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W.P.Nos.20259 & 28970 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.20259 of 2014

& M.P.No.1 of 2014

and

Writ Petition No.28970 of 2014

W.P.No.20259 of 2014

1.The Chairman-cum-Managing Director,
Tamil Nadu Tourism Development Corporation Limited,
2, Wallajah Road, Chennai 600002.

2.The Assistant Manager – Administration,
Tamil Nadu Tourism Development Corporation Limited,
2, Wallajah Road, Chennai 600002.

3.The Manager,
Hotel Tamil Nadu,
Tamil Nadu Tourism Development Corporation Limited,
Dr.Nanjappa Road, Gandhipuram,
Coimbatore 641018.

..... Petitioner

-Versus-

1.The Presiding Officer,
Labour Court, Coimbatore.

2.S.Saroja Devi

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent in I.D.No.31 of 2004 and to quash the Award dated 26.02.2013 made in I.D.No.31 of 2004 by the 1st respondent.



W.P.Nos.20259 & 28970 of 2014

W.P.No.28970 of 2014

S.Saroja Devi

..... Petitioner

-Versus-

- 1.The Presiding Officer,
Labour Court, Coimbatore.
- 2.The Chairman-cum-Managing Director,
Tamil Nadu Tourism Development Corporation Limited,
2, Wallajah Road, Chennai 600002.
- 3.The Assistant Manager – Administration,
Tamil Nadu Tourism Development Corporation Limited,
2, Wallajah Road, Chennai 600002.
- 4.The Manager,
Hotel Tamil Nadu,
Tamil Nadu Tourism Development Corporation Limited,
Dr.Nanjappa Road, Gandhipuram,
Coimbatore 641018.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the records and papers from the file of the 1st respondent made in I.D.No.31 of 2004 dated 26.02.2013 insofar as the 1st respondent denied 75% back wages and to quash the same.

*For Petitioners in : Mr.Anand Gopalan
W.P.No.20259 of 2014 &
Respondents 2 to 4 in
W.P.No.28970 of 2014*

*For 2ndnd Respondent in : Mr.S.Kumarasamy
W.P.No.20259 of 2014 & for Mr.K.Bharathy
Petitioner in
W.P.No.28970 of 2014*

*1st Respondent in both : Labour Court
Writ Petitions*



W.P.Nos.20259 & 28970 of 2014

COMMON ORDER

WEB COPY The Writ Petition in W.P.No.20259 of 2014 has been filed by the management challenging the entire award passed by the 1st respondent – Labour Court, Coimbatore, dated 26.02.2013 in I.D.No.31 of 2004, while the other writ petition in W.P.No.28970 of 2014 has been filed by the employee challenging a portion of the same award whereby she was denied 75% of back wages.

2. Since W.P.No.20259 of 2014 was the first writ petition filed by the management, for the sake of convenience, the same is taken as a lead case. The parties will hereinafter be referred to as per their array in W.P.No.20259 of 2014.

3. The petitioner in W.P.No.20259 of 2014 is the management. The 2nd respondent – Smt.S.Saroja Devi was working as a Housekeeper under the petitioner. Her work was to oversee the work of the Sweepers-cum-Sanitary Workers. She was found to be deficient and charge memorandums were issued on 02.09.1998, 16.03.1999, 19.03.1999 and 23.03.1999.

4. According to the petitioner, a particular room was not checked and kept clean and tidy and therefore, on 15.06.1999, a disciplinary proceeding was initiated. On 15.06.1999 itself, she was placed under suspension pending



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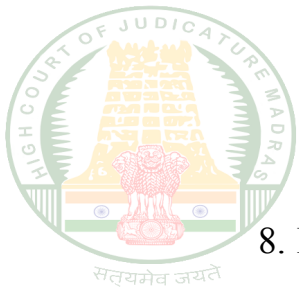
enquiry. After a domestic enquiry, she was dismissed from service on

WEB 14.05.2001.

5. The 2nd respondent raised an industrial dispute and took it to the Conciliation Officer. On failure of the conciliation proceedings, it was carried as Industrial Dispute before the Labour Court, Coimbatore, in I.D.No.31 of 2004.

6. A preliminary issue “*whether the domestic enquiry was conducted in a fair and proper manner and in accordance with law?*” was formulated by the labour court. The labour court came to a conclusion on the preliminary issue that the enquiry was not fair and proper and therefore, it gave an opportunity to the petitioner management to substantiate its case by way of letting in evidence.

