

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4740 of 2018

M.Sivakumar

.. Petitioner

-vs-

1. The Management

Ethiraj College for Women
No.70, Anna Salai
Egmore
Chennai 600 008

2. The Presiding Officer

III Additional Labour Court
Chennai

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the entire records which culminated in passing the award dated 31.08.2017 made in I.D.No.174 of 2012 on the file of the second respondent, quash the same and consequently direct the first respondent management to reinstate the petitioner in service with all consequential service and monetary benefits within a time limit to be stipulated by this Hon'ble Court.

For Petitioner :: Mr.N.Senthilkumar

ORDER

This writ petition is directed against the impugned award dated 31.8.2017 passed in I.D.No.174 of 2012 on the file of the III Additional Labour Court, Chennai, in and by which the prayer of the petitioner for reinstatement was refused, in lieu thereof, a sum of Rs.1,00,000/- (Rupees one lakh only) was awarded as a lumpsum compensation, specifically holding that he is not entitled for any other reliefs.

2. Attacking the reasons and the conclusions reached, finally refusing to grant the main prayer of reinstatement in service, the learned counsel for the petitioner submitted that the petitioner was appointed as a Lab Assistant on 25.8.2008 on a monthly salary of Rs.6,110/- in the first respondent college. When he was continuously working for a period of two years, the incident now in question occurred, for which a memo was issued on 14.7.2010 to the petitioner alleging that a participant had

missed her camera in the meeting held on 12.7.2010 in the meeting hall and the petitioner was charged for the offence of theft of the said camera, because he was in-charge for arrangement of mike and sound control in the meeting hall. The petitioner, on receipt of the said charge memo, gave his reply denying all the allegations and finally he was dismissed from service. Against the order of dismissal, he raised an industrial dispute under Section 2(A)(1) of the Industrial Disputes Act before the Assistant Commissioner of Labour-II. Finally, a failure report was filed on 28.12.2011 and when the request of the petitioner for reinstatement was refused by the management, he raised the I.D.No.174 of 2012 before the III Additional Labour Court, Chennai, taking a ground that the order of dismissal cannot be passed against the petitioner contrary to the principles of natural justice, when he was working continuously for a period of two years in the respondent Ethiraj College for Women.

3. A detailed counter affidavit was filed by the first respondent taking a ground that the dispute itself was not maintainable, inasmuch as no jurisdiction was available with the Labour Court to adjudicate the dispute of non-employment, in view of the provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, 1976, which governs and controls the staff and employees of the college. Further, under Section 21 of the Act, an appeal is provided to the Tribunal, as the Tribunal has been constituted under Section 38 of the Act which is presided over by a Judicial Officer not below the rank of a District Judge and Section 39 of the Act prescribes the modus of disposing off such appeals. Yet another specific bar was also raised that the petitioner was working as a Lab Assistant since 25.8.2008 and on 12.7.2010, when there was a seminar hosted by the respondent college, several delegates from various institutions came and participated in the said seminar. Since the petitioner was in-charge of the audio setting at the seminar hall and the delegates who participated in the seminar brought various valuable things in connection with such seminar and one such delegate left a valuable camera in the seminar hall, which was stealthily removed by the petitioner and kept in his custody under lock and key and this was also admitted by the petitioner himself in his letter dated 17.7.2010, an enquiry was held in accordance with the principles of natural justice and the petitioner also participated in the enquiry effectively and ultimately, the enquiry officer found him guilty of all the charges of stealing the camera. However, when the enquiry officer, on the basis of the admitted guilt, submitted a report, instead of taking the extreme step of dismissal from service, he was discharged from service by paying one month's salary and the same was also credited to his savings bank account No.10223 with Indian Overseas Bank, Ethiraj College Extension Counter. Since the first respondent college is a temple of learning, a person with the attitude of stealing other's property cannot be continued in service and he has been rightly discharged from

service.

4. Analysing both the pros and cons of both parties, the second respondent Labour Court has framed the following issues:-

- (i) Whether the respondents have proved the charge of misconduct by the petitioner before this Court?
- (ii) Whether the termination of the petitioner is sustainable or not?
- (iii) Whether the petitioner is entitled for reinstatement with continuity of service?
- (iv) Whether the petitioner is entitled for backwages and all other attendant benefits?
- (v) What are the other reliefs the petitioner is entitled for?

5. After finding that there was no direct evidence for the involvement of the petitioner in the occurrence and on the contrary, only based on the factors that the petitioner was in-charge of the conference hall and he had not opened the pantry room doors stating that he was not having the keys, he has been suspected to have committed the theft of camera, under these circumstances, it was held that the respondents are duty bound to discharge their initial burden on the following aspects,

(a) whether the placing of camera inside the pantry room by any person other than the petitioner is ruled out?

(b) whether the pantry room is proved to have independent door and lock and key? and

(c) whether the petitioner is proved to be the custodian of the pantry room lock and key?

Ultimately, while answering the issues, the Labour Court, in paragraph-27 of the award, has held that though the said allegation is not proved to the satisfaction of the Court, yet, by his own suspicious conduct, the petitioner has invited the apprehensions of the respondent that he would have committed the theft, because the nature of employment compels the petitioner to interact with the teaching and non-teaching faculties and also with the students every day. In these circumstances, if the petitioner is granted with the relief of reinstatement, that would lead to an embarrassing situation for both the petitioner and the management in their day to day activities and this apart, since the petitioner had also worked for only a limited period of years, the Court came to the conclusion that he should be refused the relief of reinstatement and other consequential benefits, but, in lieu of reinstatement, he could be paid a sum of Rs.1,00,000/- as a lumpsum compensation.

6. In view of the above, the submission of the learned counsel for the petitioner that when the respondent management has not proved the charge, a fair enquiry should have been held and since there was no proper enquiry held, the refusal to grant the main prayer, namely, for reinstatement in service is wholly

unjustified, do not carry any merit. The reason is that, as mentioned above, the petitioner after receiving the charge memo dated 14.7.2010, has given his reply admitting the error and the mistake committed by him. Therefore, once the case of the petitioner, namely, admission of guilt has been shown in his reply to the charge memo, the enquiry officer, who was admittedly appointed to probe into the charge, has rightly come to the conclusion that the petitioner himself has admitted his guilt. On this basis, the disciplinary authority also has passed the order discharging the petitioner from service without even imposing the extreme penalty of dismissal from service. That itself shows that the petitioner has been given sufficient leniency. Hence, this Court, finding that the direction to pay a sum of Rs.1,00,000/- in lieu of reinstatement cannot be found fault with, is not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
III Additional Labour Court
Chennai

+1cc to Mr.N.Senthilkumar, Advocate, S.R.No.16625

W.P.No.4740 of 2018

SSD(CO)

RRK(06/04/2018)

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