

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON : 16.03.2018
PRONOUNCED ON : 06.06.2018

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CORAM:**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P(MD)No. 233 of 2015**

A.Mohan

.. Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. The Management of Royal Hospital,
24 Hours Emergency Care Hospital,
1624, South Street,
Thanjavur.

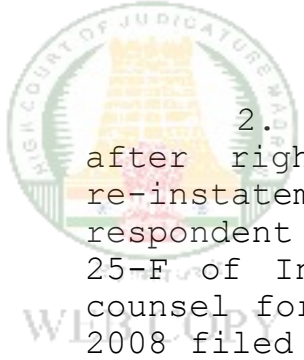
.. Respondents

PRAYER: The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records from the first respondent Labour Court relating to the impugned award dated 23.01.2014 passed by the first respondent in I.D.No.80 of 2007, quash the same and consequently to direct the 2nd respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner : Mr.S.Arunachalam
For Respondent No.1 : Court
For Respondent No.2 : No appearance

ORDER

The case of the petitioner is that he joined in the second respondent hospital on 01.06.2001 and he was working as receptionist. According to him, he was paid a meagre salary and that therefore, he demanded payment of statutory minimum wages and enrollment as a member of Provident Fund. According to the petitioner, upset by the petitioner's demand, the second respondent orally terminated him from service with effect from 01.05.2006. Hence, the petitioner raised an industrial dispute. The same was taken on file as I.D.No.80 of 2007 on the file of the Labour Court, Cuddalore. But by the impugned award, dated 23.01.2014, the Industrial Dispute was dismissed. Questioning the same, the present writ petition has been filed.



2. The learned counsel for the petitioner contended that after rightly holding that the petitioner was a workman, his re-instatement ought to have been ordered. Admittedly, the second respondent failed to comply with the procedure set out in Section 25-F of Industrial Disputes Act, before termination. The learned counsel for the petitioner also pointed out that when I.A.No.185 of 2008 filed by the petitioner for production of documents was allowed and the same was not complied with by the management, the Court ought to have taken adverse inference against the management. The petitioner's counsel further pointed out that there is an internal inconsistency in the reasoning of the Labour Court which warrants interference of this Court.

3. Heard the learned counsel for the petitioner. There was no appearance on the side of the management/2nd respondent.

4. This Court considered the contentions raised by the learned counsel for the petitioner and also the materials on record. The Labour Court has given a specific finding that the petitioner must be considered as a workman. It also gave a further finding that the respondent had actually terminated the petitioner from service. The respondent has not challenged the aforesaid findings. The only reason for denial of relief was that according to the Labour Court, the petitioner-workman did not discharge the burden cast on him to show that he worked in the hospital for 240 days in 12 Calendar months or 480 days in 24 Calendar months. The petitioner in his petition has categorically averred that he was in the employment of the respondent hospital for a period of 5 years from 2001 onwards. He also examined himself as a witness. On the side of the management, the operation theatre incharge alone was examined as witness. No document was marked on the side of the management. In the affidavit filed in support of the writ petition, it has been clearly mentioned that the petitioner filed I.A.No.185 of 2008 for production of documents that are in the possession of the management. According to the petitioner, production of those documents would prove the petitioner's continuous service. The said I.A was allowed. But the management did not comply with the direction. Therefore, the Labour Court ought to have drawn adverse inference against the management. It clearly erred in holding that the workman did not discharge the burden cast on him. The petitioner cannot do more than that.

5. This Court is of the view that there is no internal consistency in the impugned award. The Labour Court ought to have drawn adverse inference against the management. In that view of the matter, the impugned award dated 23.01.2014 passed by the first respondent in I.D.No.80 of 2007 is set aside. The second respondent is directed to reinstate the petitioner in service forthwith. The petitioner will be entitled to 25% of the backwages. It is open to the petitioner to file a petition under Section 33(c)(2) of Industrial Dispute Act for computation and recovery of the said amount.



6. Accordingly, the Writ Petition is allowed. No Costs.

Sd/-
Assistant Registrar (CS-III)

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/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.S.Arunachalam, Advocate, SR.No.66985.

ORDER MADE
IN
W.P (MD) No.233 of 2015
06.06.2018

PJL

RAM/KKR/SAR 4/19.06.2018/3P/3C