

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18875 of 2011
and
M.P.No.1 of 2011
and
W.M.P.No.22698 of 2017

The Management
M/s.M.V.Hospital for Diabetes(P)Ltd.,
4, West Mada Church Street,
Royapuram, Chennai - 600 013
Represented by its Director, Mrs.Meena Vijay

..Petitioner

vs

1.Tmt.V.Shanthi

2.The Presiding Officer,
III Additional Labour Court,
Chennai.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to I.D.No.736 of 2009 on the file of the III Additional Labour Court, Chennai, the Second Respondent herein and quash the portion of the award dated 28.02.2011 passed therein through which the petitioner has been directed to pay 50% of back wages along with other benefits to the first respondent herein.

For Petitioner : Mr.C.Mohan
For M/s.King & Partridge

For Respondents : Mr.M.Udaya Bhanu for R1
R2 - Labour Court

O R D E R

The Award dated 28.02.2011 passed in I.D.No.736 of 2009 by the 2nd respondent is under challenge in the the present writ petition.

2. The writ petitioner is M/s.M.V.Hospital for Diabetes Private Limited. The 1st respondent workman was employed as 'Ayah' in the inpatient department of the writ petitioner Hospital. The petitioner states that the 1st respondent while in employment used to create trouble and get into piques and quarrels with her co workers and supervisors. Under those circumstances, the 1st respondent was posted at the Laboratory. Even at the Laboratory, she was acting in a irresponsible manner and at the request of the Head of the Department of Laboratory, she was once again shifted to the inpatient ward. In view of the fact that the 1st respondent was re-transferred to her original location, she had indulged in undesirable conduct by refusing to perform the work allotted to her. She was contending that as a ward Ayah, it is not her job to clean the inpatients provide bed pans to them or clean the toilets in their rooms. The activities of the 1st respondent were brought to the notice of the Human Resources Department of the Management and consequently disciplinary proceedings were initiated against the 1st respondent. It is stated that the petitioner never intended to terminate the services of the 1st respondent. However, the 1st respondent avoided reporting for duty after her work on 21.02.2009. Without attending duty, the 1st respondent caused issuance of Legal Notice on 13.03.2009, alleging that she was terminated from service of the Hospital and requiring the petitioner to provide work to her. In reply dated 26.03.2011, the petitioner denied the allegations and expressed the willingness of the Management to provide work to her. However, without rejoining work, the 1st respondent once again issued a notice, imposing conditions on the Management. But the fact remains that at no point of time, the 1st respondent reported for duty despite the offer made by the writ petitioner Management to rejoin duty.

3. The 1st respondent initiated Conciliation proceedings before the Labour officer and the same ended in failure. Consequently, she filed an Industrial Dispute under Section 2A (2) of the Industrial Disputes Act in I.D.No.736 of 2009.

4. The petitioner states that Industrial Dispute number mentioned in the claim statement of the 1st respondent was I.D.No.108 of 2008 and not I.D.No.736 of 2009, the counter statement filed by the petitioner on 28.04.2010 also bore I.D.No.108 of 2008. The Writ Petitioner Management were given to understand that their Advocate was misled by the wrong number mentioned in the claim statement and hence, was unable to participate in the hearings of I.D.No.736 of 2009. The said Industrial Dispute seems to have been taken up for the various stages of the proceedings on several dates from 28.04.2010 to 22.02.2011. But the petitioner Management were not represented

even on a single hearing after the counter statement was filed owing to the wrong number mentioned in the pleadings. Under those circumstances, the award was passed on 28.02.2011 and Industrial Dispute was allowed for reinstatement with back wages.

5. The stand of the writ petitioner was that the 1st respondent was never terminated from the services of the writ petitioner Hospital. The petitioner Management have addressed several communications, expressing their willingness to provide work. The Petitioner Management have not challenged the direction to reinstate the 1st respondent though they are aggrieved of the finding of the Labour Court.

6. With these facts, the learned counsel for the writ petitioner states that the Labour Court has failed to note that the I.D. Number mentioned in the pleadings were different from the real number of the dispute and would have provided proper and sufficient notice to the parties to the dispute. The Labour Court has presumed that the 1st respondent was terminated from service and ordered for reinstatement. Contrarily, the writ petitioner never issued an order of termination nor terminated the 1st respondent orally. But the writ petitioner all along expressed their willingness and send letters to the 1st respondent to rejoin duty. The 1st respondent at her own volition not joined duty and remained unauthorizedly absent. Thus, the Award of the Labour Court is perverse and contrary to the established facts and accordingly, is liable to be scrapped.

7. The learned counsel appearing on behalf of the 1st respondent disputed the contentions by stating that she joined the petitioner hospital on 15.06.1988 as ward Ayah and her last drawn salary was Rs.4,380/-. The 1st respondent states that she had rendered her services faithfully and honestly. It is stated that the writ petitioner Hospital had not considered payment of annual increment to the 1st respondent since from the year 2007 and stopped providing work to her. The 1st respondent states that she was physically prevented by the officials of the 1st respondent Hospital with the help of the Secretary Guards from entering into the Hospital to perform her duties and responsibilities.

