



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.17370 of 2023
and
W.M.P.No.16514 of 2023

M/s.Roots Auto Products Private Limited,
Represented by its Director,
O.A.Balasubramaniam,
R.K.G.Industrial Estate,
Ganapathy, Coimbatore.

... Petitioner

Vs.

M.Savitha

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Impugned Award dated 07.02.2023 passed in I.D.No.33/2021 on the file of the Additional Labour Court, Coimbatore and quash the same.

For Petitioner : Mr.K.Govi Ganesan

ORDER

The present writ petition is filed challenging the orders passed in I.D.No.33/2021 by the learned Presiding Officer, Additional Labour



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

WEB COPY

Court, Coimbatore on 07.02.2023. The writ petitioner M/s.Roots Auto Products Private Limited is carrying on business of running a Petrol Bunk. The respondent was engaged as a Pump Operator on a monthly salary of Rs.7,820/-. The respondent absented herself for reporting duty from 07.01.2020 onwards. The writ petitioner Management enquired the same with the respondent and she in turn replied that her husband was in prison and she could not come for duty. However, the respondent raised a dispute under Section 2A(1) of the Industrial Disputes Act before the Conciliation Officer stating that she was dismissed from service orally by the petitioner Management. Since the conciliation talks failed she filed a claim petition before the Additional Labour Court, Coimbatore under Section 2A(2) of the Industrial Disputes Act for setting aside the Oral order of dismissal on 06.01.2020. The learned Additional Labour Court, Coimbatore after analysing the evidence on record directed the petitioner to reinstate the respondent in service with full back wages and other attendant benefits along with continuity of service. Aggrieved over the said orders, the petitioner Management has filed the present writ petition.



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

WEB COPY

2.Mr.K.Govi Ganesan, learned counsel for the writ petitioner would contend that the respondent was not terminated from service as alleged by her and that she absented herself from attending duty. In this regard, the petitioner Management sent a notice dated 27.07.2021 through a Registered Post with Acknowledgement Card calling upon the respondent to report for duty. According to him, though notice was served on the respondent, she did not report for duty and this fact was also mentioned in the counter filed by the respondent before the Additional Labour Court, Coimbatore. The Labour Court failed to take into account these facts and had erroneously come to the conclusion that the respondent was orally terminated from service on 06.01.2020 and that she is entitled for full back wages as claimed by her.

3.Though one Ajay Khose, learned counsel undertook to file vakalat on behalf of the respondent, till date vakalat has not been filed. The name of the respondent was also printed in the cause list.



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

WEB COPY

4.It is seen from the records that the respondent had lodged a complaint with the Inspector of Police, Sai Baba Colony Police Station, Coimbatore against one Kavithasan and Subash who are employees of the petitioner Management for abusing and assaulting her. According to the learned counsel for the petitioner the FIR is still pending and the Labour Court had taken serious note of the criminal complaint lodged by the respondent against two of the employees of the petitioner Management and had held that there are serious issues in the petrol bunk owned by the writ petitioner which are affecting the modesty of women employees. In this regard, learned counsel for the writ petitioner contended that there are two other female employees in the very same petrol bunk and that the alleged incident of abuse never took place. The further contention of the writ petitioner is that as per directions of the Additional Labour Court, Coimbatore the respondent was reinstated into service on 14.02.2023 and that she is continuously working there till date.



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

WEB COPY

5.The respondent had not adduced any records to show that she was sent out of service. In fact she had not also sent reply to the notice dated 27.07.2021 sent by the petitioner Management requesting her to join duty immediately. It is not the case of the respondent that the atmosphere in the petrol bunk was not conducive to work. In such circumstances, the observation of the Labour Court that there are serious issues in the petrol bunk which may affect the modesty of a woman. Even in the counter the Management had reiterated their earlier contentions in their notice dated 27.07.2021 that the respondent had absented herself from attending the duty and this fact has not been taken into account by the Additional Labour Court, Coimbatore before directing the Management to pay full back wages with continuity of service. Moreover, it is now well settled by a catena of decisions of the Apex Court that having regard to the principles contained in Section 106 of the Indian Evidence Act the burden of proof to show that the respondent was not gainfully employed is not on the employer. In the decision in the ***Management of Regional Chief Engineer P.H.E.D Ranchi Vs Their***



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

WEB COPY

Workmen reported in **2018 (4) LLJ 513**, the Hon'ble Supreme Court had held that it is necessary for the workman to plead and prove with the aid of evidence that after his dismissal from service he was not gainfully employed elsewhere and had no earning to maintain himself or / and his family and that the initial burden is on the employee. In the instant case, the respondent had not adduced any evidence to show that she was not gainfully employed anywhere. In such circumstances, the respondent has no right to claim backwages from her employer as of right.

6.In the circumstances, the orders passed by the Additional Labour Court, Coimbatore is partly set aside as far as the payment of back wages alone is concerned.

7.With the above observations, the Writ Petition is disposed of.
No costs. Consequently, connected Writ Miscellaneous Petition is closed.

19.10.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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Page 6 of 7



WEB COPY



W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

R. HEMALATHA, J.
mtl

W.P.No.17370 of 2023
and W.M.P.No.16514 of 2023

19.10.2023