

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.22382 and 22493 of 2009 and
M.P.Nos.1 and 1 of 2009 and
M.P.Nos.1,1,2,2,3 and 3 of 2010

The Management
rep. by its Principal
Mohanmall Chordia Jain Industrial Institute
Meenambakkam,
Chennai - 114. Petitioner in both WPs.

Vs

1. The Presiding Officer
3rd Additional Labour Court
Chennai. 1st respondent
in both WPs.
2. K.Kumar 2nd respondent
in WP:22382/09
3. Daniel Rajaselvam 2nd respondent
in WP:22493/10

Petitions are filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for the records of the first respondent pertaining to the impugned award dated 21.8.2009 made in I.D.Nos.195 and 196 of 2003 and quash the same.

For Petitioner : Mr.P.Vishnu
(No appearance)

For Respondents : Mr.P.Vijendran
for 2nd respondent
in both writ petitions

COMMON ORDER

These writ petitions are filed by the management seeking issuance of writ of certiorari calling for the records of the first respondent pertaining to the impugned award dated 21.8.2009 made in I.D.Nos.195 and 196 of 2003 and quash the same.

2. The facts in a nutshell are as under: The second respondent in W.P.No.22382 of 2009 was appointed as Instructor in the Industrial Training Institute in the year 1991, but thereafter he resigned. He was thereafter re-appointed as Instructor during the year 1994 and inasmuch as the petitioner is only a teaching staff, according to the petitioner management, he is not workman and he will not come under the purview of the Industrial Disputes Act. The second respondent in W.P.No.22493 of 2009 was appointed as Instructure in the year 1992.

3. It is stated that when the scale of pay of teaching and non-teaching staff of the training institute was revised on 25.5.1995, the second respondent who was an Instructor was paid at Rs.1400/- per month and according to the petitioner, there is no arrear due and payable to the second respondent.

4. It is further averred that during the month of August, 1996, the Director General of Employment and Training in his Letter No.DGET-19(19)95-CD, dated 16.8.1996 instructed that a minimum of 2/3rd of the salary being paid to a government servant of equivalent level should be paid to the faculty/staff members of the Private Industrial Training Centres. Pursuant to the said direction, the State Director of Employment and Training had, vide Lr.No.Affi/76765/97, dated 13.6.1997, instructed the private Industrial Training Centres to follow the recommendation of the National Council for Vocational Training with effect from 1.8.1997 and in default, it was stated that the private Industrial Training Centres would be de-affiliated.

5. It is stated that the petitioner submitted a note to the Director of Training Institute stating that in view of the poor status of the trainees in the training institution, who cannot afford to pay double the amount of tuition fees, the salaries of the Instructors cannot be revised as recommended in the communications referred supra, and the Principal suggested to raise the salary of staff at 20% for Instructors and 15% for

other staff and, accordingly, the pay of the second respondent was revised to Rs.2,350/-.

6. It is the case of the petitioner that in view of the poor admission rate of students to the courses, the petitioner proposed to relieve excess teaching and non-teaching staff trade wise and joining date wise. The second respondent was informed that he would be absorbed in the A.M.Jain College in suitable post, but he did not opt the same. Therefore, one month's notice pay and employees provident fund claim was settled as per the claim of the second respondent and the second respondent was relieved from the service.

7. However, the second respondent raised an industrial dispute seeking to set aside his termination and for reinstatement with backwages. The Labour Court, by the impugned award, ordered reinstatement of the second respondent with 50% backwages, continuity of service and other attendant benefits.

8. Assailing the said order, the petitioner management had filed these writ petitions for the relief stated supra.

9. There is no representation on behalf of the petitioner management. The grounds of challenge to the impugned awards raised in these writ petitions mainly highlight that the second respondents in both the writ petitions do not fall under the definition of workman and, therefore, the dispute cannot be referred for adjudication under the Industrial Disputes Act.

10. The next plea raised in the grounds is that backwages cannot be granted in a routine manner without considering the overall facts and circumstances of the case and that when the relieving order does not cast any stigma, there is no violation of principles of natural justice.

11. Per contra, the learned counsel appearing on behalf of the second respondents in both the writ petitions reiterated the reasons that weighed with the Labour Court in passing the impugned awards and prayed for dismissal of these writ petitions.

12. I heard Mr.P.Vijendran, learned counsel for the second respondent in both the writ petitions and perused the documents available on record.

13. In its order, the Labour Court observed that the second respondent in both the cases were working from 1992 to 2002 and during the said period they have not been issued with any Memo and there were also no bad records. It has also been observed that there is nothing on record to show that the second respondent was directed to work in A.M.Jain College. There was also no record to show that after 13.9.2005, the second respondent was working in A.M.Jain College. On the other hand, it is the say of the second respondents in both the writ petitions that on 14.9.2005, they were denied employment.

14. In the case on hand, the petitioner management has not sent any letter to the second respondents calling for explanation as to why they were not attending the work after 13.9.2005 and no material has been produced to show that disciplinary action was taken against them. If the second respondents did not attend the work, it is the bounden duty of the petitioner management to call for explanation from them. In the absence of any material produced by the Management, it is to be held that the Management had denied employment to the second respondents in both the writ petitions.

15. Qua the arguments of the learned counsel for the petitioner that the second respondents in both the writ petitions were not the workmen and they were working as Instructors and, therefore, Industrial Disputes Act will not apply to them, referring to the decision of this Court in Principal St. Sebastian Industrial Training Institute, Madras and another v. Principal Labour Court, Madras and another, reported in 2000 (II) LLJ 333, the Tribunal held that the second respondents in both the writ petitions cannot be treated as teacher as they are Instructors discharging technical work, which falls within the definition of Section 2(s) of the Industrial Disputes Act. Ultimately, the Tribunal held that the second respondent was denied employment by the Management.

16. Since the second respondents in both the writ petitions have not been issued with any memo during their service from 1992 to 2002 and there were no bad antecedents and in fact, they worked as per the direction of the Management, this Court finds that the findings of the Tribunal ordering reinstatement of the second respondents in the writ petitions is perfectly correct. This Court finds no illegality and/or perversity in the order of the Tribunal. No valid grounds have been made out to interfere

with the order of the Tribunal. However, considering the fact that the second respondents in both the writ petitions were not in employment for a long period of time, the backwages is reduced to 20% as against 50% awarded by the Labour Court.

17. For the foregoing reasons, these writ petitions are dismissed by confirming the impugned award dated 21.8.2009 on the file of the learned III Additional Labour Judge, Chennai. The petitioner is directed to reinstate the second respondent with continuity of service with 20% backwages from the date of reinstatement of the second respondents. The above said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

The III Additional Labour Court,
Chennai.

+lcc to Mr.P.Vijendran, Advocate sr.15983 [29/10/2018]

सत्यमेव जयते W.P.Nos.22382 and 22493 of 2009 and
M.P.Nos.1 and 1 of 2009 and
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srg 26/10/2018

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