

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19487 of 2013

The Management
Bharathan Steel Agencies
61 Dr N R N Lay-out,
Papanayakanpalayam,
Coimbatore - 37.
Rep by its Partner

...Petitioner

..Vs..

1.The Deputy Commissioner of Labour
Authority under the Tamil Nadu Shops
and Establishments Act,
Coimbatore.

2.S.Kumudha

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in TNSE Case No.8 of 2011 and quash its Order dated 07.01.2013.

For Petitioner : Mr.S.Haroon Al.Rasheed
for M/s.T.S.Gopalan & Co.

For Respondents: Mr.J.Ramesh, AGP (for R.1)
Mr.G.B.Saravana Bhavan (for R.2)

ORDER

The order dated 07.01.2013 passed by the first respondent in TNSC case No.8/2011 is sought to be quashed in the present writ petition.

2.The writ petitioner is the management of Bharathan Steel Agencies. The second respondent was employed as an Office Assistant in the petitioner/management from 12.12.1995. She was the sole employee. During the year 2007, the second respondent, in view of her service with the petitioner/management since from the year 1995, took a loan of Rs.10,600/-. The second respondent had not paid even a part of the said loan amount and on 17.10.2009, she was enquired as to when she would repay the

loan. The second respondent stopped reporting for duty from 19.10.2009. On 25.10.2009, 03.12.2009 and 30.01.2010, the petitioner/management sent letters to the second respondent placing on record her absence from 19.10.2009 and asked her to report duty. However, the second respondent did not respond, but sent a letter on 24.12.2009 alleging that she was denied employment with effect from 19.10.2009. After 111 days from 19.10.2009, the second respondent filed an appeal before the first respondent under the Tamil Nadu Shops and Establishments Act, along with the delay condonation petition alleging that she was terminated from service. The said appeal was numbered as TNSE Case No.8 of 2011 after allowing her condone delay petition.

3.The second respondent herself examined as a witness and in cross examination she admitted that after leaving the service of the writ petitioner/management, she was carrying out certain casual works and that unless she was paid the backwages, she was not interested to report duty. The letters were marked as documents before the first respondent. The first respondent allowed the appeal in favour of the second respondent/workman. Against the said order, the present writ petition is filed.

4.The learned counsel appearing on behalf of the petitioner stated that when the writ petitioner/management asked the second respondent to repay the loan amount, she stopped attending duty. Thereafter, 3 letters were sent to the second respondent and she was not responded to these letters and remained unauthorizedly absent. Even during the hearing of the present writ petition, the learned counsel appearing on behalf of the petitioner made a submission that the management is willing to allow the second respondent to report duty. An opportunity was given by this Court enabling the second respondent to take a decision and the case was adjourned. When the matter is listed again, the learned counsel appearing on behalf of the second respondent contended that the second respondent is not willing to report duty. No reasons are given by the second respondent for not attending duty and she has not reached the age of superannuation. However, it is informed that the second respondent is not willing to report duty.

5.This being the factum of the case, this Court is of an opinion that an inference is to be drawn regarding the conduct of the second respondent/employee that either she will be working in some other establishment or she is not interested to work in any organization at all. In such circumstances, the contentions of the writ petitioner/ management is to be addressed upon. When an opportunity is provided by this Court, management also expressed their willingness to allow the second respondent to report duty. However, the second respondent

expressed her unwillingness to report duty and therefore, this Court cannot grant any backwages as claimed by the second respondent. However, the statutory entitlements including PF Gratuity for the services rendered by the second respondent is to be settled and in this regard the writ petitioner/management is directed to cooperate with the disbursement of all the statutory dues by the competent authorities. The second respondent is at liberty to approach the writ petitioner/management for the settlement of all the statutory entitlements by following the principles contemplated under the Act and Rules. However, the second respondent is not entitled to any backwages from the writ petitioner/management.

6.The learned counsel appearing on behalf of the writ petitioner states that at the time of admission of the writ petition, the management had deposited an amount of Rs.2,13,230/- with the first respondent. The writ petitioner/management is at liberty to submit an appropriate application for settlement of dues, to first respondent and who in turn is directed to repay the deposit amount with the accrued interest within four weeks from the date of receipt of application from the management.

7.This being the factum, the order dated 07.01.2013 passed by the first respondent in TNSE No.8/2011 is quashed and the writ petition stands allowed.

mrm

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Labour
Authority under the Tamil Nadu Shops
and Establishments Act,
Coimbatore.

+1cc to Mr.T.S.Gopalan and co , Advocate SR.No.89362
+1 cc to Government Pleader Sr.No.90422
+1cc to Mr.G.B.Saravana bhavan , Advocate SR.No.89407

W.P.No.19487 of 2013

A.SK(11/12/2019)