



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No. 905 of 2016

and

W.M.P.No.687 of 2016

The Management
Ramana Maharishi Rangammal Hospital
Sivar Nagar,
Athianthal Village,
Sri Ramana Ashram Post - 606 603
Thiruvannamalai District.

... Petitioner

vs.

1. S.Sundar

2. The Presiding Officer,
Principal Labour Court,
Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records connected with I.D.No.46 of 2015 on the file of the 2nd respondent and quash the award dated 24.11.2015.

For Petitioner : Mr.S.Jebadass Pandian

For Respondents : No appearance for R1
R2 Court

O R D E R

This writ petition is filed challenging the award of the Labour Court made in I.D.No.46 of 2015 dated 24.11.2015, wherein and whereby, the petitioner herein was directed to reinstate the first respondent along with backwages, continuity of service and all other attendant benefits.

2. The petitioner herein is the Management. The first respondent, though was served with notice in this writ petition, has not chosen to appear before this Court either in person or through counsel. His name is printed in the cause list.

3. Heard the learned counsel for the petitioner and perused the materials placed before this Court including the additional



typed set of papers filed today.

4. The claim of the first respondent before the Labour Court is that he was appointed as an X-Ray Technician by the petitioner herein on 09.09.2011 and worked till 28.02.2014 and thus, he has put in continuous service for more than 240 days every year. Accordingly, the first respondent claimed that his termination after 28.02.2014 is illegal and thus, he is entitled for reinstatement with backwages.

5. On the other hand, it is the case of the petitioner Management before the Labour Court that the appointment of the first respondent is only for a limited period as stated in the very appointment order itself and consequently, the first respondent was not given continuation of the appointment after the period of appointment is over. It is further stated that the petitioner had misbehaved with the female patients while taking ECG. The Labour Court found that the first respondent was terminated without notice and without an opportunity to give explanation and consequently, passed the award for reinstatement with backwages and continuity of service.

6. Learned counsel for the petitioner submitted that when the very appointment itself is for a limited period and the first respondent was not given extension of appointment thereafter, the question of retrenchment does not arise and consequently, the Labour Court is not justified in granting the relief as sought for by the first respondent. He also submitted that even otherwise, the misconduct of the first respondent with the female patients at the time of taking ECG is very serious charge and therefore, the first respondent is not entitled to any indulgence. He also submitted that even though the Management found the said misconduct of the first respondent, he was only warned and was allowed to work till the end of the contractual period. Therefore, he contended that the Labour Court is not justified in passing the impugned award.

7. The first respondent is not appearing before this Court to support the order of the Labour Court. I have perused the materials placed before this Court.

8. It is seen that under Ex.M3, the first respondent was informed that his performance will be assessed after a period of one month and only on satisfactory report, he will be initially appointed for one year. In Ex.M4, the appointment order dated 01.02.2012, it is clearly stated that the first respondent was appointed for a period of one year from 01.02.2012 to 31.01.2013. In Ex.M5, again the appointment of the first respondent was renewed for a period of one year from 01.02.2013 to 31.01.2014 by specifically stating that at the end



of the said period, his performance will be again assessed and only on satisfactory report, his position will be continued. Thereafter, under Ex.M6 dated 27.02.2014, the 1st respondent was informed that based on the assessment report given by his Head of the Department, it has been decided not to renew the contract for any further period and thus, his temporary contract came to an end.

9. Perusal of the above said exhibits would clearly indicate that the first respondent was never appointed by the petitioner Management permanently and on the other hand, it was only for a limited period, that too, on contractual basis. It is further seen that in between, the petitioner service was assessed and a report was obtained from the Head of the Department, in which, it is seen that the first respondent performance was found not satisfactory. In any event, as the first respondent was allowed to work till the end of the contractual period and thereafter not given extension of appointment, I find that the Labour Court is not justified in granting the relief to the first respondent for reinstatement along with backwages and also continuity of service, more particularly, when the appointment itself was for a specific period. Further, the allegation made against the petitioner that he had misbehaved with the women patients while engaged to take ECG is very serious in nature. However, it is to be noted that the first respondent was not sent out based on such allegation immediately and on the other hand, he was warned and allowed to continue till the end of the contractual period. Hence, the Management is not required to conduct any enquiry and give opportunity to the first respondent to rebut such allegation, as the first respondent was not granted further extension of appointment. Had the 1st respondent been sent out of employment during the contractual period based on such allegation, one can expect that he should be given an opportunity. In this case, it is not so.

10. In view of the above stated facts and circumstances, I find that the Labour Court has totally erred in granting the relief to the first respondent. Therefore, I find that the above findings of the Labour Court is perverse and consequently, liable to be set aside. Accordingly, this Writ Petition is allowed and the impugned award is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsi



To

The Presiding Officer,
Principal Labour Court,
Vellore District.

+1cc to Mr.R.Bhagawat Krishna, Advocate, S.R.No. 101969

W.P.No.905 of 2016

RV (CO)
GN (21/01/2020)