

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9308 of 2017
and
WMP.NO.10290/2017

J.Alexander

...Petitioner

vs.

1. The Commissioner of Labour
DMS Complex,
DMS Subway,
Teynampet,
Chennai-600 006.

2. The Human Resource Department
M/s.Atlantic Air and Ocean
Freight Services Pvt., Ltd.,
No.28, Ground Floor,
2nd Street,
Ravi Colony,
St.Thomas Mount,
Chennai-600 016.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to conduct an enquiry in connection with the petitioner's complaint duly issued to the 1st respondent in the form of a representation dated 17.12.2015 and regularize his services as sales manager at the Office of the M/s.Atlantic Air and Ocean Freight Services Pvt., Ltd., No.28, Ground Floor, 2nd Street, Ravi Colony, St.Thomas Mount, Chennai-600 016, the 2nd respondent herein and settle his dues namely salary with effect from November 2015 to till date and other consequential benefits.

For Petitioner : Mr.D.Ashok Kumar

For Respondents: Mr.N.Sakthivel
Additional Government Pleader
for R1.
Mr.D.Baskar,
for R2.

O R D E R

The relief sought for in the present writ petition is for a direction to the 1st respondent to conduct an enquiry in connection with the petitioner's complaint made to the 1st respondent in the form of representation dated 17.12.2015 and regularize his services as sales manager at the Office of M/s.Atlantic Air and Ocean Freight Services Pvt., Ltd., No.28, Ground Floor, 2nd Street, Ravi Colony, St.Thomas Mount, Chennai-600 016, the 2nd respondent herein and settle his dues namely salary with effect from November 2015 till date and other consequential benefits. The writ petitioner states that he joined the services of the second respondent/Company as a sales manager.

2. The learned counsel appearing for the petitioner states that without serving any order of termination, the petitioner was restrained from attending the duty. The procedure contemplated was not followed and no show cause notice was issued. Thus, the writ petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner states that the dispute is already raised before the first respondent and the same is pending for adjudication.

4. The learned counsel for the second respondent disputed the said contention by stating that the writ petitioner remained absent un-authorisedly from 21.11.2015. Consequently, there was a huge short fall of collection, which affected the 2nd respondent company financially. Thus, on 30.11.2015, a detailed show cause notice was issued to the writ petitioner. The writ petitioner had not chosen to reply to the show cause notice. Therefore, he was terminated from service by letter dated 17.12.2015 by agreeing to give 3 months salary in lieu of notice of termination. After the receipt of termination letter, the petitioner issued a reply dated

17.12.2015 with false and untenable allegations against the management. It is pertinent to note that the petitioner has not explained reasons for his negligence in his duty. However, the learned counsel for the petitioner states that a dispute has been raised before the first respondent and the writ petitioner is willing to adjudicate the dispute.

5. When it is admitted that dispute has been raised and the same is now pending before the first respondent, the relief as such sought for in the present writ petition cannot be granted. All such grievances and the issues ought to be adjudicated with reference to the documents to be produced by the respective parties and by adducing evidence. Thus, such disputed facts cannot be gone nor adjudicated in a writ proceedings under Article 226 of the Constitution of India. In the event of non-adjudication of such issues, the relief as such sought for in the present writ petition cannot be granted. However, it is made clear that the first respondent is empowered to adjudicate the issues in the manner prescribed under law. The respective parties are at liberty to avail the opportunity and adjudicate the same before the first respondent. The first respondent is directed to proceed with the adjudication and conclude the same as expeditiously as possible.

6. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb

To

The Commissioner of Labour
DMS Complex,
DMS Subway,
Teynampet, Chennai-600 006.

+1 cc to Government Pleader Sr.No.

+1cc to Mr.D.Baskar , Advocate SR.No. 76956

W.P.No.9308 of 2017

and WMP.NO.10290/2017

A.SK(22/10/2019)