7. During enquiry, the petitioner management examined 3 witnesses as M.Ws.1 to 3, in order to substantiate its case. M.W.1, instead of supporting the case of the management, gave evidence that it was the duty of the Sweepers cum Sanitary Workers to keep the rooms clean and tidy and that, in case, any room is not kept clean and tidy, then, the Housekeeper could only complain the same to the Manager. Thereafter, it falls within the management, viz., the 1st petitioner to initiate action on such complaint.



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8. It is an admitted case by both sides that no action was initiated against

the concerned Sweeper cum Sanitary Workers for not having kept the rooms clean and tidy. The labour court found that the evidence M.W.2 was general in nature and did not support the case of the petitioner management at all. With respect to M.W.3-Manager of the Hotel, who was instrumental in issuing suspension order to the 2nd respondent, the labour court found that he had not specifically stated that on 12.03.1999 there were defects in Room No.122. The labour court further found that if really M.W.3 had noted defects on 12.03.1999, he would have stated the same in the charge memo dated 28.04.1999 as well as in the charge memo dated 04.08.1999. On that basis, the labour court drew an inference that Charge No.1 was an after thought.

9. Insofar as Charge Nos.2 & 5 were concerned, even the enquiry officer had found that they were not made out. The enquiry officer had returned a report only with respect to Charge Nos.1, 3, 4 & 6. The allegation in Charge No.1 was a serious one qua the nature of work of the 2nd respondent and that was found to be an after thought.

10. Insofar as Charge Nos.3 and 4 were concerned, they were that the employee had not received the suspension order, despite the same being served on her. Apart from the oral evidence of M.W.2, no other evidence had been put



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forward. Therefore, on appreciation of the oral and documentary evidence

placed before it, the labour court came to the conclusion that the charges were not proved.

11. With respect to Charge No.6, the labour court had categorically found that there was no evidence at all. The same was with respect to Charge No.7 also. Therefore, I do not find any illegality or irregularity with respect to the order of the labour court in directing reinstatement of the petitioner in service with continuity of service and all other attendant benefits to the employee.

12. Having come to conclusion that the 2nd respondent employee was not at fault, the labour court found that as the 2nd respondent employee had not given any evidence, with respect to taking of efforts in getting a job, she was not entitled to get full back wages and the labour court had only granted 25% of back wages.

13. Aggrieved by the same the 2nd respondent employee has filed W.P.No.28970 of 2014. Since both the writ petitions challenge the Award passed in the same Industrial Dispute, hence, they were clubbed and heard together.

14. I heard Mr.Anand Gopalan, learned counsel appearing for the



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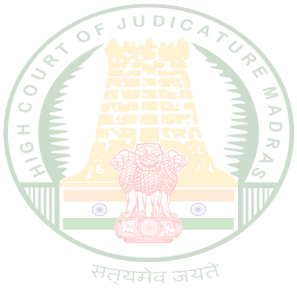
management and Mr.S.Kumarasamy, learned counsel appearing for the

WEB employee.

15. Mr.S.Kumarasamy, learned counsel appearing for the employee would contend that the petitioner was not at fault and therefore, she is entitled to full back wages.

16. On the other hand, Mr.Anand Gopalan, learned counsel appearing for the management would vehemently contend that the labour court had rightly come to the conclusion that the 2nd respondent employee was not entitled to more than 25% back wages because, she had not pleaded and proved that she was not gainfully employed. He would invite my attention to the judgements of the Supreme Court in **Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand [(2018) 18 SCC 299]** and **Kendriya Vidyalaya Sangathan v. S.C. Sharma [(2005) 2 SCC 363]**.

