



W.P.No.33293 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE **N.MALA**

W.P.No.33293 of 2019 &
W.M.P.No.33755 of 2019

A.Vijayaraghavan and V.Radha
The Management of
M/s The Vijay Park Hotel (AVRN Hotels Pvt., Ltd.,)
12, Jawaharlal Nehru Road,
Inner ring road,
Arumbakkam, Chennai – 600 106

... Petitioner

Vs.

R.Suresh
rep. By G.Nandakumar
The General Secretary
The Madras Commercial and General
Workers Union,
31, Abdullah Street,
Choolaimedu,
Chennai – 600 094

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the culminating in I.D.No.103 of 2018 on the file of the Principal Labour Court, Chennai dated 23.09.2019 and quash the same.



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For Petitioner : Mr.M.Santhanaraman

For Respondent : No appearance

ORDER

The Writ Petition is filed for a Writ of Mandamus to quash the award dated 23.09.2019 in I.D.No.3 of 2018.

2. The respondent was employed as Banquet Manager in the petitioner company in the year 2004 and was drawing a salary of Rs.32,500/ inclusive of all allowances. While so, according to the respondent, he was threatened by the petitioner to go on voluntary retirement, to which, the respondent refused and the petitioner, therefore, denied employment from 02.11.2017. As termination of respondent's service was without notice or enquiry, the respondent raised a dispute under Section 2A(2) of the Industrial Disputes Act.

3. The case of the petitioner was that the respondent was not a workman under Section 2(s) of the I.D.Act and therefore, he could not invoke provisions of Section 2A(2) of the I.D.Act and raise a dispute.



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According to the petitioner, the respondent misbehaved with its guests and so a complaint was lodged with the management by one of the customers.

When the management questioned the respondent on the incident on 02.11.2017, the respondent voluntarily stated that he did not want to work with the petitioner and so vide receipt dated 14.11.2017 a full and final settlement of the dues of the respondent was made. Hence according to the petitioner, there was no termination, but voluntary abandonment of service by the respondent. The petitioner, therefore, stated that the claim of the respondent was without any merit and the same deserved to be dismissed.

4. Before the labour court, both the petitioner as well as the respondent filed documentary evidence. The respondent examined himself, whereas the petitioner did not examine any witness on its behalf. The Labour court on an appreciation of the entire materials placed before it, passed an award for reinstatement alone and rejected the other reliefs prayed for.

5. Though notice was sent to the respondent in the Writ Petition, none appears for the respondent.



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6. The learned counsel for the petitioner submits that the petitioner produced cash payment voucher dated 14.11.2017 marked as Ex.M.1 in support of its plea that the respondent voluntary left the service by entering into full and final settlement of his dues, but the labour court did not appreciate the same in proper perspective. The learned counsel further submits that the labour court inspite of finding Ex.M.1 to be genuine, erred in directing reinstatement. The learned counsel further submits that the labour court having found that the respondent was drawing salary of Rs.30,152/- which was more than the salary prescribed under Section 2(iv) of the Industrial Disputes Act, erred in entertaining the claim petition, that too in the absence of any evidence by the respondent that the nature of work was not supervisory in nature.

7. I have heard the learned counsel for the petitioner and perused the records.

8. Relying on the admission of the respondent, in his cross examination that he was drawing salary of Rs.30,152/-, the labour court found that the respondent was drawing more salary than that prescribed under Section 2(s) (iv) of the Industrial Disputes Act. The labour court in any event entertained the claim petition.



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9. Be that as it may, it is to be seen if the Labour Court was justified in directing the reinstatement of the respondent inspite of its finding on Ex.M.1.

10. Ex.M.1 is a receipt given by the respondent for full and final settlement of his dues by the petitioner. Eventhough Ex.M.1 was found to be genuine by the Labour Court, the Labour Court on an erroneous view that the petitioner offered re-employment to the respondent with liberty to initiate disciplinary proceedings against him for misconduct, directed reinstatement without back-wages.

11. In my view, the Labour Court lost sight of the fact that offer of re-employment was made prior to Ex.M.1. The Labour court further failed to note that the contention of the petitioner that the offer of re-employment was made prior to Ex.M.1 was fortified by Ex.M.2, which is an order passed by P.G.I.A.02/2018 dated 29.05.2018. Had the respondent not voluntarily left the employment, he would not have approached the authority for payment of gratuity. In view of the above discussions, the award of the labour court cannot be sustained and hence the same is set aside.



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For all the above reasons, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/ No
Speaking Order/ Non Speaking Order
ssd

To

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N.MALA,J.

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