

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WP.No.29451 of 2010

The Management of Vael's Educational Trust,
Malliga Nagar, Old Pallavaram,
Chennai - 117.

.. Petitioner

vs.

1.The Additional Labour Court,
High Court Buildings,
Chennai - 108.

2.J.Rajan

... Respondent

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records and quash the Award dated 02.06.2010 passed by the first respondent, the Presiding Officer, First Additional Labour Court in I.D.No.88 of 2008.

For Petitioner : Mr.Meenakshisundaram

For Respondents : Mr.M.Gnanasekar (for R2)
R1 - Labour Court

ORDER

The petitioner/management has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records and quash the Award dated 02.06.2010 passed by the first respondent, the Presiding Officer, First Additional Labour Court in I.D.No.88 of 2008.

2. The second respondent, hereinafter referred to as "the employee" was working under the petitioner, hereinafter referred to as "the management". It is the allegation of the management that the employee stayed away from the work at his discretion and on the days when he chose to attend the establishment, he went about chatting with his co-workers and wasting the time. According to the management, the reason behind the employee chatting with his colleagues was because he was running a private chit fund inside the establishment. Despite repeated warnings by the management not to indulge in such money lending business within the establishment, he continued to do so.

3. It is the case of the management that several complaints were received alleging that the employee had cheated the co-workers by not returning the monies they had subscribed. The employee kept away from the work since end of April 2006 and he wrote a letter to the Provident Fund Commissioner asking for settlement of provident fund accumulations and accounts. On 26.03.2007, the employee wrote letter to the management asking for settlement of his provident fund accumulation etc. Six months after his denial of employment, the employee raised a dispute before the Deputy Commissioner of Labour, Chennai for the alleged denial of employment from 26.04.2006. Thereafter, the employee raised Industrial Disputes being I.D.No.88 of 2008 before the first respondent herein.

4. The management resisted I.D.No.88 of 2008 by filing counter. Before the first respondent, the employee examined himself as P.W.1 and marked Exs.P1 to P3. The management has not adduced any oral and documentary evidence.

5. Upon considering the oral and documentary evidence adduced by the employee and upon considering the counter filed, the first respondent passed an Award directing the management to reinstate the employee with 50% back wages with continuity of service.

6. Being aggrieved by the Award of the first respondent, the management has filed the writ petition seeking to quash the Award passed by the first respondent dated 02.06.2010 in I.D.No.88 of 2008.

7. I heard Mr.Meenakshisundaram, learned counsel appearing for the petitioner and Mr.M.Gnanasekar, learned counsel for the 2nd respondent and perused the materials available on record.

8. On a perusal of the Award impugned, I find that the employee worked as Lab Attender in the management from 14.12.1994 to 23.04.2006. On 23.04.2006, the management stopped the employee from entering into the establishment and denied work. Despite the employee approaching the management, the management has failed to give employment.

9. According to the employee, no prior notice was given to the employee. It is the specific case of the employee that he has not indulged in any such private money lending business inside the establishment as alleged by the management.

10. The first respondent, in its order, stated that despite opportunities granted to the management, the management failed to adduce any evidence and therefore, the evidence on the side of management was closed.

11. It is stated by the management that the employee absented from work by himself. In the order, the first respondent stated that refuting the evidence of the employee, the management has not produced any evidence.

12. It is pertinent to note that there is no proof showing that the employee was doing money lending business within the establishment. Like wise there is no proof showing that co-workers have given complaint about the cheating by the employee. Moreover, for the alleged complaint, the management has not given any notice to the employee and also conducted any enquiry.

13. According to the management, they have filed petition to set aside the ex parte Award way back in April 2010 with delay condonation petition and the same are pending before the first respondent. Mere filing petition to set aside the ex parte Award is not a reason for quashing the order impugned.

14. In the counter, the employee stated that he was not employed anywhere from March 2009 and the said fact was also known to the management.

15. Considering the fact that the employee was working nearly 11 years as Lab Attender with starting salary of Rs.600/- and also considering the age of the employee who may hardly have 4/5 years of employment left, in order to render substantial justice in the light of the reasons discussed above, I am of the view that the first respondent, only after analysing the material evidence produced, ordered reinstatement with 50% back wages. I find no infirmity in the order impugned.

16. In the result:

(a) this writ petition is dismissed;

(b) the management is directed to implement the Award in I.D.No.88 of 2008, dated 02.06.2010 passed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

WEB COPY Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The I Additional Labour Court,
High Court Buildings,
Chennai - 108.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.68979(08/03/2018)

W.P.No.29451 of 2010

RRK(07/03/2018)



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