

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.22260 of 2010
and M.P.No.1 of 2010

The Management of
Vijay Senthil Leathers
1138, Kacheeri Salai,
Vaniyambadi-635 751
rep.by its Partner

.... Petitioner

Vs

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

2.M.Rajendhiran

.... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the first respondent in ID No.74/2004 and quash its Award dated 14.07.2010.

For Petitioner : Mr.S.Ravindran for
M/s.T.S.Gopalan & Co.

For Respondents : No appearance for R2

O R D E R

The case of the petitioner is that the second respondent was working as a Mechanic in the petitioner establishment. From 09.12.2002 onwards, the second respondent did not report for duty, for which the petitioner had not preferred to take any disciplinary action. However, the petitioner received a letter dated 20.12.2002 from the second respondent alleging that the petitioner terminated his services on 09.12.2002. Immediately, the petitioner sent a reply denying the allegations and also directing him to report for duty. The petitioner states that instead of reporting to duty, the petitioner precipitated the issue by raising an Industrial Dispute on the file of the first respondent in I.D.No.74 of 2004. Even after the Conciliation Officer of the first respondent sent a letter to the second respondent advising him to join duty, he had not turned up for

duty. Finally the Conciliation Officer closed the file without submitting any conciliation failure report. While so, to the shock and surprise of the petitioner, it was found that the Conciliation Officer reopened the case about which the petitioner had no knowledge, and submitted a failure report on the ground that the petitioner did not attend the conciliation. In the Industrial Dispute before the first respondent Labour Court, the second respondent contended that the petitioner did not give him work in terms of the advise of the Conciliation Officer and since his termination of employment on 09.12.2002 is invalid, he should be reinstated in service with continuity of service, back wages and other attendant benefits. The petitioner also filed counter statement denying the allegations made by the second respondent.

2.Before the first respondent, the second respondent examined himself as a witness and two documents were marked, viz. Exs.W1 and W2. On behalf of the petitioner, Mr.Vijayakumar, Partner of the Establishment was examined as RW1 and Exs.M1 to M9 were marked. The petitioner states that during cross examination, the second respondent admitted that he was not issued with order of termination. Before the Conciliation Officer, the petitioner directed the second respondent to report for work. On 07.03.2003, the Conciliation Officer advised the second respondent to report for work for which the second respondent imposed conditions. After filing the counter in I.D.No.74 of 2004 wherein he was offered employment, he did not accept the said offer and report for work.

3.The petitioner, in his evidence before the first respondent, stated that the dispute raised by the second respondent is vexatious; that in spite of the repeated offer of employment, the second respondent refused to join duty, but continued with the litigation; that the second respondent was already employed with M/s.Devan & Co.; that since the dispute raised by the second respondent is untrue, the Industrial Dispute has to be dismissed.

4.With the above background, the petitioner has come up with this writ petition to quash the order passed by the first respondent in I.D.No.74 of 2004 dated 14.07.2010 wherein the petitioner was directed to reinstate the petitioner in service with continuity of service, full back wages and all other attendant benefits.

5.The learned counsel for the petitioner has submitted that immediately after the receipt of the letter dated 20.12.2002 alleging termination of employment on 09.12.2002 from the second respondent, the petitioner denied the said allegations and directed him to report for work. Even in the counter statement

filed in I.D.No.74 of 2004, the petitioner-Management reiterated its offer, but the second respondent did not report for work. The reason given by the first respondent in its Award as regards the rejection of the offer of employment by the second respondent, viz.that the petitioner had not paid the arrears of wages to the second respondent, is contrary to facts. Finally it is submitted that the act of the second respondent is nothing but to extract money from the petitioner and the fact remains that the second respondent was gainfully employed during the pendency of litigation. Stating so, the learned counsel prayed for setting aside the impugned order passed by the first respondent.

6.Heard the learned counsel for the petitioner and perused the materials available on record.

7.This writ petition was admitted on 30.09.2010 and an order of interim stay was granted in respect of the grant of back wages and continuity of service, that too for a period of eight weeks. Thereafter, the matter had not been listed. It is seen that during cross examination, the second respondent admitted that he was not issued with order of termination and thus it is clear that the petitioner had not retrenched the second respondent from service. In this writ petition, the respondent is not represented by any counsel. Even though the writ petition was admitted in the year 2010, till now, the second respondent has not chosen to enter appearance. In these circumstances, the impugned order passed by the first respondent deserves only to be set aside and accordingly it is set aside and the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

KM

To

The Presiding Officer,
The Additional Labour Court, Vellore.

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No.8915

W.P.No.22260 of 2010
and M.P.No.1 of 2010

SS (CO)
GMY (01/03/2019)