

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2018
Pronounced on : 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16334 of 2008
and
M.P.No.1 of 2008
and
M.P.Nos.1 and 2 of 2010

- 1.The Management,
Rep. by Manager, Mr.A.Vimalan (Deceased),
Waverly Estate, Nagaloor Post,
Yercaud-632 602.
- 2.The Management,
Rep. by Manager, V.J.Sabarish Adithya,
Waverly Estate, Nagaloor Post,
Yercaud-632 602. petitioners

(P2 is substituted as per order
dated 16.07.2018 by VBSJ in
W.M.P.No.21110 of 2018 in
W.P.No.16334 of 2008)

Vs.

- 1.Malliga
- 2.The Presiding Officer,
Labour Court, Salem. .. Respondents

This Writ Petition filed has been filed for issuance of a Writ of Certiorari to call for the records in award in I.D.No.383/02 dated 27.11.2017 on the of the 2nd respondent/Labour Court, Salem and to quash the same as illegal and contray to evidence.

For petitioners : Mr.G.Jermiah

For Respondents : K.M.Ramesh for R1
R2-Court

O R D E R

The writ petition has been filed to issue a Writ of Certiorari to call for the records in I.D.No.383/2002 dated 27.11.2007 on the file of the 2nd Respondent-Labour Court, Salem and to quash the same.

2. The facts of the case are as follows:

2(i).The 1st respondent was employed as a worker in the estate of the petitioner herein. On 06.05.2002, the 1st respondent's service was terminated. On 15.05.2002, the 1st respondent sent a representation to the petitioner with a request to reinstate her with back wages from the date of termination of her service.

2(ii) On 30.05.2002, the petitioner sent a reply stating that since the 1st respondent had already resigned from her job for personal reason on 30.04.2002. The 1st respondent resignation was accepted on 01.05.2002 and settlement order under Section 18(1) of the I.D.Act was signed on 02.05.2002. The 1st respondent has also been paid a sum of Rs.5,500/- was paid towards full and final settlement to the petitioner and that the 1st respondent received the aforesaid amount and therefore she is not entitled for re-instatement or for any back wages from the date of termination.

3.Under these circumstances, the 1st respondent initiated proceedings on 05.06.2012 under Section 2(a) of the I.D. Act, 1947 before the Labour Officer, Salem.

4.Rival contentions were advanced before the Labour Officer, Salem and in view of failure for conciliation, the first respondent filed a claim statement before the Labour Court and same was taken on file as I.D.No.383 of 2002.

5.In the said proceedings before the Labour Court, the 1st respondent examined herself as P.W.1 and documents were marked as Exs.P.1 to P.5. The petitioner produced two witnesses as R.W.1 and R.W.2 and documents were marked as Ex.R1 to R7.

6.In the course of examination, R.W.1 admitted that on 01.05.2002 on account of May Day, the petitioner did not attend duty on the said date. Ex.P.2 is the letter of resignation of the 1st respondent which according to the petitioner was given by the 1st respondent and was accepted.

7.In the course of proceedings before the Labour Court, a notice was issued to the 1st respondent.

8.The Labour Court by its impugned award has allowed the case filed by the first respondent on the ground that the alleged date of acceptance of resignation on 01.05.2002 cannot be accepted as the said date happened to be a May Day and that the resignation letter was concocted to deny the first respondent's employment without any valid reason as alleged by her.

9.The Labour Court has considered the fact that the first respondent came to know the content of Ex.P.2 only through secretary of the Union though the management was expected to give reply in legal language known to the workman. As per the Tamilnadu Plantations Labourers Joint Standing Order all communications should be in the local language known to the employee. Even as per the standing order, an employee who has put less than one year of continuous service is eligible for one month's notice if they are desirous of giving relieving from service. As the petitioner failed to adhere to the Rules in Industrial Employment Standing Order or the Tamil Nadu Plantation Labour Joint Standing orders the termination of the service of the petitioner was held to be unjustified, void and illegal. The case was allowed with the cost of Rs.1,000/-.

10.In view of the above, the Labour Court ordered reinstatement of the first respondent together with back wages

11.Aggrieved by the order of the Labour Court, Salem, the petitioner has come up by way of the present writ petition under Article 226 of the Constitution of India.

12.The principal ground on which, the impugned award is sought to be challenged is that it is illegal and arbitrary and contrary to evidence. It is stated that in view of resignation by the first respondent, the Labour Court erred in reinstating the first respondent with back wages.

13.It is stated that fact that the first respondent has received and acknowledged settlement under Section 18 (1) of the Act goes to prove that the first respondent had voluntarily agreed to resign from the employment. The petitioner has also raised questions that the complaint was filed only on 05.06.2002 though the petitioner was allegedly out of employment from 06.05.2002 and that a case was filed as an after thought.

14.In the writ petition, the petitioner has assailed the impugned order of the Labour Court on the ground that the first respondent had resigned on 30.04.2002 and the said resignation was accepted by the petitioner and therefore, the impugned order of the second respondent cannot be sustained.

16.The learned counsel for the petitioner submitted that the signature of the 1st respondent in the resignation letter, has not been disputed and therefore, the Labour Court had wrongly allowed the petition. Hence, the petitioner has come forward with the present writ petition.

15.The learned counsel for the petitioner submitted that the signature of the 1st respondent in the resignation letter, has not been disputed and therefore, the Labour Court had wrongly allowed the petition. Hence, the petitioner has come forward with the present writ petition.

16.The learned counsel for the petitioner has not filed any case and would only argue that the order is palpably injustice and liable to be interfered under Article 226 of the Constitution of India.

17.Per contra, the learned counsel for the first respondent has defended the order passed by the Labour Court, Salem. The learned counsel for the 1st respondent has relied upon the following decisions:

i). Agnani vs. Badridoss 1963(1) Labour Law Journal 684 (SC)

ii) Sadhu Ram vs.Delhi Transport Corporation 1983(2) Labour Law Journal 383 (SC)

iii) Jitendra Singh Rathor vs.Shri baidyanath Ayurved Bhavan Ltd., and Another 1984(2) Labour Law Journal 10(SC)

iv) Rajinder Kumar Kindra vs.Delhi Administration through Secretary (Labour) and Others 1984(2) Labour Law Journal 517(SC)

v) Indian Overseas Bank vs.I.O.B.Staff Canteen Workers' Union 2000(10 Labour Law Journal 1618 (SC).

18.I have gone through the facts of the case and the impugned award passed by the Labour Court, Salem.

19.The scope for interference under Article 226 of the Constitution of India is very limited. The Court can neither re-appreciate evidence nor substitute the finding of the Labour Court with its findings. The Court has merely see that whether the order has been passed after following the Principles of natural justice and has not resulted in palpably perverse order.

20.In my view, the Labour Court, Salem has examined the evidence on record and has come to a just conclusion and therefore the impugned order cannot be interfered under Article 226 of the Constitution of India. No irregularity has been highlighted in the impugned order except to endeavour to re-appreciate the evidence and to substitute the findings based on the points already pleaded and argued before the Labour Court.

21.Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS VI)

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To:

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.62726

+1cc to Mr.G.Jermiah, Advocate SR.No.63239

KS (CO)

sm:4.10.2018

W.P.No.16334 of 2008



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