

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10551 of 2015

&

W.M.P.Nos.1 of 2015 & 17558 of 2018

V M Abdul Latheef,
Correspondent,
C.Abdul Hakeem College of Engineering
& Technology, Melvisharam,
Vellore District - 632 509.

...Petitioner

..Vs..

1.The Principal Labour Court,
Vellore, Vellore District.

2.K.Ekambaram

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records from the first respondent and quash the order of Principal Labour Court, Vellore, Vellore District in order vide I.D.No.152 of 2014 dated 23.01.2015.

For Petitioner : Dr.C.K.Syed Shaffi

For Respondent : S.T.Varadarajulu (for R.2)
R1 - Labour Court

ORDER

The award dated 23.01.2015 passed in I.D.No.152 of 2014 is under challenge in the present writ petition.

2.The writ petitioner is the Management of C.Abdul Hakeem College of Engineering and Technology, Melvisharam, Vellore District. The learned counsel appearing on behalf of the petitioner states that the second respondent was appointed as Security Guard in the petitioner college on 01.11.2002. His services were also confirmed and he was provided with all the facilities including uniform, food etc. On and from 03.03.2014, the second respondent/workman was unauthorizedly absent and not

reported for duty, without obtaining any prior permission or intimation. The writ petitioner/management sent a letter on 13.03.2014, to the last known address with a direction to report for duty immediately.

3.However, the second respondent/workman did not join duty and he continued his unauthorized absence. The management again sent a letter on 20.03.2014 asking the workman to join duty. Even that letter was not responded by the workman and without attending duty, the second respondent raised an industrial dispute before the Labour Court stating that the writ petitioner has illegally terminated the services of the second respondent/workman.

4.The Labour Court adjudicated the issues and passed an order granting reinstatement and backwages in favour of the workman. Challenging the award, the present writ petition is filed. The Labour Court found that the workman was terminated from service. The management has taken a stand that the second respondent/workman was transferred from one block of the college to another block, which caused him to remain unauthorizedly absent and raised an industrial dispute. In order to object the order of transfer, the second respondent not reported for duty. Thus, the writ petitioner/ management had not terminated the services of the second respondent.

5.The findings of the Labour Court reveals that the order of transfer was issued with some motive by the management. Thus, the Labour Court arrived at a conclusion that the transfer order issued itself was motivated and the said transfer order provoked the workman to remain absent and therefore it is to be construed that the management had terminated the services of the second respondent/workman.

6.The learned counsel appearing on behalf of the petitioner states that all along the management is requesting the second respondent to report for duty. Several letters sent by the management were also produced before the Labour Court and the Labour Court has not considered the documents filed by the writ petitioner/ management.

7.The learned counsel appearing on behalf of the second respondent/workman disputed the contentions raised on behalf of the writ petitioner by stating that the transfer of the workman itself is illegal and he was forced to remain in absence and he was not permitted to report for duty. Thus, the entire facts and circumstances were considered by the Labour Court and the award was passed, thus, the writ petition is liable to be rejected.

8. During the course of the hearing of the present writ petition, the learned counsel appearing on behalf of the writ petitioner brought to the notice of this Court that the second respondent/workman was employed in a private Security Guard Services and on verification through the local Police Station, this Court is able to ascertain that he was deputed to work as Security Guard in Citi Union Bank situated opposite to the writ petitioner/college. The second respondent also filed a misleading and wrong affidavit. In this regard, the second respondent was directed to file an affidavit in view of the report submitted by the Inspector of Police, Yercaud Police Station. Today (15.10.2019) the second respondent/workman filed an affidavit stating as follows:

"4.....As was not sure of getting regular employment, I made such an incorrect affidavit. It was not done intentionally. I apologize unconditionally for making incorrect statement earlier. Any payment made between 13.03.2018 and 23.09.2019 may be adjusted in my 17B wages payable to me. If the petitioner is willing to give employment to me, even today I am willing to join duty."

9. The affidavit is accepted by this Court, considering the fact that he is a workman and in order to get the benefit of Section 17B of the Industrial Disputes Act such affidavits are filed. However, such false affidavits cannot be filed in order to get the benefit of Section 17B of the Industrial Disputes Act. However taking a lenient view, this Court is inclined to accept the affidavit, offering an unconditional apology.

10. As far as the merits of the award are concerned, the order of transfer issued by the management was an admitted fact. The second respondent/workman was also remained absent and not reported for duty. The mitigating circumstances were considered by the Labour Court. This apart during the non-employment period the workman was working as a private security guard and he was posted as Security Guard in Citi Union Bank which is situated opposite to the writ petitioner college itself.

11. Under these circumstances, this Court is of the considered opinion that there is no infirmity in respect of the award regarding the reinstatement of the second respondent into services. As far as the backwages are concerned, the workman was gainfully employed in a private security services and therefore the award of the backwages may be improper.

12. The learned counsel appearing on behalf of the writ

petitioner reiterated the stand of the management that they are ready and willing to reinstate the petitioner without any delay. The stand of the writ petitioner/management is that they have not terminated the services of the writ petitioner and therefore, they are willing to reinstate the writ petitioner at any point of time. Considering that submission, this Court is inclined to issue direction directing the writ petitioner/management to reinstate the writ petitioner in service within a period of two weeks from the date of receipt of copy of this order. An order of reinstatement is to be issued by the management and based on the order, the second respondent/workman is at liberty to join duty. On reinstatement, the second respondent/workman is to be paid the current wages and the benefit of continuity of service is also to be extended to the workman. However, the second respondent/workman is not entitled for backwages.

13. Accordingly, the award of the Labour Court dated 23.01.2015 in I.D.No.152 of 2014 is modified and the writ petition stands partly allowed. No costs. Consequently the connected miscellaneous petitions are closed.

mrn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Principal Labour Court,
Vellore, Vellore District.

+1cc to Mr.S.T.Varadarajulu, Advocate, SR.No.86304

W.P.No.10551 of 2015

Kak(18/11/2019)

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