

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.3680 of 2012

The Management,
M/s. Naser Bali (Gloves) Pvt. Ltd.,
1/30, C.N.A.Road,
Vaniyambadi 635751,
Vellore District,
Rep by P.Anees Ahmed,
Director. Petitioner

Vs

1.The Presiding Officer,
Additional Labour Court,
Vellore.

2.S.Kalaivani Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records and quash the Award dated 30.08.2011 passed in I.D.No.180 of 2005 by the 1st respondent, Presiding Officer, Additional Labour Court, Vellore, insofar as it relates to the award of continuity of service, 25% back wages and other benefits.

For Petitioner : Mr.Gupta for
M/s.Gupta and Ravi
For Respondents : R1-Court
: No appearance for R2

O R D E R

Heard Mr.Gupta, learned counsel for the petitioner. None appears for the respondents.

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

"To issue a writ of Certiorari, to call for the records and quash the Award dated 30.08.2011 passed in I.D.No.180 of 2005 by the 1st respondent, Presiding Officer, Additional Labour Court, Vellore, insofar as it relates to the award of continuity of service, 25% back wages and other benefits."

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

The second respondent was employed under the petitioner Management as Thumbs Helper. According to the petitioner Management, right from the date of joining, the second respondent was not punctual in her attendance. For which, she was warned several times by the petitioner Management. In 2004, the second respondent remained unauthorized absence for a long period of time. A show cause notice was issued on 05.10.2004, which was received by the second respondent, directing her to show cause as to why disciplinary action cannot be initiated against her for her unauthorized absence from 29.09.2004 to 05.10.2004. Thereafter, an enquiry was conducted in pursuance of the charge sheet dated 05.10.2004.

4. The second respondent also participated in the enquiry and the enquiry report was filed on 05.11.2004, holding the charges proved against the second respondent. Even after the conclusion of the enquiry, the second respondent remained absent unauthorizedly from 01.11.2004. The second notice of enquiry was issued to the second respondent and charge sheet was also issued against her on 08.11.2004. In spite of receipt of notice, the second respondent did not choose to appear. Since the second respondent deliberately remained absent and not chosen to attend the enquiry, the Enquiry Officer proceeded with the enquiry proceedings and conducted the same by setting the second respondent ex parte. On 25.11.2004, a finding was rendered by the Enquiry Officer, holding the charges proved once again against the petitioner. Thereafter, the second show cause notice was issued on 03.12.2004, seeking explanation from the second respondent as to why she should not be dismissed from service for her misconduct.

5. In response to the show cause notice, an explanation was submitted on 07.12.2004, wherein, she admitted the fact that she was unauthorizedly absent and pleaded for condonation of the same. However, in view of the past service record of the second respondent, the petitioner Management thought fit that no useful purpose would be served by retaining the second respondent in service and therefore, passed an order on 14.12.2004, dismissed her from service.

6. The second respondent raised an Industrial Dispute in I.D.No.180 of 2005, against the dismissal order and the dispute was adjudicated by the first respondent Labour Court. The Labour Court framed a preliminary issue and a preliminary award was passed on 28.02.2011, holding that the domestic enquiry conducted by the Management was not fair and proper. Thereafter, the parties were permitted to lead evidence before the Labour Court. On the basis of the evidence and materials placed on record, the Labour Court had finally come to the conclusion that the charge has been fully established and proved. While holding as such, the Labour Court invoked

Section 11A of the Industrial Disputes Act, 1947, in regard to the quantum of penalty imposed on the second respondent.

7. The Labour Court passed an award on 30.08.2011, ordering reinstatement with continuity of service and 25% back wages and thereafter, it appears that the Management had sent a letter on 12.01.2012, calling upon the second respondent to report for duty. A reminder was also sent on 30.01.2012, directing the second respondent to report for duty immediately as ordered by the Labour Court. However, the second respondent did not respond to the letters, directing her to join duty.

8. While matter stood thus, the present writ petition is filed only in respect of grant of continuity of service and 25% back wages by the Labour Court in the teeth of the admitted fact that the charge of unauthorized absence against the second respondent employee, was fully established on the basis of the evidence and the materials placed on record before the Labour Court.

9. The learned counsel for the petitioner Management would submit that inspite of efforts taken by the Management, directing the second respondent to join duty, the second respondent has not chosen to respond to the letters and still not joined duty. Therefore, it is a clear case that the second respondent is not interested to join duty in the service of the petitioner Management. That being the case, the question of grant of continuity of service and 25% back wages is without justification and cannot be countenanced both in law and on facts.

10. Although notice has been sent to the second respondent about the proceedings pending before this Court, despite service of notice, neither the second respondent herself nor any counsel represented before this Court. She has chosen to remain absent even in the present proceedings before this Court.

11. Having considered the submissions of the learned counsel for the petitioner Management and having considered the relevant materials and pleadings placed on record, this Court is in agreement with the contention put forth on behalf of the petitioner that the second respondent employee is not inclined to join duty, despite a call letter is issued to her. That being the case, the question of grant of continuity in service and 25% back wages cannot stand the test of judicial scrutiny.

12. As rightly submitted by the learned counsel for the petitioner Management that the Labour Court has given a clear finding that the charge of unauthorized absence was held to be established against the second respondent and while giving a finding as such, the Labour Court has erred in granting continuity of service and 25% back wages. The Labour Court has

completely misdirected by having a misplaced sympathy towards the employee who has not shown any interest in continuing with the employment. Moreover, as stated in the affidavit filed in support of the writ petition, despite letters being sent towards the implementation of the award passed by the Labour Court towards reinstatement of the employee, there has been no response as on date and she has also not chosen to appear before this Court to explain her position.

13. Therefore, this Court is of the considered view that the award as such cannot be allowed to stand. Therefore, the writ petition is allowed and the award is modified to the extent of grant of continuity of service and 25% back wages is set aside and as far as reinstatement of the second respondent is concerned, the same is not put to challenge and therefore, the same will remain intact.

14. With the above observation, the writ petition is allowed as prayed for. No costs.

Assistant Registrar
Dt.15.2.18

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Additional Labour Court,
Vellore.

+1 cc to M/s.Gupta & Ravi,advocate,sr.4906.

Krd 20/2

W.P.No.3680 of 2012

सत्यमेव जयते

WEB COPY