



W.P.(MD).Nos.20328 of 2014 and 22471 of 2015

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 19.04.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).Nos.20328 of 2014 and 22471 of 2015**

**and**

**M.P.(MD).Nos.1 of 2014 and 1 of 2015**

W.P.(MD).No.20328 of 2014:

The Management  
St.Lukes Eye Hospital,  
11/34, Market Road,  
Nazareth – 628 617,  
Tuticorin District,  
Represented through its  
Chief Medical Superintendent

... Petitioner

**Vs.**

1.The Presiding Officer,  
Labour Court,  
Tirunelveli.

2.T.Leena Stella

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the Award passed by the first respondent in I.D.No.12 of 2012 dated 21.03.2014 and to quash the same.



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W.P.(MD).No.22471 of 2015:

The Management  
St.Lukes Eye Hospital,  
11/34, Market Road,  
Nazareth – 628 617,  
Tuticorin District.

... Petitioner

**Vs.**

1.The Presiding Officer,  
Labour Court,  
Tirunelveli.

2.T.Leena Stella

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order passed by the first respondent in CP.No.2 of 2015 dated 02.09.2015 and to quash the same.

(In Both Writ Petitions):

For Petitioner : Mr.C.Karthikeyan

For R-1 : Labour Court

For R-2 : Mr.J.Jeyakumaran



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### **COMMON ORDER**

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The Writ Petition in W.P.(MD)No.20328 of 2014 is filed to quash the Award passed by the first respondent in I.D.No.12 of 2012 dated 21.03.2014 and the Writ Petition in W.P.(MD)No.22471 of 2015 is filed to quash the order passed by the first respondent in CP.No.2 of 2015 dated 02.09.2015.

2. The second respondent had joined the St. Lukes Eye Care Hospital as Accountant. The work of the 2<sup>nd</sup> respondent is to receive the entire collection of the money received from the patients and she had to maintain the cash books, ledgers and vouchers relating to the said Hospital. The Pharmacy stocks and accounts were also entrusted to her. However, the second respondent has not maintained the account in a proper manner and there was a deficit to the tune of Rs.30,000/- On various occasions, there was deficit. Hence, the Management initiated disciplinary proceedings after giving opportunity to the second respondent and has passed an order of dismissal from service. Aggrieved over the same, the second respondent has filed I.D.No.12 of 2012 and the Labour Court has considered the rival claims and has come to the conclusion that the second respondent is entitled to reinstatement with continuity of service along with backwages and also directed to refund Rs.30,000/- to the second respondent. Aggrieved over the same, the Management has filed the Writ



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3. The second respondent has filed the Claim Petition CP.No.2 of 2015 claiming Rs.2,89,826/- with 12% interest and the Labour Court vide order dated 02.09.2015 has partially allowed the Claim Petition and directed the Management to pay Rs.1,98,961/- to the second respondent with 6% interest from the date of the claim petition till realization. Aggrieved over the same, the Management has filed W.P.(MD)No.22471 of 2015.

4. The contention of the Management is that even though the Management is aggrieved by the award passed by the Labour Court and has preferred Writ Petitions, in the meanwhile, the Management directed the second respondent to join St. Rabel Hospital, Sayarpuram vide, communication dated 05.01.2015. However, the second respondent refused to join the service in Sayarpuram for the reason that the said Hospital is far away from her residence. The second respondent also expressed her inability to continue her service. However, the learned counsel appearing for the second respondent submitted that since the Labour Court has directed to reinstate, the Management is bound to reinstate the second respondent only in the earlier Hospital that is St. Lukes Eye Care Hospital. But the Management submitted that another person was already appointed and continuing the service in the earlier Hospital. Moreover, the post of Accountant cannot be kept vacant endlessly. Therefore, the Management has appointed some other person.



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5. Therefore, this Court is of the considered opinion that inspite of opportunity granted to serve in the Management's Sister concern, the second respondent has declined to join the service. The 2<sup>nd</sup> respondent is not having any right of choice to any post or place and it is the exclusion right of the employer. Moreover in the present case ,since already another person is employed, the 2<sup>nd</sup> respondent cannot demand the same place. Therefore, in order to balance the rights of both the parties, this Court is directing the Management to pay Rs.75,000/- (Rupees Seventy Five Thousand only) to the second respondent as a final compensation. The impugned orders are quashed. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

6. In view of the above, the Writ Petitions are allowed in above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**19.04.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
Nsr

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**S.SRIMATHY, J.**

Nsr

To  
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Labour Court,  
Tirunelveli.

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