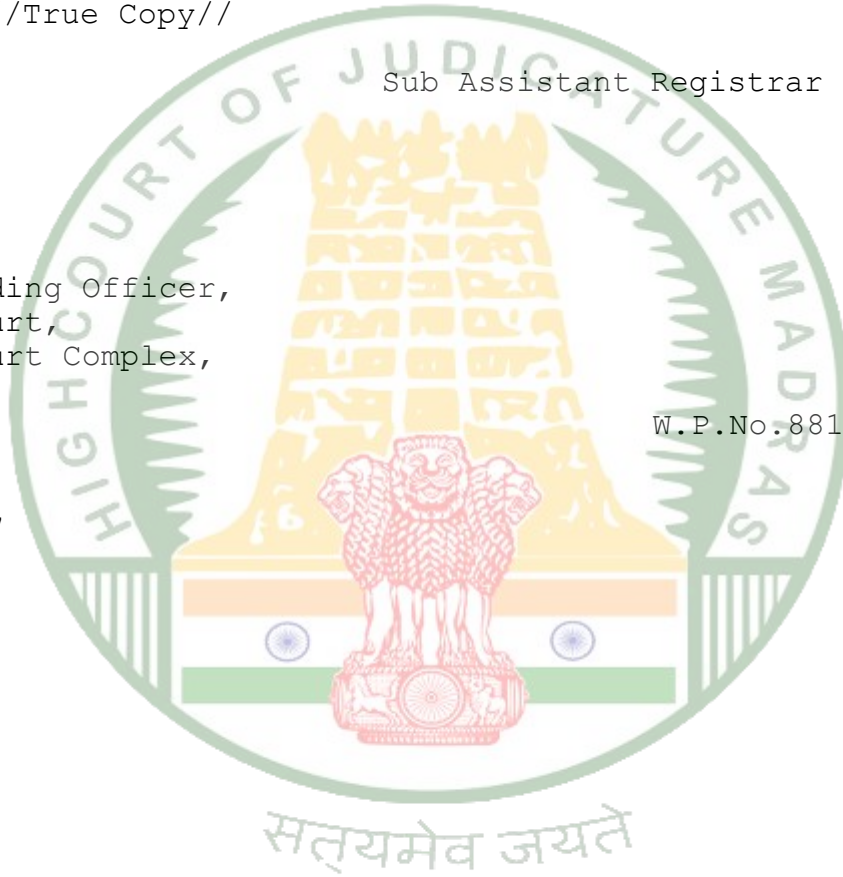
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To

The Presiding Officer,
Labour Court,
Labour Court Complex,
Trichy.

W.P.No.8811 of 2004

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