

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.20396 of 2016

Lakshmi

... Petitioner

Vs.

1. The Presiding Officer, Labour Court, Salem

2. The Commissioner, Salem Corporation,
Salem

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of the Writ of Certiorarified Mandamus calling for the records relating to the orders of the 1st respondent dated 22-06-2015 passed in I.D.No.17/2012, quash the same and consequently to direct the 2nd respondent to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr. P.I.Thirumoorthy

For Respondents : M/s.K.Bhuvaneswari-for R2
R1-Court

O R D E R

This writ petition has been filed seeking to quash the award of the Labour Court dated 22.06.2015 passed in I.D.No.17 of 2012 and consequently to direct the second respondent to reinstate the petitioner with the consequential benefits.

The brief facts in nutshell:

2. The petitioner was initially appointed as a temporary sanitary worker by the second respondent on a consolidated pay of Rs.750/- but with usual allowances, on 04.08.1995. The petitioner was regularized in the time scale of pay on 14.01.1999. As the petitioner had to work incessantly without any break that too in the drainage, the petitioner suffered

health issues especially had difficulty in breathing. Therefore, she was not able to work continuously and she was not working from 19.07.2006. However, the petitioner applied for medical leave and she had to extend the leave, till she became fit to resume duty, i.e., with effect from 20.11.2008.

3. The petitioner, along with the fitness certificate, went and reported for duty, but the second respondent refused to provide duty. Thereafter she submitted a representation on 04.03.2010 through Registered Post. But she was not permitted to join duty. Thereafter, conciliation proceedings were initiated, but the conciliation ended in failure, as the employer did not cooperate for the conciliation. Thereafter, the matter was referred to the Labour Court and the Labour Court has chosen to reject the claim of the petitioner. Challenging the award of the Labour Court, this writ petition has been filed.

4. Heard both sides.

5. It is contended by the learned counsel appearing for the petitioner that the Labour Court did not consider the grievances expressed by the petitioner in a proper perspective and has chosen to reject the claim of the petitioner, without considering the implication of the vague counter filed by the Management.

5.1. It is specifically pointed out that the counter is nebulous, in the sense that neither it has admitted the claim of the petitioner nor it has not disputed the employment specifically. The Management being the custodian of records is expected specifically deny the allegations made by the petitioner, if it is not true. But the counter is not specific in denying the averments made by the petitioner.

5.2. This has driven this Court to consider the counter filed by the respondents before the Labour Court. There is an one line admission in paragraph 3 of the counter affidavit stating that the petitioner was not working from 1983, but she was working from 14.01.1999. Though it is denied that she was receiving regular time scale of pay, it is not stated on what basis and on what salary she was working. It is denied that she was not engaged for cleaning drainages and that she did not submit any leave application. It is not stated specifically from which date she was not given any employment. It is specifically stated that the petitioner did not come for duty from 19.07.2006 and only on 12.11.2010, she asked for duty. In other words, it is contended that the conduct of the petitioner in not reporting for duty for a period of four years three months and 24 days would amount to abandonment of service and it would not amount to refusal on the part of the management to provide duty. When she has abandoned her services voluntarily there is no question of providing any employment to her.

5.3. The respondents also claims that when the Management has neither issued an order of dismissal / termination / discharge / retrenchment, the petition under Section 2 (a) (2) of the I.D.Act is also not maintainable.

6. Needless to point out that when the second respondent has not passed any order in writing, then it may amount to oral termination and just because there is no written order, the claim of the petitioner cannot be rejected on the technical ground. The persons suffering from oral termination is also entitled to make the claim. The petitioner has produced medical certificates showing that those were the copies of medical certificates obtained by her and submitted to the second respondent. But the second respondent would submit that those documents are not produced before them. If the second respondent claims that those documents are not produced before them, they should have very well produced the service records of the petitioner or any other registers showing that it was not received by them. For example, they should have produced Petition Register or Despatch Register or Allocation Register, which would show whether any certificates were received and whether it was sent to respective departments or the mode of disposal for those petitions. If those documents are produced, it will clearly show that, whether the petitioner has submitted medical certificates or not. But that has not been done.

7. May be it is true that the petitioner was not engaged in the drainage work, but what is the nature and kind of work the petitioner was discharging is also not stated in the counter. When she is a sanitary worker in all likelihood she might have attended the drainage work also. In the absence of the details of the job that was given by the employer, the contention that she was not employed for drainage work cannot be accepted. If, in case, the petitioner had been discharging drainage work, then her contention that she suffered health issues on account of the drainage work cannot be simply rejected or neglected.

7.1. A perusal of the Medical Certificates produced by the petitioner would go to show that the petitioner had been suffering from chronic pulmonary disease. Therefore, in all probability, on account of the sanitary work also, the petitioner might have suffered this employment injury.

7.2. Even assuming that the petitioner did not submit any leave certificate, immediately the Management would have issued at least show cause notice asking to show cause as to why the petitioner did not report for duty or giving an indication to her that if she is not reporting for duty, her employment is likely to be terminated. The management should have understood that being a sanitary worker, the petitioner may not be knowing

anything about the rules and regulations governing the administration. Some lenient approach should have been given to the petitioner, because she was an illiterate lady.

8. At this juncture, it may be useful to refer to Section 25 (F) of the Industrial Disputes Act, which reads thus:-

"25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette...."

9. It is only the employer, who is statutorily bound to maintain documents relating to the appointment and the details of services rendered and details of the benefits conferred upon the petitioner. Though initially burden of proof is upon the petitioner, once there is an admission that the petitioner had been in employment with the second respondent, for some time at least, then the burden of proof is shifted upon the second respondent to show that the petitioner's claim is not maintainable. None of the documents have been produced by the Management. As she is employed under the second respondent, it is for the second respondent to show that from which date she was not reporting for duty and on which date there was a request for joining, whether the absence was unexplained or she was suffering from pulmonary diseases, etc. Even if it is a case of voluntary abandonment of duty, it is for the second respondent to show the circumstances which would indicate that it would be a case of voluntarily abandonment of duty. Being the sanitary worker, in all probability, she would not have even thought of abandoning that duty, because it may affect her livelihood.

10. In the stated circumstances, the order passed by the Labour Court (first respondent) is set-aside. The second respondent is directed to consider the documents, which are

filed along with the petition and to consider her case of at least providing for compensation, treating it as a retrenchment.

11. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

srk

To

1. The Presiding Officer, Labour Court, Salem

2. The Commissioner, Salem Corporation, Salem

+1cc to Mr.P.I.Thirumoorthy, Advocate SR.No.88285

W.P.No.20396 of 2016

EV(CO)
GMY(07/01/2019)



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