

(2011) 01 MAD CK 0440

In the Madras High Court

Case No : Writ Petition No. 6786 of 2006

The Management, rep. by its Correspondent, St. Mary's
Matriculation School

APPELLANT

Vs

Sulochana and The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

Industrial Disputes Act, 1947 — Section 33C

Tamil Nadu Code of Regulations for Matriculation Schools — Article 2, 22A

Citation : (2011) 01 MAD CK 0440

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Fr. A. Xavier Arulraj, for the Appellant; A.M. Packia Nathan Easter, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This writ petition has been filed challenging the order of the second Respondent Labour Court, dated 27.1.2006, made in C.P. No. 400 of 2004.

2. By its order, dated 27.1.2006, the second Respondent Labour Court had directed the Petitioner management to pay a sum of Rs. 58,456/- to the first Respondent, as the amount due to her, as salary. The Petitioner management has stated that the first Respondent had been appointed as a writer in the Petitioner management school, which is a minority institution. The monthly salary of the first Respondent had been fixed at Rs. 4104/-.Thereafter, she had been re-appointed. She is governed by the Code of Regulations for Matriculation Schools in Tamil Nadu.

3. While so, she had absented herself from duty, without prior permission, from 6.6.2003. In spite of the reminders sent by the Petitioner management requesting her to report for duty, there was no response from her. Instead, she

had been sending telegrams to the management of the Petitioner school, requesting for extension of leave. Even though no leave had been granted to her, she did not join in duty. She did not produce the necessary medical certificate, within the time limit prescribed, as per the conditions of service applicable to her. Thus, she had violated Article 2 of Appendix VII of the Code of Matriculation Schools. Thereafter, she did not return to work. However, she had raised a dispute before the Labour Officer, Salem, claiming reinstatement in the service of the Petitioner management, with backwages. Since, the conciliation proceedings had failed, she had filed C.P. No. 400 of 2004, u/s 33C(2) of the Industrial Disputes Act, 1947, claiming a sum of Rs. 60,456/-, as backwages, from June, 2003 to July, 2004.

4. The Labour Court, Salem, without considering the fact that the service of the first Respondent was governed by specific statutory provisions of the Tamil Nadu Code of regulations for Matriculation Schools, had allowed the claim of the first Respondent. In such circumstances, the Petitioner management has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. The learned Counsel appearing on behalf of the Petitioner management had submitted that the order of the second Respondent Labour Court, dated 27.1.2006, made in C.P. No. 400 of 2004, is arbitrary illegal and void. It is contrary to the provisions of the Code of regulations for Matriculation Schools in Tamil Nadu. The second Respondent Labour Court had committed an error in coming to the conclusion that the Petitioner management was liable to pay the salary to the first Respondent employee for the period of her unauthorised absence. The second Respondent Labour Court had not considered the fact that the first Respondent had absented herself from duty, without the authorisation of the Petitioner management and without producing the necessary medical certificate, in accordance with the service rules applicable to her. The second Respondent Labour Court had accepted the claim of the Petitioner management, in spite of the fact that the first Respondent had admitted that the Petitioner management had asked her to join in duty on 3.11.2003. Further, the second Respondent Labour Court ought to have held that the first Respondent should have filed an appeal, u/s 22A of the Code of Regulations for Matriculation Schools. Therefore, the order of the second Respondent Labour Court, dated 27.1.2006, made in C.P. No. 400 of 2004, is liable to be set aside.

6. The learned Counsel appearing for the Petitioner management had relied on the following decision, reported in *Ruth Soren v. Managing Committee, East I.S.S.D.A 2001 (2) SCC 115*, wherein it has been held as follows:

The question for consideration is whether educational institution falls within the definition of "establishment" carrying business, trade or profession or incidental activities thereto. An "establishment" for the purposes of the Act means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary thereto.

Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of Article 19(1)(g) of the Constitution, would not be one falling within the scope of "establishment" under the Act. "Establishment", as defined under the Act, is not as wide as "industry" as defined under the Industrial Disputes Act. Hence reliance on Bangalore Water supply and Sewerage Board case for the Appellant is not of any help.

7. In the counter affidavit filed on behalf of the first Respondent it has been stated that she had joined in the service of the Petitioner management, as a clerical staff (non teaching staff), in the year, 1987. She had been confirmed in the said post, on 1.6.1990. It had also been stated that she had fallen ill and could not go to work, from 7.6.2003 to 30.10.2003. Therefore, she had gone on medical leave. In spite of the requests made by the first Respondent, to the management of the Petitioner school, seeking extension of medical leave, no reply or notice had been sent by the Petitioner management to the first Respondent.

8. Further, the Petitioner management did not send any communication directing the first Respondent to join in duty. In such circumstances, the first Respondent had been constrained to raise an industrial dispute, before the second Respondent Labour Court. Based on the evidence available on record and in view of the relevant provisions of law, the second Respondent Labour Court had passed the order, dated 27.1.2006, in C.P. No. 400 of 2004, directing the Petitioner management to pay a sum of Rs. 58,456/- to the first Respondent, towards the arrears of salary, from June, 2003 to July, 2004. There is no infirmity in the said order passed by the second Respondent Labour Court. The writ petition filed by the Petitioner management is devoid of merits and therefore, it is liable to be dismissed.

9. In view of the averments made in the affidavit filed in support of the writ petition and in the counter affidavit filed on behalf of the first Respondent and in view of the submissions made by the learned Counsels appearing on behalf of the parties concerned, this Court is of the considered view that the Petitioner management has not shown sufficient cause or reason to grant the reliefs, as prayed for by the Petitioner management, in the present writ petition. The Petitioner management has not been in a position to show that the order of the second Respondent Labour Court, dated 27.1.2006, made in C.P. No. 400 of 2004, is arbitrary, illegal and void.

10. From the records available before this Court, it is seen that the Petitioner management had not filed any document before the second Respondent Labour Court, during the proceedings in C.P. No. 400 of 2004, to substantiate its claim that the first Respondent had been requested to rejoin in duty. If the allegation

of the Petitioner management that the first Respondent had absented herself from duty, unauthorisedly, is true, it would have been open to the Petitioner management to have initiated appropriate proceedings against the first Respondent, as per the relevant provisions of law. However, the Petitioner management had not chosen to initiate any action against the first Respondent.

11. Further, the contention raised on behalf of the Petitioner management that the first Respondent ought to have availed the appellate remedy, u/s 22.A of the Code of Regulations for Matriculation Schools, cannot be sustained. It is seen that the said provision would apply only in cases where a punishment is imposed on the person concerned. As such, it would not apply to the present case, which has arisen due to the non-payment of the salary due to the first Respondent, who is a non-teaching staff of the Petitioner school. In such circumstances, the contentions raised on behalf of the Petitioner management cannot be countenanced. Since, the writ petition is devoid of merits, it stands dismissed. No costs.