



WEB COPY



W.P.No.3942 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	5/1/2024
Pronounced on	28/6/2024

C O R A M

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.3942 of 2014

The Management
Mani Higher Secondary School
rep. By its Secretary
Coimbatore 641 029.

...

Petitioner

Vs

1. The Presiding Officer
Labour Court
Coimbatore.

2. R. Mani

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari to call for the records of the first respondent in I.D.No.181 of 2006 and quash its Award dated 28/5/2013.



W.P.No.3942 of 2014

WEB COPY

For Petitioner	...	Mr.Sushanth for Mr.P.Raghunathan for M/s.T.S.Gopalan & Co
For Respondents	...	Tribunal – R.1 Mr.G.B.Saravanabhavan for R.2.

ORDER

This writ petition is filed seeking to quash the Award dated 28/5/2013 passed in I.D.No.181 of 2006 by the first respondent.

2. The facts in brief as per the records are that the petitioner School has been functioning from 1954. It employed six (6) non teaching staff. Secretary of the School represents the School with various authorities and undertakes day-to-day activities. The second respondent joined the petitioner Management on 1/6/1998 as an Attender on temporary basis on consolidated wages in un-aided Section. He was prone to absenteeism and availing loan from the parents of the School children for which he was advised and cautioned on many occasions. He was absenting himself frequently to avoid the creditors. On 17/11/2024,



W.P.No.3942 of 2014

the second respondent was absented from work without any intimation.

No disciplinary action was contemplated, as the petitioner Institution expected the second respondent to report for the duty, however, he has not turned up without any reason.

3. On 26/5/2005, six months from the date of absence, a legal notice was issued by the second respondent alleging that on 19/11/2004, he was orally terminated by the petitioner Institution. No motive was attributed as to why he was terminated orally. A reply was sent by the petitioner Institution about the petitioner's unauthorised absence from 17/11/2004. The second respondent has raised an Industrial Dispute and made allegations that the Secretary of the petitioner Institution by name Mr.Rajagopal was biased against the second respondent as he belong to Scheduled Caste. The petitioner was shocked with the allegations, however, the petitioner Institution has offered the second respondent for employment at Kovilpatti, as there was no need for the second respondent's services at the School at Coimbatore.



W.P.No.3942 of 2014

WEB COPY

4. Raising the non-employment by the petitioner, second respondent had raised an Industrial Dispute in I.D.No.181 of 2006. 8 documents were marked, 2 witnesses were examined on the Management side whereas on behalf of the second respondent, two witnesses were examined and 7 documents were marked. After completion of enquiry, labour Court has directed the petitioner Institution to reinstate the second respondent with continuity of services and attendant benefits, however without backwages. Aggrieved by the same, present writ petition has been filed.

5. The second respondent has not filed any counter affidavit in this writ petition however, the Proceeding before the labour Court would disclose the defence of the second respondent.

6. Heard Mr.Sushanth, learned counsel for the petitioner and Mr.G.B.Saravanabhavan, learned counsel for the second respondent.

7. It is submitted by the learned counsel for the petitioner that the second respondent was never terminated by the petitioner. He himself



W.P.No.3942 of 2014

WEB COPY

has withdrawn from attending the Institution from 17/11/2004 and that allegation made against the petitioner discrimination on the basis of the caste is incorrect and also submitted further that in case if really the second respondent was terminated, he should not have waited for 7 months for issuing a notice and during the course of conciliation proceeding, second respondent was offered the employment, however, he himself has declined. Therefore, sought for setting aside the impugned order.

8. The learned counsel appearing for the second respondent however submitted that the petitioner joined as Office Assistant and that P.R.Rajagopalan has discriminated him basing on his caste and on 17/11/2004, second respondent's brother'-in-law died in an accident, thereby, he could not attend on 17/11/2004 and 18/11/2004. However, when he went to attend the School on 19/11/2004, Mr.P.R.Rajagopalan has instructed the second respondent not to work and refused to give employment. He has submitted letters on 13/12/2004 and 13/1/2005 requesting him to permit him to join. But there was no response, thereby, on 26/5/2005, a legal notice was sent.



