



W.P No.26920 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

CORAM

THE HONOURABLE MR. JUSTICE **P.DHANABAL**

W.P.No.26920 of 2012

B.Vijay Babu

.. Petitioner

Vs.

1.The Commissioner of Labour,
Labour Department,
At Labour Complex, Gandhi Nagar,
Puducherry.

2.The Labour Officer (Conciliation)
Nehru Nagar,
Puducherry.

3.The Labour Officer (Enforcement)
Labour Department,
Labour Complex, Gandhi Nagar,
Puducherry.

4.The Management,
M/s.Covai Pazhamudhir Nilayam,
No.288 M.G.Road,
Muthialpet, Puducherry – 605 003.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, calling for entire records relating to order dated 06.08.2012 No.2235/LO/(E)/AIL-II/2012 on the file of the 1st respondent and quash the same and direct the 4th respondent to reinstate the petitioner in service as worker with back



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wages from 01.11.2011 with all consequential and attendant benefits within stipulated period.

For Petitioner : Mr.N.S.Sivakumar
For Respondents : Mr.G.Djearamy,
Government Advocate (Puducherry)
for R1 to R3
For R4 : No Appearance

ORDER

This writ petition has been filed for Certiorarified Mandamus or order or direction in the nature of a writ or any other appropriate writ, calling for the records relating to order dated 06.08.2012 No.2235/LO(E)/AIL-II/2012 on the file of the first respondent and quash the same and direct the 4th respondent to reinstate the petitioner in service as worker with back wages from 01.11.2011 with all consequential and attendant benefits.

2. According to the writ petitioner, he was appointed as manager at the Pazhava Nagar Branch of the 4th respondent on 16.07.2008 and was later transferred to the Muthialpet Branch on 25.03.2010. While so, on 01.01.2011, the 4th respondent/Management



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stopped the petitioner from performing his duties and sent him away from the shop without any valid reasons. Thereafter, he approached the 4th respondent and demanded to be allowed to perform his duty, but they did not allocate him any work. Therefore, he issued a legal notice on 07.11.2011 to the 4th respondent for reinstatement, and after receipt of the notice, he received no response from the 4th respondent. Therefore, he filed a petition under Section 2 A of the Industrial Disputes Act before the 2nd respondent, but the second respondent has not taken any steps and thereafter a notice was issued to the petitioner vide letter dated 19.04.2012 by the 3rd respondent to appear before him with relevant records. The 4th respondent filed a reply on 18.06.2012 before the 3rd respondent, stating that the petitioner had been absent without any intimation since 10.12.2010 and that he had consumed poison in the month of December 2010 due to his family problems and was hospitalized, with no clues about his whereabouts for the last 15 months. The 3rd respondent forwarded a copy of the order dated 06.08.2012 passed by the 1st respondent regarding the representation of the writ petitioner. In the order, the 1st respondent, instead of ordering reinstatement, only awarded a sum equivalent to one month wages to the petitioner. Now the said order is under challenged by this writ petition.



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3. The learned counsel for the petitioner would submit that the order passed by the first respondent states that the petitioner did not file any petition before the appropriate authority regarding his termination of service within the time stipulated under the Puducherry Shops and Establishment Rule, 1964, i.e., within 30 days. However, the 1st respondent failed to consider that there is a provision for the condonation of delay if the appellant satisfies the appellate authority that he has sufficient cause for not preferring the appeal within that period. If so, the first respondent ought to have returned the petition for want of a petition to condone the delay, instead he passed the order on merits. As per the provisions under Section 44(1) “if a person is employed for not less than six months, his service should not be terminated except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice”. But, the 1st respondent miserably failed to appreciate the provision of law and also failed to consider that the



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petitioner was stopped from service without assigning any reason.

Therefore, the order passed by the 1st respondent is liable to be set aside.

4. The learned counsel appearing for the 4th respondent would submit that the petitioner was appointed as in-charge manager at the retailed outlet in Muthialpet with effect from 25.03.2010 and he was paid a salary of Rs.3,000/- per month and he was provided food for three times daily. The petitioner without any intimation absented himself from work with effect from 10.12.2010 and thereafter it came to know that the petitioner had consumed poison in the month of December 2010 due to family problems, and he was hospitalized and thereafter, there has been no knowledge of his whereabouts for the past 15 months. The petitioner being the in-charge manager of the outlet did not hand over his charge to his immediate superior or his colleagues and documents which were in custody with ulterior motive. The petitioner, who received his salary on 05.12.2010, reported that his salary was stolen, and the management advised him to lodge a complaint before the police and the same is also still pending. The petitioner is making very grave and serious allegations against the employer about the business integrity and ethics and attempting to make false propaganda with ulterior motive. The 1st



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respondent after an elaborate enquiry, correctly dismissed the petition in respect of reinstatement and ordered for one month wages on the ground that no one month notice was served by the parties under Section 44(2) of the Puducherry Shops and Establishment Act, 1964 and the matter was taken up by the petitioner to the Labour Department only after 14 months. Therefore, the order passed by the 1st respondent is in order. Hence, the present writ petition is liable to be dismissed.

5. Heard both sides and perused the materials available on record.

6. In this case, it is an admitted fact that this writ petitioner was working under the management of the fourth respondent, and his monthly salary was Rs.3,000/-. According to the petitioner, the management refused to give employment to him from 01.01.2011 onwards. No notice was served to him and no written order was passed terminating his employment. Therefore, he raised Industrial Dispute and the first respondent enquired the parties and passed order by holding that no notice was served under Section 44(2) of the Puducherry Shops and Establishment Act, 1964. However, the petitioner has not approached the



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labour department for the past 14 months. Therefore, the Commissioner of Labour directed the manager to pay one month wages to the petitioner.

This Court also perused the entire records. According to the 4th respondent, the petitioner himself did not report for duty from 10.12.2010 and he consumed poison due to his family problem and was hospitalized and thereafter after past 15 months, he was continuously absent. The writ petitioner also did not deny the absence from 10.12.2010 and also did not explain why he did not go for work for the past 15 months. As rightly observed by the first respondent, as per Section 44(2) of the Puducherry Shops and Establishment Act, one month notice has to be served to the parties, but no notice was served and the petitioner also approached the labour department only after 14 months from the alleged termination. Therefore, the 1st respondent after taking into consideration of all the facts and evidences correctly ordered for one month wages to the writ petitioner. Therefore, the order passed by the first respondent is in order and does not warrant interference.

6. In view of the above said discussions, this Court is of the opinion that this petition has no merits and deserves to be dismissed. In the result, this writ petition is dismissed. No costs.



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Index: Yes/No.
Internet/Yes/No

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P.DHANABAL.J.

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