8. Considering the facts and circumstances, let us now consider the findings of the Labour Court.

9. The Labour Court made a finding that the Management has not argued the case. Thus, the Management proceeded largely based on the submissions of the 1st respondent workman and there was no participation on the side of the Management in the adjudication. Under these circumstances, this Court is bound to consider the entire facts and circumstances as the Labour Court

had no occasion to hear the writ petitioner Management in respect of their defence. The 1st respondent workman was not cross-examined and the Management has not produced any witnesses. However, the employment of the 1st respondent as ward Ayah was admitted by the petitioner Management.

10. Based on the pleadings and the documents submitted by the 1st respondent workman, the Labour Court arrived a conclusion that the 1st respondent workman was terminated from service. However, the counter statement filed by the Management before the Labour Court reveals that the writ petitioner Management did not prevent the 1st respondent from reporting for duty. In view of the fact that the writ petitioner Management, at no point of time, refused employment to the 1st respondent. They contend that there was no necessity to comply with the provisions of 25(F) of the Industrial Disputes Act. It is clearly stated that the writ petitioner Management never terminated the services of the 1st respondent. Contrarily, it is stated that the 1st respondent is gainfully employed elsewhere and she was no longer interested to work in the writ petitioner Management. Though the counter statement is filed by the Management, that was not considered, contrarily, the Labour Court arrived a conclusion that the 1st respondent was terminated from services and directed to reinstate her. Even before this Court, the learned counsel for the writ petitioner Management reiterated that even now, the writ petitioner Management is willing to reinstate the 1st respondent workman. To establish the bonafide of the said contention, the writ petitioner Management filed the additional typed set of papers, wherein the Telegram reply letter and letter sent by the Management are enclosed. The reply letter dated 21.07.2011 sent by the writ petitioner to the Telegram notice issued by the counsel for the 1st respondent on 11.07.2011 reveals that the writ petitioner is ready to provide work to the 1st respondent as and when she reports to duty.

11. It is further stated that the learned counsel may instruct the 1st respondent to report for duty immediately. Even in letter dated 26.07.2011, the writ petitioner Management requested the 1st respondent to join duty as early as possible. The said letter was acknowledged by the 1st respondent. The letter dated 05.08.2011 also reveals that the writ petitioner Management requested the 1st respondent to join duty. On 16.08.2011, the Management once again sent a letter, called upon the 1st respondent to report for duty immediately without causing any further delay. Thus, the writ petitioner management even now is willing to reinstate the petitioner in service.

12. Under these circumstances, the learned counsel for the writ petitioner states that the 1st respondent is at liberty to join duty with immediate effect and the Management is ready and willing to provide work to her.

13. This being the factum established before this Court, this Court is of an opinion that the award of the Labour Court for reinstatement, need not be interfered with as the writ petitioner Management themselves have expressed their willingness to provide work to the 1st respondent workman.

14. As far as the award of back wages are concerned, this Court is of an opinion that the 1st respondent workman was unauthorizedly absent and not reported to join duty. Even presuming that she was not provided any work by the writ petitioner Management during the relevant point of time, subsequent letters and conduct of the writ petitioner Management reveals that they requested the 1st respondent Management to report for duty. It is not just a reply to the Legal Notice. Even on many occasions, the writ petitioner Management requested the 1st respondent workman to join duty as early as possible. Even in the counter affidavit filed before the Labour Court, the Management expressed their willingness to provide work to the 1st respondent. Contrarily, the 1st respondent has taken an indifferent view and not joined duty at her own volition. The Management has expressed its willingness to provide work and the workman refused to report for duty, then the workman is not entitled for any back wages. If the workman is not willing to report for duty, the factual inference is to be drawn that either the workman is employed elsewhere or not interested in joining duty with the Management.

15. This being the factual inference to be drawn in such circumstances, this Court is of the considered opinion that the Award of back wages of the Labour Court is perverse as the writ petitioner Management all along expressed its willingness to provide work to the 1st respondent and requested the 1st respondent to report for duty.

16. As far as the reinstatement is concerned, the Management itself has no objection even during the hearing of the present writ petition. This being the factum, this Court is of an opinion that the interest of justice would be served, if the writ petitioner Management is directed to reinstate the 1st respondent. However, the 1st respondent workman is not entitled for back wages as she had not reported for duty on earlier

occasions, even during the pendency of the Industrial Dispute, at her own volition and not at the interest of the Management.

17. This being the factum, the following orders are passed:

(1) The Award of the Labour Court dated 28.02.2011 passed by the second respondent in I.D.No.736 of 2009 is quashed in respect of the award of back wages alone. But the 1st respondent is entitled for reinstatement and continuity of service.

(2) The writ petitioner Management is directed to reinstate the writ petitioner within a period of four weeks from the date of receipt of a copy of this order. In this regard, the writ petitioner is directed to issue a letter to the 1st respondent workman, who in turn, is at liberty to join duty.

18. With these directions, the writ petition stands partly-allowed. However, there shall be no order as to costs. Consequently, miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
III Additional Labour Court,
Chennai.

+1cc to M/s.King and Partridge, Advocate Sr.80779
+1cc to Mr.M.Udhaya Bhanu, Advocate Sr.80775

W.P.No.18875 of 2011

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srg 23/10/2019