

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.29998 of 2005

&

W.M.P.No.32880 of 2005

Management of Unico Leather
Leather Products Private Limited,
No.1, Sri Ramapuram Road,
Kilachur Village, Palikonda,
Vellore District - 635 809.

...Petitioner

...Vs...

1.The Presiding Officer,
Labour Court, Vellore.

2.S.Devagi

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the concerned records from the first respondent Labour Court, quash the award passed by the first respondent dated 28.02.2005 in I.D.No.273 of 1999.

For Petitioner : Mr.Balan Haridas

For Respondents : Labour Court - R.1

No appearance for R.2

ORDER

The award dated 28.02.2005 passed in I.D.No.273 of 1999, is under challenge in the present writ petition.

2.The petitioner is the Management of Unico Leather Products Private Limited. The second respondent was employed in the writ petitioner/management as Stitcher. On 16.06.1999, the Production Manager questioned about her poor quality of stitching and also informed her about oral complaints received from the Supervisor. At the outset, the Production Manager informed that the second respondent/workman was not performing her duties to the satisfaction of the Supervisors.

3. Further, on 17.06.1999, the second respondent failed to report for work. The Divisional Manager issued a memo dated 17.06.1999 asking the second respondent to report for work immediately and the copy of the said letter was also marked to the Labour Officer. A telegram was also issued calling upon the second respondent to report for work immediately. Even after receiving the letter as well as the telegram, the second respondent had not joined the duty. Contrarily, she has sent a letter dated 18.06.1999 alleging that as when she reported for work on 17.06.1999, she was denied to work. The second respondent approached the Labour officer and thereafter an industrial dispute was raised in I.D.No.273/1999.

4. The learned counsel appearing on behalf of the writ petitioner states that at no point of time, the Management refused to provide work to the second respondent/workman. Contrarily, a letter and telegram was sent to the second respondent asking her to report for duty, instead of reporting to duty, the second respondent approached the Labour Officer and thereafter raised an industrial dispute. Even before the Labour Court, the Management expressed their willingness to allow the second respondent to report for duty. In spite of their letter, telegram as well as the affidavit filed before the Labour Court, the second respondent had not joined duty.

5. The Labour Court has failed to consider all these documents and passed an award with a direction to reinstate the second respondent in service with backwages and continuity of service. The award was passed by the Labour Court by drawing the factual inference that the writ petitioner had prevented the second respondent from joining duty. However, the fact remained that even before the Conciliation Officer, the writ petitioner/management submitted a letter stating that the second respondent/workman is at liberty to join duty at any point of time.

6. A telegram was also sent to the second respondent and an affidavit was filed before the Labour Court. In spite of all these factors, the Labour Court made a finding that the Management has not stated anywhere permitting the second respondent to report for duty. Such a finding is incorrect and in contradiction with the documents filed before the Labour Court. The Labour Court found that the management has not expressed any view regarding the permission granted to report for duty.

7.However, the learned counsel appearing on behalf of the writ petitioner contended that such a finding is absolutely in contradiction with the documents filed before the Labour Court as well as the letters sent by the management to the second respondent/workman. In view of the factual inference drawn by the Labour Court for the purpose of passing an award in favour of the second respondent/workman, is in contravention to the Labour Court as well as the second respondent.

8.This Court is of an opinion that the findings of the Labour Court are perverse and the documents filed before the Labour Court were not considered. This apart, the letters sent by the Management asking the second respondent to report for duty are also not considered. In the event of failure on the part of the employee to report for duty, the question of following the procedures contemplated under Section 25F of the I.D.Act, would not arise at all. Only in case where the Management has not permitted the employee for reporting the duty, the procedures contemplated under Section 25F are to be followed and not otherwise.

9.In the present case on hand, the writ petitioner is able to establish that all along they have established their willingness to permit the second respondent/workman to report for duty and she failed to report the duty. This being the factum of the case, the award of the Labour Court is perverse and consequently the award dated 28.02.2005 passed in I.D.No.273/1999 is hereby quashed.

10.With the above directions, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

mrm
To

The Presiding Officer,
Labour Court, Vellore.

+1cc to Mr.Balan Haridas , Advocate SR.No. 84631

W.P.No.29998 of 2005

A.SK(05/11/2019)