

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.15632 of 2016

Annai Madha Educational Institution
rep.by its Correspondent
S.Rasavenkatesan, S/o.P.Sellamuthu
Trichy Main Road, Edaicheruvai Village
Akkanur Post, Tittagudi Taluk
Cuddalore District.

..... Petitioner

Vs

1. The Presiding Officer
Labour Court, Cuddalore
Cuddalore District.

2.N.Mayavel Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records relating to the impugned award passed by the labour court, cuddalore in I.D.No.2 of 2015 dated 31.08.2015 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.N.Thiagarajan for R2

O R D E R

The present writ petition is filed, challenging the award of the labour court in I.D.No.2 of 2015 dated 31.08.2015. By the award dated 31.08.2015 passed in I.D.No,2 of 2015, the labour court set aside the order of termination passed against the workman and ordered reinstatement with continuity of service and backwages. This award is under challenge in this writ petition.

2. The petitioner herein is the Correspondent of the educational institution. The second respondent was working as a driver and it is alleged that in the year 2013, when he was driving the bus with students, the bus met with an accident on account of his rash and negligent driving. Thereafter the workman did not report to work. After waiting for some time, the workman approached the labour court by raising I.D.No.2 of 2015.

The case of the workman was that he was terminated from services on and from 07.06.2014 without any basis and the termination is illegal.

3. The claim of the petitioner herein is that though they had engaged a counsel to defend their case, but, unfortunately the counsel did not file vakalat and did not even inform the status of the case to the petitioner. The petitioner claims that only when a notice was served in C.P.No.15 of 2016, they had enquired their counsel regarding the labour court proceedings. The petitioner came to know that the labour court passed an award on 31.08.2015 on merits and therefore the claim of the petitioner is that the award was an exparte award and the same has to be set aside by this honourable court. Under such circumstances, the extraordinary jurisdiction of this Court has been invoked challenging the award of the labour court in I.D.No.2 of 2015 dated 31.08.2015.

4.The case of the workman is that he was orally terminated from service which is illegal and it is rightly held so by the labour court. But the case of the management is that it is only the workman who voluntarily did not report for work after the accident, which would amount to relinquishment and therefore the award of the labour court directing reinstatement is illegal. Which of the two contentions is correct is the issue.

4.1.The labour court has considered the issue as to whether the termination of the workman was against law and if so to whether the workman is entitled to continuity of service and backwages after reinstatement.

5. A perusal of the award of the labour court shows that on behalf of the second respondent herein, ie., the workman, he himself has been examined and the failure report has been marked. The management herein did not file any counter and did not adduce any evidence.

5.1.The fact remains that the second respondent herein has joined the institution of the petitioner on 30.04.2007 with an initial salary of Rs.3000/- and at the time of termination of services, his salary was Rs.6000/-. The labour court has considered the issue as to whether the termination would amount to retrenchment or termination on account of misconduct. If the termination is invoking Section 25 (F) of the Industrial Disputes Act, the pre conditions for retrenchment ought to have been followed and it is not so in this case. Even in case of termination on account of misconduct, show cause notice should have been issued, enquiry should have been conducted and only thereafter the second respondent ought to have been removed from services. That was also not the case here.

6. Inasmuch as there was not even a show cause notice issued as against the second respondent, the termination on 07.06.2014 was only an oral termination, which is against the law and therefore the second respondent is entitled to reinstatement with the benefit of continuity of service and backwages.

6.1. A Perusal of the award passed by the labour court would clearly show that the labour court has considered all relevant issues and also the questions of law and therefore, the award passed by the labour court cannot be said to be illegal or arbitrary.

7. It is not proved that this workman voluntarily relinquished his service. There is no proof to show that the dismissal was on account of retrenchment or a lay off. Under the circumstances, the order passed by the labour court setting aside the termination and ordering reinstatement with backwages is justified.

8. Accordingly, this writ petition stands dismissed. Award of the labour court is confirmed. Connected W.M.P.Nos.13585 of 2016, 1895 and 1896 of 2017 are closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer
Labour Court, Cuddalore
Cuddalore District.

+lcc to Mr.N.Thiagarajan, Advocate sr.no.55914

+lcc to Mr.C.Prakasam Advocate sr.no.55632

W.P.No.15632 of 2016

nr 26/09/2018