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W.P.No.15281 of 2019 and W.M.P. No.15277 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.15281 of 2019 and W.M.P. No.15277 of 2019

Management of
Fernhills Royale Palace,
Represented by its General Manager,
Fernhill P.O. 643 004
The Nilgiris

... Petitioner

Vs.

1. The Deputy Commissioner of Labour (Conciliations)
Authority under the Tamil Nadu Catering
Establishments Act
Coonoor.

2. R.A. Francis

... 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
the orders dated 22.02.2018 of the 1st respondent in proceedings
No.VE7428/2017 and quash the same.

For Petitioner	:	Mr.P. Raghunathan for M/s. T.S. Gopalan & Co.
For R1	:	Ms.P.Vijayadevi Government Advocate
For R2	:	No appearance.



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ORDER

This petition is filed by the Management of Fernhills Royale Palace, represented by its General Manager, challenging the order dated 22.02.2018 in C.A. No.7428/2017 of the 1st respondent, the Deputy Commissioner of Labour (Conciliations), Coonoor (Authority under the Tamil Nadu Catering Establishments Act, 1958).

2. The petitioner Fernhills Royale Palace is a hotel in the Nilgiris with a staff strength of about 38 employees. According to the petitioner Hotel, it had received a strike notice in form 'O' bearing date 15.09.2017. It was issued by 'Nilgiris Industrial and General Workers' Union and addressed to the petitioner. It had contained a charter of demands. The petitioner hotel, on 28.09.2017 issued a general advisory to all the employees not to join the strike and to sort out the issues, if any, with them. Later on 16.10.2017, the Management held a town hall meeting with all the staff and took a signed undertaking from many employees that they will not involve in any activities detrimental to the interests of the petitioner hotel. The 2nd respondent one Francis, a permanent



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employee who joined on 14.06.2006, was one among the six employees who did not sign the "undertaking of good behaviour". He met with an accident on 24.09.2017 and fractured his right leg. He proceeded on medical leave till October and resumed duty on 01.11.2017 but was again granted leave for 15 days and asked to report on 16.11.2017. However, the 2nd respondent did not report for duty till 24.11.2017. Despite reminders requesting him to rejoin duty, he did not rejoin. On 05.12.2017, he went on an appeal before the 1st respondent stating that he was orally dispensed with from service with effect from 16.11.2017. The letters from the petitioner dated 09.12.2017 and 15.12.2017 also were of no avail. The conciliation proceedings on 09.01.2018 was followed by the impugned order dated 22.02.2018 by which the petitioner was directed to reinstate the 2nd respondent in service.

3. Mr.P. Raghunathan, learned counsel for the Writ Petitioner Hotel would contend that the 2nd respondent was never terminated from service and that all the correspondence from petitioner dated 25.11.2017, 04.12.2017, 09.12.2017 sent through Registered Post with Acknowledgment Due (RPAD) and the letter dated 13.12.2017 submitted to the 1st respondent would indicate that no such termination



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took place and the 2nd respondent had abstained from work on his own volition since 07.11.2017. He also pointed out that the 1st respondent did not take into consideration all these letters and went ahead concluding that the 2nd respondent was terminated from service orally.

4. The crux of the issue is whether the 2nd respondent was orally dispensed with from service with effect from 16.11.2017 and whether the impugned order for reinstatement was right.

4.1. The affidavit of the petitioner hotel reads as follows:

"The 2nd respondent met with an accident and fractured his right leg on 24.09.2017 and as such he was on medical leave from the said date. He was paid full salary after adjusting his leave for the month of October 2017. The 2nd respondent again reported for duty on 01.11.2017. As his condition was not fit he was again granted leave for 15 days."

4.2. However on the letter dated 13.12.2017 addressed to the Labour Officer (1st respondent) the petitioner states that "*he is absenting*



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himself from work since 07.11.2017 for which the Management had sent notice and reminders to report for work".

4.3. In the letter dated 25.11.2017 addressed to the 2nd respondent the petitioner states that *"you had given medical leave from 24.09.2017 as you have fractured your leg and extended your leave from 02.11.2017 till recovery".* This letter dated 25.11.2017 as well as other letters asking the 2nd respondent to rejoin have no acknowledgment of the 2nd respondent. There is no evidence for RPAD or service thereof. Furthermore, the affidavit of the petitioner hotel also reads as *"pursuant to the impugned order of the 1st respondent, the 2nd respondent and other employees who had approached him and obtained similar order have filed claim petition before the Labour Court, Coimbatore in C.P.No.43/2018 seeking to compute wages for the period 16.11.2017 to 31.03.2018 to the tune of Rs,3,36,945/-."* Thus it is clear that not only the 2nd respondent but there were other employees of the petitioner hotel whose services also were orally dispensed with by the hotel on 16.11.2017.



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They have also tried to mislead this Court by producing letters which purportedly were prepared later. I deprecate this act of the petitioner.

The impugned order of the 1st respondent, the Deputy Commissioner of Labour (Conciliation), is upheld.

5. In the result, this Writ Petition is dismissed. No costs. Consequently connected Writ Miscellaneous Petition is closed.

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bga
Index : yes/no
Speaking /Non speaking Order

To

The Deputy Commissioner of Labour (Conciliations)
Authority under the Tamil Nadu Catering
Establishments Act
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R.HEMALATHA, J.

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