W.P.No.3942 of 2014

WEB COPY

9. I have perused the materials available on record.

10. The labour Court while taking into consideration the rival contentions has framed two issues as to whether the second respondent is entitled for reinstatement and other consequential relief. The said issue was answered by way of impugned order directing the petitioner to reinstate the second respondent with continuity of service and attendant benefits. Being aggrieved, instant writ petition has been filed by the petitioner Management. However, the labour Court has refused to grant backwages. The second respondent has not preferred any writ petition for refusal of the backwages. Therefore, finding of the labour Court refusing to grant backwages has become final.

11. Now, the point for consideration is whether the labour Court has passed reasoned order in respect of reinstatement of second respondent. The contention of the second respondent is that he was denied the employment from 19/11/2004. According to him, he was absent on 17/11/2004 and 18/11/2004, as his brother in law and his



W.P.No.3942 of 2014

WEB COPY

sister were expired. On 19/11/2004, the petitioner was orally terminated and declined to give employment without any reason. It is also alleged that Rajagopal has discriminated him on the basis of caste.

12. The labour Court has properly appreciated the issue in respect of discrimination. As rightly observed by the labour Court, when the second respondent has issued notice through his counsel for his reinstatement on 26/5/2005, he has not mentioned about the alleged discrimination by Mr.P.R.Rajagopal on the basis of caste lines. For the first time, when the conciliation proceeding was initiated, second respondent has raised the issue of discrimination. Therefore, the labour Court has rightly rejected the contention of the second respondent about the caste discrimination of the Correspondent of the petitioner Institution.

13. In respect of oral termination, second respondent has allegedly addressed two letters dated 13/21/2004 and 13/1/2005. But those letters have not seen the light for the reasons known to the second respondent. They were not filed before the labour Court. However, the legal notice got issued by the second respondent on 26/5/2005 which was filed before



W.P.No.3942 of 2014

the labour Court by the petitioner Management, as Ex.M.1, for which reply was also given. According to the petitioner Institution, second respondent was never terminated. If at all the petitioner Institution has not terminated the second respondent, keeping in view of the labour Laws, the petitioner Institution should have issued a notice to the second respondent asking him to report to the duty when the second respondent was absent continuously. If at all the second respondent was not interested in working with the petitioner Institution, he should have resigned or informed the Management that he is not interested but no such thing has happened. Therefore, as the second respondent made an attempt by addressing the letters to the petitioner and by issuing legal notice to the petitioner seeking for re-employment, similarly, the petitioner Institution has also should have made an attempt directing the second respondent to appear for the duties.

14. Added to it, when the conciliation proceedings have taken place, the petitioner though offered for employment, it was not offered to work at the place where the second respondent was working, he was offered to work at Kovilpatti whereas the second respondent was working



W.P.No.3942 of 2014

WEB COPY

at Coimbatore and was residing with his family at Coimbatore. When the petitioner has not terminated the second respondent when the petitioner intend to reinstate the second respondent, reinstatement offer should have been made only in respect of the School at Coimbatore where the second respondent was working and not in any other place. Further, if at all the petitioner has no grievance against the second respondent and if at all the petitioner Institution has not terminated the second respondent, there is no reason why the order of the labour Court for reinstatement are not complied with. Therefore, these factors would give rise the impression that the second respondent was denied the employment may be correct.

15. Once an employee who had been working continuously for more than one year was terminated, it attracts Section 25 F of the Industrial Disputes Act. In order to retrench an employee, employer is bound to issue one month notice and retrenchment compensation. In the case on hand, both the things have not done, thereby, retrenchment of the petitioner becomes illegal. Once retrenchment becomes illegal as long as the petitioner Institution is working, the only option that the Court can pass is directing the petitioner to reinstate. In the case on hand, while



W.P.No.3942 of 2014

analysing Section 25 F of the Industrial Disputes Act, the labour Court has rightly concluded and directed the petitioner to reinstate the second respondent. In view of the above discussion, impugned order passed by the labour Court is well reasoned and cannot be interfered with.

16. In the result, this writ petition is dismissed. No costs.

28/6/2024

Index : Yes / No

Neutral Citations: Yes/No

mvs.

To

1. The Presiding Officer
Labour Court
Coimbatore.

Dr.D.NAGARJUN, J

mvs.



WEB COPY



W.P.No.3942 of 2014

Pre-delivery order made in
W.P.No.3942 of 2014

28/6/2024