



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28948 of 2015

M/s. The Mylapore Hindu
Permanent Fund Ltd.,
Rep. by its Secretary,
No.32 and 33, South Mada Street,
Mylapore, Chennai.

...Petitioner

-Vs-

1.T.S.Jaganathan

2.The Presiding Officer,
Principal Labour Court,
Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to I.D.No.28/99 on the file of the 2nd respondent dated 22.04.2015 and quash the same.

For Petitioner : Mr.S.Janarthanam

For R1 : Mr.Balan Haridas
For R2 : Labour Court

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The first respondent herein, while serving under the petitioner/ Management, was dismissed from services on 19.03.1998 based on the charges of unauthorised absence. The dispute raised by him before the Labour Court culminated into an Award dated 22.04.2015, whereby the management was directed to reinstate the first respondent herein in service with continuity of service and 50% back wages from the date of termination till 02.12.2011, which is the date on which the Labour Court found that the first respondent had enrolled himself as an Advocate before the Bar Council of Tamil Nadu and Puduchery. Aggrieved



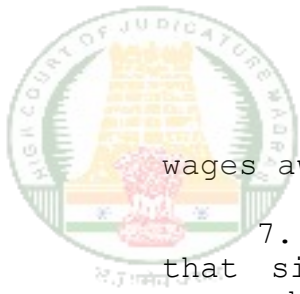
against the said order, the present writ petition has been filed.

3. The charges against the first respondent was that he was unauthorisedly absent for 106 days between 28.08.1997 and 12.12.1997. The reason assigned by the first respondent is that he had medical ailment of nose bleed, for which he had been undergoing medical treatment, for which purpose, he had applied for leave from 28.08.1997 and subsequently, when he had sought for extension of time, the same was rejected by the petitioner/management on 27.12.1997.

4. The Labour Court had allowed the claim predominantly on the ground that the first respondent was dismissed from services without any show cause notice or enquiry. The other reason assigned by the Labour Court was that the management ought to have considered the leave requested by the first respondent and granted leave without wages or should have referred the first respondent to the Medical Board for ascertaining his ailment. In view of these lapses on the part of the management, reinstatement came to be awarded.

5. The ground raised in the present writ petition is that the first respondent was rightfully terminated from services because of his unauthorised absence. This cannot be a reason for interfering into an Award. This Court is in confirmity with the findings of the Labour Court that the dismissal was uncereemonious, since no departmental action was initiated prior to the dismissal order. The Labour Court is also correct in holding that the management ought to have considered the petitioner's request and exercised the option of granting leave without back wages, instead of dismissing him without any enquiry. Above all, the observation that the first respondent was not subjected to a Medical Board to ascertain the ailment, also cannot be found fault with. As such, the order of reinstatement together with continuity of service, does not require any interference.

6. Insofar as granting 50% back wages is concerned, the management had taken a stand before the Labour Court that, since the first respondent was engaged in a business, he is not entitled for the benefits for he was gainfully employed. The Labour Court had rejected such a claim, stating that the management had failed to substantiate the business conducted by the first respondent. However, it had found that the first respondent had enrolled himself as an Advocate on 02.12.2011 and therefore, restricted the back wages to 50% from the date of dismissal till 02.12.2011. I do not find any infirmity in such a finding. Having failed to substantiate that the first respondent was engaged in a business during the period of non-employment, the management cannot now seek for interference into the back



wages awarded by the Labour Court.

7. The learned counsel for the first respondent would submit that since the management had failed to reinstate the first respondent, pursuant to the Award, he would be entitled for the back wages from the date of the Award onwards.

8. In the writ petition filed before this Court, an order of interim stay was granted on 23.06.2017, on condition that the petitioner pays a sum of Rs.7,50,000/- to the first respondent and it is stated that out of the said sum, the management had paid a sum of Rs.3,50,000/-. In view of the stay granted by this Court, the management had not reinstated the first respondent back into service.

9. Since the first respondent herein was not reinstated back into service, in view of the interim orders granted by this Court, this Court is of the view that the first respondent will not be entitled for the back wages from the date of the Award on the principle of "no work no wages".

10. For all the foregoing reasons, I do not find any infirmity in the Award of the Labour Court. Accordingly, the Writ Petition stands dismissed. In view of the dismissal of the writ petition, the first respondent would be entitled for all the benefits, under the impugned Award dated 22.04.2015. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

hvk

To

The Presiding Officer,
Principal Labour Court,
Chennai.

+2cc to Mr.S.Janarthanan, Advocate, S.R.No.1827

W.P.No.28948 of 2015

UM(CO)
CB(01/02/2022)