

(1967) 08 MAD CK 0049
In the Madras High Court

Peer Mohamed and Co.

APPELLANT

Vs

Mohamed Hussain and Another

RESPONDENT

Date of Decision : 08-08-1967

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (1968) 2 LLJ 98

Hon'ble Judges : T. Venkatadri, J

Bench : Single Bench

Judgement

T. Venkatadri, J.—The petitioner, Peer Mohamed & Co., has filed this petition to quash the order, dated 27 October 1964, of the presiding officer, additional labour court, Madras, made in Claim Petition No. 8 of 1964, directing the petitioner to pay a sum of Rs. 582.33 to respondent 1 employee in an application filed by him u/s 33C(2) of the Industrial Disputes Act claiming back-wages for the period commencing from 23 September 1961 to 5 May 1962 and salary for the subsequent period from May 1962 to 80 November 1963, amounting in all to Rs. 1,350.

2. Respondent 1 was originally employed under the petitioner on a salary of Rs. 60 per month. His services were terminated without any reason on 23 September 1961. Respondent 1 preferred an appeal u/s 41 of the Madras Shops and Establishments Act before the commissioner for Workmen's Compensation, Madras. The Additional Commissioner, by his order, dated 6 May 1963, set aside the order of termination of the petitioner and directed reinstatement of respondent 1. Respondent 1 did not either report himself for duty or call upon the petitioner within a reasonable time to put him in service after the order of termination was set aside by the Additional Commissioner for Workmen's Compensation. But it was only on 2 April 1963, respondent 1 sent a notice complaining that the petitioner had not taken any step in pursuance of the order setting aside the termination of his service. In this letter, it is true that respondent 1 complained that he approached the petitioner in person and

requested him to reinstate him in service and that the petitioner did not give him proper reply. On the other hand; the petitioner has adduced evidence that, though the order of termination of the service of respondent was set aside by the Additional Commissioner for Workman's Compensation as early as 5 May 1962, respondent did not offer himself for the post he held formally in the company. Further, there was material placed before the labour court to show that respondent was there-after working in the firm of Jafarali Motijamal & Bros. and others between July 1963 and November 1963. The presiding officer of the labour court has given a finding that respondent 1 had earned Rs. 767.67 during that period. He, therefore, deducted this sum from the amount claimed and passed an order to the effect that the amount due to respondent 1 by way of computation was Rs. 582.33. It is this order of the labour court the petitioner wants to quash by a writ of certiorari.

3. In my view, an important question arises for consideration, namely, whether, after an order of termination from service was set aside by a tribunal, it is the duty of the employer to invite the former employee to join service or whether it is the duty of the employee concerned either to claim, demand or insist upon the employee that he should be reinstated in his former job in the company.

4. It is common case that though the order of termination of the petitioner from service was set aside as early as 5 May 1962, there is nothing in writing at all till 2 April 1963; when for the first time respondent 1 complained to the petitioner that he had not taken steps to reinstate him in the post. It is here that I disagree with the contention of learned Counsel for respondent 1. It is not the duty of the employer to take steps to invite the employee in pursuance of the order of a tribunal setting aside the termination order passed by the employer; but it is the duty of the employee concerned either to claim or inform in writing that he is ready and willing to join the service within a reasonable time or to give a notice that he should be reinstated failing which he would be taking legal proceedings against the employer. In the absence of any of three things, the employer is under no legal obligation to take steps to reinstate the employee who was dismissed by him but subsequently restored to his job by the order of the tribunal. It is also reasonable that such an employee should express his readiness to join service under the employer within a reasonable time. He cannot keep quiet for months and months without expressing any desire on his part to take up the employment, to pursuance of the order of reinstatement passed by the tribunal. What is reasonable time would depend upon the facts and circumstances of each case. In *Bombay Steel Rolling Mills, Ltd. and Ors. v. Khemchand Rajkumar Steel Mills and Pahorpur Yards Labour Union*, Calcutta 1964 II L.L.J. 120 under the terms of settlement, the employer had agreed to take back into service the workmen on their acquittal in criminal proceedings. Some of act concerned workmen were acquitted. But they did not report for work or ask for reinstatement within a reasonable period on their acquittal. In considering what is reasonable time, their lordships of the Supreme Court observed at p. 122:

...But if after such acquittal the workmen preferred to remain away and did not ask for work, it is neither fair nor reasonable to ask the management to comply with the demand for reinstatement made months and months after such acquittal.

In that case, the order of reinstatement was set aside by the Supreme Court. The principle that would emerge from this is that, where there is order of reinstatement or agreement to reinstate between the employer and the employee, the employee should report himself for duty within a reasonable time. In the instant case, admittedly, for a period of nearly a year, respondent 1 did not take any step to call upon the petitioner to reinstate him in service. Under those circumstances, the labour court is wrong in directing the petitioner to pay a sum of Rs. 582.33, especially when it has given a finding that the employee was working elsewhere soon after the order of reinstatement was passed. If respondent 1 had been serious about his job under the petitioner, he could have either sent a notice or claimed the job soon after the passing of the order of reinstatement. On the other hand, respondent 1, even after succeeding in his appeal, has shown an attitude of indifference towards the employer and has adopted an " I don't care " attitude towards him. For the foregoing reasons, the order of the labour court is quashed.

5. The writ petition is allowed. Ordinarily, I would not have allowed costs but for the fact that learned Counsel for respondent 1 represented to me that his client is fighting the case on a matter of principle. As the issue is now found against him, he will have to pay costs. Counsel's fee Rs. 160.