



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.13 of 2014

and

M.P. (MD) .Nos.1 of 2014 and 1 of 2015

The Management of Mahathma Gandhi Memorial
Tuberculosis and Chest Diseases Hospital,
represented by its Chairman,
Sengipatti,
Thanjavur District - 613 401.

... Petitioner

Vs.

U.Karumbaiyiram (died)
1.Kamalam (died)
2.Geetha
3.S.Kavitha
4.M.Anitha
5.Vanitha Bhuvaneswari

... Respondents 1 to 5/
L.Rs. of the sole Respondent

(Respondents 1 to 5 are substituted for the deceased sole respondent as per the order of this Court dated 25.07.2019 passed in W.M.P. (MD).No.10824 of 2019)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the award passed by the Labour Court, Cuddalore in I.D.No.102/2001, dated 02.09.2013 and quash the same.

For petitioner : Mr.D.Muruganantham,
Additional Government Pleader

For respondents : Mr.A.Rahul

ORDER

This writ petition has been filed challenging the award passed by the Labour Court, dated 02.09.2013, whereby and whereunder the Court below has set aside the order of punishment of dismissal from service of the respondent viz., Mr.U.Karumbaiyiram and directed to grant continuity of service and back wages from the date of dismissal till the date of his retirement. The petitioner was

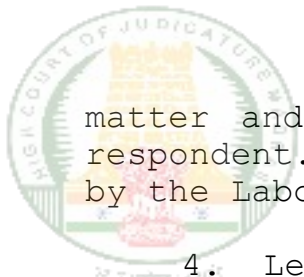


further directed to pay interest at the rate of 6% p.a. for each month's wages from the due date till the actual payment.

2.0. The case of the petitioner is that the respondent was appointed as Male Nursing Assistant on 14.09.1974 by the petitioner. On 05.07.2000 at about 10.40 a.m. when the District Collector inspected the hospital, many in-patient made a complaint as against the respondent herein stating that he absented in duty period on previous day at night, while in-patient was in need of nursing assistance. On 06.07.2000, the respondent was placed under suspension and he was issued with a charge memo containing eight charges on 26.07.2000. The first charge is that the petitioner joined a union affiliated with a Political party. The second charge is that the petitioner raised the flag of the union in front of the hospital without the permission of the District Collector. The third one is that he installed the name board of the union in the premises of the hospital. The fourth charge is that he reared cattle inside the campus. The fifth charge is that on 05.07.2000 a patient had respiratory problems, the petitioner failed to offer help inspite of being informed. The sixth charge is that on 07.07.2000 the petitioner staged a demonstration near the front entrance of the hospital blocking the patient's entry. The seventh charge is that the petitioner acted to the detriment of the hospital's development and income knowing fully well the economic conditions of the hospital. The eighth charge is that the petitioner violated the byelaws and the directions of superiors.

2.1. After conducting enquiry, the petitioner dismissed the respondent from service on 29.11.2000. Challenging the same, the respondent has filed W.P.No.21822 of 2000 before this Court. But, this Court, by order dated 22.12.2000, directed the respondent to avail appeal remedy before the Board of Trustees. Thereafter, the petitioner has filed appeal before the Board of Trustees. The Board of Trustees of the Management has dismissed the appeal on 16.07.2001. Aggrieved by the same, the respondent raised an industrial dispute in I.D.No.102 of 2001. The Labour Court has set aside the dismissal order and directed to grant continuity of service and back wages from the date of dismissal till the date of his retirement with interest at the rate of 6% p.a. Challenging the said order, the petitioner has filed this writ petition. During the pendency of this petition, the respondent / employee died and therefore, his legal heirs were substituted as respondents 1 to 5.

3. Learned Additional Government Pleader appearing for the petitioner submitted that the petitioner would not come under the definition of Industry for the reason that it is running with a service motive and not profit motive and as per the bye-laws, the Government Servant's Conduct Rules only shall apply to the respondent and therefore, the respondent is not entitled to get remedy under the Industrial Disputes Act. Without considering the



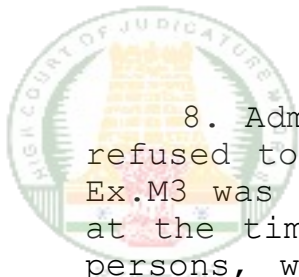
matter and set aside the order of dismissal from service of the respondent. Thus, he prayed to set aside the impugned order passed by the Labour Court.

4. Learned counsel for the respondent submitted that the petitioner / Hospital is an Industry and therefore, it would come under the purview of the Industrial Disputes Act. He would further submit that the main ground on which the respondent was dismissed from service by the petitioner is that he was absent in duty when a patient need his assistance. But, at that time, the respondent went for supper after informing the other staff. The patients were immediately attended by the other staff and therefore, the respondent cannot be attributed with the charge of dereliction of duty. Considering the same, the Labour Court has set aside the order dismissing the respondent from service and to grant continuity of service and back wages. There is no need to interfere with the award passed by the Labour Court. Thus, he prayed to dismiss this writ petition.

5. Heard the learned Additional Government Pleader appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the records carefully.

6. Admittedly, the petitioner/Hospital is running by a society governed by a committee comprised of the District Collector and Trustees. It is not providing service at free of costs. Based on the decision of the Hon'ble Supreme Court, the Court below has held that as the hospital comes under the definition of "industry", the respondent can raise industrial dispute. This Court does not find any reason to interfere with the said finding of the Court below.

7. So far as the charges are concerned, the petitioner has framed eight charges against the petitioner. Though three witnesses were cited in the charge memo, they were not examined in the enquiry. The enquiry officer has held that out of eight charges, six charges were proved only based on the explanation given by the respondent, which cannot be accepted. The Labour Court has held that though eight charges have been levelled against the respondent, the petitioner has produced evidence only in respect of the fifth charge. The fifth charge is that on 04.07.2000 the respondent failed to offer help to a patient who suffered by respiratory problems. It is seen that in order to prove the same, the petitioner has examined one of the last grade employees in the hospital as MW2. Though MW2 has stated in her evidence that she was informed by a janitor that the respondent has failed to offer help to a patient who suffered by respiratory problems on 04.07.2000, during the cross examination she herself admitted that during the relevant time, the respondent went for supper and as such, the other staff, who are available, should help the patients and accordingly, a female nurse attended the patient.



8. Admittedly, there is no evidence to show that the respondent refused to come to the help of the patient. Though a complaint - Ex.M3 was stated to be given by the patients against the respondent at the time of inspection by the District Collector, none of the persons, who put their signatures in the said complaint, has been examined on the side of the petitioner, in order to prove the said charge. Considering the above, the Court below has set aside the order dismissing the respondent from service. This Court does not find any reason to interfere with the award passed by the Labour Court.

9. As on today, the delinquent employee died pending writ petition and subsequently, the wife, who was brought on record as first respondent, also died, The other legal heirs are already on record as respondents 2 to 5 in the writ petition. The petitioner is directed to settle the benefits, as awarded by the Labour Court, within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To
The Presiding Officer,
Labour Court,
Cuddalore.

+1 CC to M/s.M/S.A.RAHUL, Advocate (SR-104295[F] dated 10/12/2019)

+1 CC to M/s.SPL.GP (SR-104553[F] dated 11/12/2019)

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10.12.2019

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