

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.7081 and 7082 of 2014  
and  
MP.No.1 of 2014

1. The Management  
M/s. Apha College of Science  
Arts and Engineering  
Rep.by its Chairperson  
Dr.Grace George,  
No.16, 3rd Cross Street  
West CIT Nagar, Nandanam  
Chennai -600 035
  2. The Principal  
M/s. Apha College of Science  
Arts and Engineering  
No.34, Udayavoorkoil Street  
Thirumazhisai, Poonamallee  
Chennai - 602 107 ... Petitioners in both Petitions
- Vs
1. The Presiding Officer  
I Additional Labour Court  
High Court Campus, Chennai -104
  2. D.Saravanan ... Respondents in both Petitions

Prayer in WP.No.7081 of 2014

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 24.10.2013 in I.A. No.577 of 2013 in I.D. No.102 of 2009 and consequently directing the 1st respondent to defer/keep in abeyance of the cross examination of WW1 evidence till the evidence of the petitioner Management is over in I.D. No.102 of 2009.

Prayer in WP.No.7082 of 2014

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the concerned records from the 1st respondent, quash

the order of the 1st respondent dated 24.10.2013 in I.A. No.578 of 2013 in I.D.No.102 of 2009 insofar as partly disallowing the same and consequently directing the 1st respondent to permit the petitioner Management to examine its witnesses before cross examination of WW1.

For Petitioner : Mr.Balan Haridass  
for Mr.O.Raman

For R2 : Mr.V.Govarathan

#### C O M M O N O R D E R

Heard Mr.Balan Haridoss, learned counsel appearing for the petitioners and Mr.V.Govarathan, learned counsel appearing for the second respondent.

2. The petitioners are the Management and Principal of an Educational Institution, which are aggrieved by the orders passed by the First Additional Labour Court, Chennai in I.A.Nos.577 and 578 of 2013 in I.D.No.102 of 2009.

3. A dispute was raised by the second respondent workman challenging his dismissal from service. The Management though entered appearance, did not at the first instance, examine their witnesses or filed proof affidavit and the case was posted to 30.01.2013 for cross examination by the respondent. At that stage, the Management filed petitions in I.A.Nos.577 of 2013 and 578 of 2013 requesting the Labour Court to permit them to lead evidence to prove the misconduct alleged to have been committed by the respondent Workman. The said applications were rejected by the Labour Court stating that up to 03.9.2013, the Management did not take any steps and that it had waived its right and permitted the workman to adduce evidence and cross examining the respondent witnesses.

4. After hearing the learned counsel for the petitioners as well as the respondent workman, it is to be pointed out that the order of dismissal came to be passed by the Management without conducting any domestic enquiry. Therefore, the Labour Court would have to decide the first issue as to whether the Management should be permitted to lead evidence to prove the misconduct and the Labour Court would have to examine as to whether the domestic enquiry was fair and proper. However, in the instance case, that question does not arise since admittedly, there was no domestic enquiry. Therefore, necessarily the Labour Court has to permit the Management to lead evidence to prove the charges against the respondent workman. Technically, Labour Court might have been right in

stating that Management slept over their right. Nevertheless, in the facts and circumstances of the case, the evidence of the Management is very essential to consider and adjudicate the dispute. Further more, since the dispute raised, in the year 2009, by the workman is getting delayed on account of the challenge to the impugned orders, this Court feels that, in the interest of justice, the Management can be permitted to lead evidence. In the peculiar facts and circumstances of the case, the impugned orders are required to be set aside and the Management be permitted to lead evidence and the Labour Court, thereafter to proceed with the matter in accordance with law.

5. However, since the workman has been made to run from pillar to post from the year 2009, this order goes with a condition that the respondent workman should be paid the litigation expenses. Accordingly, while allowing the writ petitions by setting aside the impugned orders, there will be a direction to the Management / College to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondent Workman within a period of two weeks from the date of receipt of a copy of this order and on production of proof of such payment, the Labour Court shall permit the petitioners Management / College to lead evidence by re-opening the matters and thereafter proceed in accordance with law. The parties have assured that they will not have many witnesses and hence, taking note that the dispute is of the year 2009, the Labour Court shall endeavour to complete the trial at the earliest, preferably, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ga  
To

The Presiding Officer  
I Additional Labour Court  
High Court Campus, Chennai -104

+2cc's to Mr.V.Govarathan, Advocate, S.R.No.17491

+1cc to Mr.O.Raman, Advocate, S.R.No.17579

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MSM(CO)  
CA(06/04/2016)