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W.P.No.5400 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 5400 of 2021

&

W.M.P.No. 6008 of 2021

The Management
Saradhas Nursing Home
Chairman Ramalingam Road
Ammamet
Salem – 3

...Petitioner

Vs.

T.Murugesan

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in ID.No.195 of 2014 on the file of Labour Court, Salem, quash the award dated 20.08.2019 published on 27.11.2019 passed therein.



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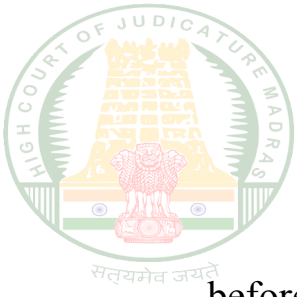
For Petitioner : Mr. R.Raghavan

For Respondent : Mr. K.V.Shanmuganathan

ORDER

Challenging the award passed by the Labour Court, Salem in ID.No.195 of 2014, the management is before this Court. The parties are referred to in the same array as before the Labour Court.

2. The petitioner had filed the petition under Section 2 A (2) of the Industrial Dispute Act, following the failure report given by the Labour Officer, Salem and prays that he be reinstated with back wages. It is the case of the petitioner that he was working as an Assistant from the year 1985 and had been discharging his duties diligently. While so, on 09.05.2014 without adhering to legal procedures his services was terminated. The act of the respondent is against the principle of natural justice. At the time of the dismissal the petitioner was drawing a sum of Rs.7,500/- per month.



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3. The respondent had not initiated any disciplinary proceedings before orally terminating the services of the petitioner. The petitioner had approached the respondent directly and had also sent a letter dated 21.07.2014 seeking reinstatement for which there is no response. The petitioner would submit that his 30 years of service had not been taken into consideration by the respondent / management. He had raised the dispute before the Labour Conciliation Officer which did not yield the desired result and a failure report was submitted by the Conciliation Officer. Therefore, the petitioner was before the Labour Court seeking reinstatement along with back wages and attendant benefits.

4. The respondent / management had filed a counter inter alia contending that the petitioner had not joined the respondent in the year 1985 as Assistant and that his services were not terminated from 09.05.2014. On the contrary the respondent would contend that the petitioner was working with them till May 2014 and the last salary was a sum of Rs.7677/-.



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5. It is the further case of the respondent that the petitioner was absent from service from 08.06.2014 and he had on 21.07.2014 submitted a letter seeking reinstatement. The respondent had sent a reply calling upon the petitioner to join the duty. However, without joining the duty he has raised a dispute.

6. The respondent would further submit that in the month of June, the petitioner had stolen Rs.1,00,000/- from the respondent / Hospital which was kept for payment in the bank and when the management enquired into the same and threatened to lodge police complaint he had replied that he had not stolen the money. Further, his wife and daughter had come to the hospital and used abusive language against the administrator of the Hospital. Therefore, the respondent would submit that the petitioner is not entitled to back wages for the period he has not worked.



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7. The points for consideration are as follows:

(i) Whether the oral termination against the petitioner on 09.05.2014 was against law and natural justice and had to be set aside?

(ii) Whether he is entitled to reinstatement with back wages?

8. The petitioner examined himself as PW1 and marked Ex.P.2 to Ex.P.4. The administrator of the respondent / hospital was examined as R.W.1 and Ex.R1 to Ex.R.3 were marked. Ex.P.1 was marked through R.W.1 during cross examination.

9. The learned Labour Judge held that since there was no proof to show that the petitioner had received written resignation letter it would only prove the fact that the petitioner was orally terminated. The allegation that the petitioner was guilty of theft had not been proved by the respondent / management and not even a Police complaint had been filed.



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10. Ultimately, the learned Labour Judge proceeded to set aside the oral termination and directed reinstatement with back wages and all attendant benefits.

11. Challenging the same the management is before this Court.

12. The learned counsel appearing for the management would submit that it was the petitioner who had voluntarily left the services of the respondent concern and despite their statement before the Conciliation Officer that they were ready to take back the petitioner, he had not reported for duty. Therefore the petitioner is not entitled to reinstatement.

13. This allegation is denied by the learned counsel for the petitioner / workman who would submit that except for the statement made before the Conciliation Officer and the Labour Court no overt steps had been earlier taken by the respondent / management to ask him



to rejoin. In this regard he would rely upon the Judgement reported in

2004 (1) Mh.L.J. - Noble Paints Private Limited Vs. Ashok Tukaram

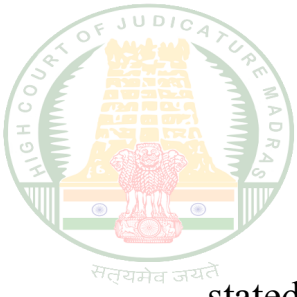
Shinde.

14. Heard the learned counsels and perused the records.

15. The arguments that has been put forward by the learned counsel appearing for the petitioner is that despite expressing willingness to take back the petitioner / workman, the petitioner has not reported for duty.

16. Before the Conciliation Officer in their counter the respondent management has stated as follows:

“அவர் பணி வேண்டும் என்று கேட்கிறார். நான் பணியில் சேர்த்துக் கொள்ள தயாராக உள்ளேன். முடிவு அவருடையதே.



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17. In the counter before the Labour Court the management have stated as follows:

“मनुतारर मीन्दुम पणियिल शेरन्तु पणिपूरिय
विरुप्पमिरुन्तल न्तिर्वकम् अवर् पणियिल शेरन्तु
कोल्ललाम् एन सडरुप्पिकुक्किन्तु.

18. However, prior to these there has been no communication from the respondent / management calling upon the workman to rejoin work particularly when he has sent letter on 21.07.2014 seeking reinstatement. Therefore, the statement made before the Conciliation Office and in the counter is nothing but a lip service.

19. In the Judgement relied upon by the respondent in ***Noble Paints Private Limited Vs. Ashok Tukaram Shinde***, the learned Judge who had later went on to become the Hon'ble Chief Justice of India had observed as follows:

“Insofar as the question of abandonment is concerned, in view of the well settled position in law, abandonment or relinquishment of service, is a question



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of intention. Whether there has been a voluntary abandonment of service is a circumstances of each case. In G.T.lad & Others Vs. Chemicals & Fibres of India, (1979) Vol. LLJ Page 258 a Bench of three learned Judges of the Subpreme Court, while laying down these principles, also held that normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. Insofar as this Court is concerned, in Gaurishankar Vishwakarma Vs. Eagle Spring Industries Private Limited & Others (1988) 1 CLR, Page 38, a Division Bench held that it is well settled that even in a case of abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and must hold an enquiry before terminating his service on that ground. In Abdul Rashid Vs. Indian Sailors Home Society & others, (1988) 1 LLN Page 120, the Division Bench in a case where the employer had raised the defence of abandonment of service, noted that if it was a case of voluntary abandonment, the employer would have communicated wit the workman and asked him to report for duty. That was not done.

20. The above facts would squarely apply to the facts of the



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instant case. There is nothing to show that the respondent / management had called upon the petitioner to come back to work and that had initiated disciplinary proceedings before terminating his services.

21. I see no reasons to interfere with the well considered Judgement of the Labour Court, Salem. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

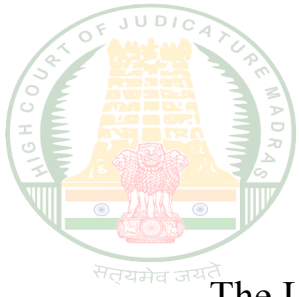
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