



W.P. No.23851 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.07.2023**

**CORAM**

**THE HON'BLE MR. JUSTICE M.DHANDAPANI**

**W.P. No.23851 of 2016**

**and**

**W.M.P. No.20467 of 2016**

The Management  
Hotel Windsor Castle  
No.14, Rajaji Road  
Salem-636 007.

... Petitioner

-VS-

1. The Labour Officer  
(Appellate Authority under  
Section 19 of Tamil Nadu  
Catering Establishment Act 1958)  
Salem-636 001.

2. P.Kalaimannan

... Respondents

**Prayer:-** Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, call for the records in Na.Ka.No.672 of 2015 on the file of the Labour Officer (Appellate Authority under Section 19 of the Tamil Nadu Catering Establishment Act, 1958) Salem – 636 001 quash the order dated 05.05.2016, pass such or further order as this Court deem fit and property in the circumstance of this case.

For Petitioner : Mr.M.R.Raghavan

For Respondents : R1-Labour Court  
R2-Notice returned unserved  
No appearance



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## ORDER

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This petition has been filed seeking to quash the order in Na.Ka.No.672 of 2015 on the file of the Labour Officer (Appellate Authority under Section 19 of the Tamil Nadu Catering Establishment Act, 1958) Salem – 636 001, dated 05.05.2016.

2. It is the case of the petitioner that the second respondent was appointed as a Waiter in the petitioner establishment during the year 1995. On 24.01.1998, he was promoted as captain and his last drawn salary was Rs.4,200/- and he was taken leave from 03.07.2015 to 08.07.2015 after obtaining permission from the management. Thereafter, he made an application before the first respondent herein under Section 19(2)(a) of the Tamil Nadu Catering Establishment Act, 1958. After adjudication, the first respondent vide order dated 05.05.2016 directing the petitioner to reinstate the second respondent along with backwages and continuity of service and attendant benefits. Challenging the said order, the petitioner has filed the present writ petition before this Court.

3. The learned counsel for the petitioner submitted that initially, the



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petitioner has not terminated the service of the second respondent. Pursuant to the impugned order, the petitioner has been calling the second respondent to reinstatement of service. However, he refused to join duty. If the back wages and other benefits as directed by the first respondent are paid to the second respondent, it may not be possible for the petitioner to recover the same.

4. Heard the learned counsel for the petitioner and perused the materials available on record. There is no representation on behalf of the second and however, the writ petition has filed in the year 2016. Considering the pendency of the writ petition, this Court is inclined to dispose of the same on merits.

5. The facts of the case are not in dispute. Admittedly, the second respondent entered into service in the petitioner Management in the year 1995 and he was subsequently promoted in the year 1998. In the year 2015, he claimed that he was abused by one of the co-employee and the same has been reported to the petitioner Management. The petitioner Management has not resolved issue properly between the petitioner and the co-employee. Thereby, the oral termination order was passed. The petitioner submitted that the petitioner is ready to reinstate the service of the second respondent with pay protection and continuity of service. However, the petitioner denied only back



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wages, but the second respondent has been refused the employment with the petitioner. On perusal of the same, the second respondent has gainfully employed anywhere. To that extent, the petitioner has let in evidence before the Labour Court. Without considering the same, the Labour Court has awarded back wages to the second respondent, which is not sustainable one. In such view of the matter, this Court is inclined to pass the following orders:

*i. The petitioner is directed to reinstate the second respondent, if he reported duty, within a period of two weeks from the date of receipt of a copy of this order;*

*ii. The second respondent is not entitled for any backwages for the non employment period; and he is entitled for continuity of service and all other benefits.*

6. With the above observation, the writ petition is allowed. Consequently, the connected Miscellaneous Petition(s) is/are closed. No costs.

26.07.2023

*Rli*

Index: Yes/No

NCS : Yes/No



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- To
1. The Labour Officer  
(Appellate Authority under  
Section 19 of Tamil Nadu  
Catering Establishment Act 1958)  
Salem-636 001.



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**M.DHANDAPANI, J.**

*Rli*

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**26.07.2023**