



W.P.No.7989 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7989 of 2017

And

W.M.P.Nos.8729, 17020 and 17021 of 2017

The Management of
Thiyagarayanagar Social Club,
Rep. by it's President

... Petitioner

Vs.

1.The I Additional Labour Court,
Additional City Civil Court Buildings,
High Court Campus,
Chennai – 104.

2.N.Shanmugam

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records connected with the I.D.No.296 of 2013 on the file of the first respondent Labour Court, Chennai, quash the impugned order dated 22.04.2016 made therein.

For Petitioner : Mr.R.Gowtaman
For Respondents : Mr.K.Bharathi for R2



W.P.No.7989 of 2017

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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records connected with the I.D.No.296 of 2013 on the file of the first respondent Labour Court, Chennai, and to quash the order dated 22.04.2016 made therein.

2.The case of the petitioner is that the second respondent was employed as waiter trainee by the petitioner and he himself stopped from coming to work, however, to the shock and surprise of the petitioner, the second respondent raised industrial dispute in I.D.No.296 of 2013 before the first respondent and the first respondent passed award dated 22.04.2016 directing the petitioner to reinstate the second respondent and to pay 50% backwages and all other attendant benefits from the date of dismissal to the date of reinstatement. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner never terminated the second respondent from service and further submitted that even today, the petitioner is ready



W.P.No.7989 of 2017

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to reinstate the petitioner in service, however, the backwages awarded by the first respondent is not sustainable one.

4.Per contra, the learned counsel appearing for the second respondent submitted that the second respondent worked for the petitioner from 28.08.1994 as a waiter and since he suffered back pain, he was on medical leave from 14.06.2012 to 14.12.2012 and was taking treatment in a Government hospital and when he went to report for work on 15.12.2012, he was not allowed to work. Such facts were clearly established before the Labour Court and the same was properly appreciated by the Labour Court and the Labour Court rightly passed the impugned award, which warrants no interference.

5.Heard the arguments advanced on either side and perused the materials available on record.

6.Admittedly, the second respondent was working as waiter in the petitioner club and the said fact is not in dispute. The petitioner claim that the second respondent himself stopped from coming to work, whereas, the second respondent claim that he was on medical



W.P.No.7989 of 2017

leave from 14.06.2012 to 14.12.2012 and was taking treatment in a Government hospital and when he went to report for work on 15.12.2012, he was not allowed to work.

7.The petitioner is ready to reinstate the petitioner in service, however, is aggrieved by the backwages awarded by the first respondent. Though the second respondent claim that he was on medical leave from 14.06.2012 to 14.12.2012 and was taking treatment in a Government hospital, he did not mark any document to substantiate that he was not gainfully employed anywhere and the same before the Labour Court. Hence, this Court is of the opinion that the backwages awarded by the first respondent in favour of the second respondent is not sustainable one. However, the second respondent is entitled for continuity of service.

8.In view of the above, the petitioner is directed to reinstate the second respondent with continuity of service and to pay all other attendant benefits to the second respondent except backwages from the date of dismissal to the date of reinstatement. The award dated 22.04.2016 passed by the first respondent in I.D.No.296 of 2013 is



W.P.No.7989 of 2017

modified to the above extent.

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9.The writ petition is accordingly disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

27.07.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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W.P.No.7989 of 2017

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