17. In both the aforesaid cases, the Supreme Court had held that initial burden is on the workman to prove that he had not been gainfully employed. Only on tendering that proof, the court had held that, it would shift to the management. It is here that counter filed by the management becomes relevant. The 2nd respondent employee in the instant case had specifically stated in her petition in para 13 as under:-



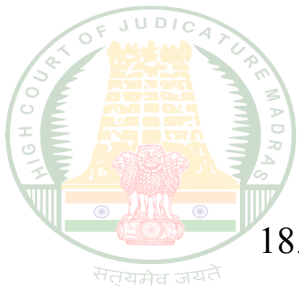
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“13. மொத்தத்தில் நான் ஒரு தவறும் செய்யாத அப்பாவி பெண் தொழிலாளி. நான் ஒரு ஏழை குடும்பத்தைச் சேர்ந்தவள், எனது கணவர் ஒரு கூலி ஆவார். எனக்கு இரு பெண் குழந்தைகள் இருக்கிறது. மேற்சொன்னவாறு என்னை சட்டத்திற்கெதிராக முறையற்ற வகையில் எதிர்மனுதாரர்கள் பணிநீக்கம் செய்திருப்பதால் நான் எவ்வித வேலையும் இன்றி பொருளாதாரத்தில் நலிந்து எனது குடும்பமே வறுமையில் வாடி வருகிறது. என் மீதான வேலை நீக்கம் சட்டத்திற்கெதிரானது என்பதாலும் நான் எந்த ஒழுங்கீனச் செயலையும் செய்யவில்லை என்பதாலும் மற்றும் என்னை பழிவாங்கும் நோக்குடனேயே எதிர்மனுதாரர்கள் செயல்பட்டு பணிநீக்கம் செய்திருப்பதாலும் நான் மீண்டும் முன்பின் பணிதொடர்ச்சியடன் வேலை பெற அருகதையாவதோடு பணியறவில் இருந்த காலங்களுக்குண்டான அனைத்து பின்பாக்கி சம்பளம் மற்றும் இதர சலுகைகளையும் நான் எதிர் மனுதாரரிடமிருந்து பெற நான் முழு அருகதையாகிறேன்.”

Though paragraph by paragraph response was filed by the manager in W.P.No.20259 of 2014, sadly for the management, the above averments have not been traversed. It is here I recollect the general rule of pleading that non traverse would amount to implied admission. This rule was laid down by the Supreme Court in **Lohia Properties (P) Ltd., Tinsukia, Dilbrugar, Assam v. Atmaram Kumar [Manu/SC/0549/1993 : (1993) 4 SCC 6]**.



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18. When a specific plea has been raised about non employment and the said plead was not denied, the question of placing the burden of proof on the workman does not arise. Had the management denied the plea of non employment raised by the workman, then, it would be an issue to be decided and evidence would have been let in. Fortunately for me, in this case, there was no denial at all. Therefore, the question of placing the burden of proof entirely on the workman does not arise. Therefore, insofar as paragraph 21 of the award which denied full back wages on the ground that the employee had not stated in her evidence that she had not taken efforts for alternative employment is a perverse finding. The labour court ought to have seen that the 2nd respondent employee had specifically pleaded her non employment and that she was suffering from the pangs of poverty. Despite the same, the management did not traverse the fact. Therefore, on the aforesaid principle, I hold that since the plea of non employment was not traversed by the management, it is deemed to be an admission on the part of the management. It is trite that admitted facts need not be proved. Therefore, the finding of the labour court insofar as back wages is concerned is contrary to the settled principle and it requires interference at the hands of this court.

19. Coming to the percentage of back wages, Mr.Anand Gopalan would



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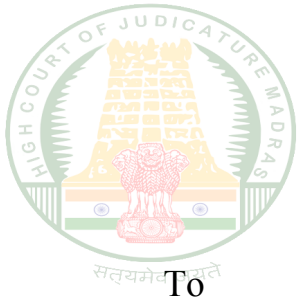
submit that the 2nd respondent employee was reinstated in service on 10.07.2014 and had retired on 31.03.2017 and she is also drawing provident fund pension. This fact has not been denied by the learned counsel for the 2nd respondent employee. Considering the subsequent developments, I feel that justice would be served if the back wages is enhanced to 50% from 25% as ordered by the labour court.

20. In view of the the aforesaid discussions, W.P.No.20259 of 2014 fails and the other writ petition in W.P.No.28970 of 2014 succeeds in part.

In the result, W.P.No.20259 of 2014 stands dismissed and W.P.No.28970 of 2014 stands partly allowed. Clause (i) of para 22 of the impugned award insofar as it restricts back wages to 25% stands modified. Instead of 25% back wages, the management is directed to pay 50% back wages to S.Saroja Devi (employee) and in all other respects the award of the labour court stands confirmed. The management is directed to settle the back wages within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

12..06..2023

Index : yes / no
Neutral Citation : yes / no
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V.LAKSHMINARAYANAN, J.

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