



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2018

PRONOUNCED ON : 06.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.10409 of 2015

and

M.P. (MD) .Nos.1 and 2 of 2015

The Secretary,
Home Church,
C.S.I., W.C.C.Road,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

.. Petitioner

Vs.

1.The Labour Court,
Tirunelveli.

2.M.Joseph Rajan

.. Respondents

PRAYER: The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the preliminary award passed in I.D.No.78 of 2007 dated 30.03.2010 as well as the final award passed in I.D.No.78 of 2007 dated 13.05.2015 on the file of the Labour Court,Tirunelveli, and quash the same.

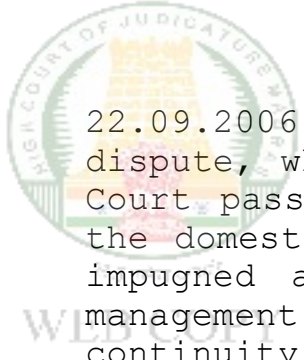
For Petitioner : Mr.M.P.Senthil

For Respondent No.1 : Court

For Respondent No.2 : Mr.R.Vijayakumar

ORDER

The writ petitioner is a religious institution. The second respondent was appointed as an Office Assistant in the writ petitioner Church in July, 1990. He was working as a Clerk during 2005. He was placed under suspension by proceedings dated 30.10.2005. The allegation against the second respondent is that at the time of counting the Church offertory money, he committed theft of Rs.1,100/- by pocketing eleven 100 rupee notes. Thereafter, a full-fledged enquiry was said to have been conducted. The second respondent is said to have crossexamined the ~~enquiry committee~~ <https://www.mca21.gov.in/> services. Finally, the enquiry committee submitted its report dated 30.10.2005. Based on the said enquiry report, the second respondent herein was terminated from service on



22.09.2006. Thereafter, the second respondent raised industrial dispute, which was taken on file in I.D.No.78 of 2007. The Labour Court passed its preliminary award dated 30.03.2010 holding that the domestic enquiry was not fairly conducted. Thereafter, by the impugned award, the order of dismissal was set aside and the management was directed to reinstate the second respondent with continuity of service. However, backwages was restricted to 25 %. Aggrieved by the same, the petitioner has filed this writ petition questioning the preliminary award dated 30.03.2010 and the final award dated 13.05.2015.

2. Heard the learned counsel appearing on either side.

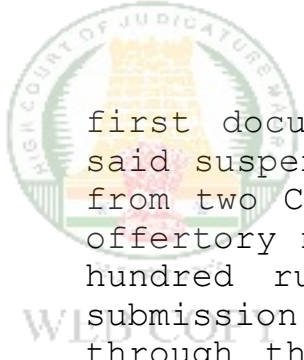
3. The learned counsel for the petitioner would submit that due to change in Church management, they were not actually aware of the passing of the preliminary award. That is why, they did not avail the opportunity to adduce fresh evidence before the Labour Court. In any event, once they realised that the Labour Court had held that the domestic enquiry was not fairly conducted, the management filed I.A.No.40 of 2015 in I.D.No.78 of 2007 to adduce oral evidence. Though the said petition was dismissed, the management was held entitled to mark the proceedings of the Domestic Report and rely on it. This order was passed on 25.02.2015. The Labour Court after perusing the entire materials including the domestic enquiry report, finally passed the award dated 13.05.2015 holding that the termination was illegal.

4. The learned counsel for the petitioner would submit that they are still entitled to contend that the preliminary award is bad in law. The learned counsel for the petitioner would contend that a mere look at the enquiry report that was marked as Ex.M.1 would show that the second respondent herein took full part in the proceedings and even crossexamined the witnesses. Thus, there was full compliance with the principles of natural justice. He, therefore would contend that the Labour Court erred in holding that the domestic enquiry conducted by the management was not fair. He would also pointed out that this was a case of theft of the offertory money and therefore, the delinquency committed by the employee should be viewed very seriously and not lightly. The learned counsel reiterated the grounds taken in the affidavit filed in support of the writ petition.

5. Having considered the rival contentions, this Court is of the view that the impugned award does not call for any interference. The Labour Court in its preliminary award had observed that the management did not comply with the principles of natural justice, before holding that the employee was guilty of theft of the offertory money.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The petitioner/management had filed its typedset of papers. There are as many as 11 enclosures in the typedset. The

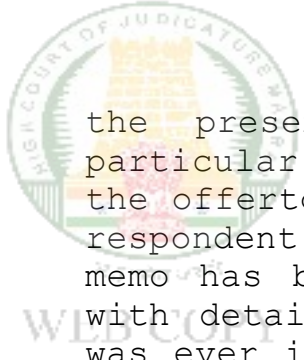


first document is the order of suspension dated 30.10.2005. The said suspension order states that the Secretary received complaint from two Church Deacons to the effect that during the counting of offertory money, the second respondent herein tried to put in few hundred rupee notes in his pocket. This was followed by the submission of the enquiry report dated 30.04.2006. This Court went through the contents of the enquiry report. The Exhibits placed for reference before the enquiry committee, were the complaint letter of the Deacons and the copy of the suspension order issued to the second respondent herein. The Deacons who were present during the incident were examined. The enquiry report states that the second respondent also crossexamined the witnesses. Even in the enquiry report, it is alleged that the second respondent herein had actually crumpled the 100 rupee notes. This is described in the following manner in the enquiry report.

"(i) In the process of counting Offertory, the accused is found to have collected higher denomination rupee notes and thrusting the notes in his left hand fist, instead of sorting out higher denomination notes and putting the same on the specific tray placed for the purpose on the western side of the counting table. But the accused on thrusting the rupee notes in his hand had moved away in the opposite direction of the specific tray on hiding the left hand beneath the tray and made effort to pocket the rupee notes in left hand side pocket. By that time complainant had got hold of the left hand and squeezed his hand to release the rupee notes in captivity of the accused and while the rupee notes so placed were counted, it was 11 hundred rupee notes in folded and crinkled condition. The accused is found to have resisted to show his left hand, until he was forced to release the higher denomination rupee notes. His movement to the farthest of the higher denomination cash tray clearly reveals his intention of steal the higher value notes."

7. But what is more significant is that another witness had alleged that the second respondent is said to habitually misappropriate the offertory money. The enquiry committee came to the conclusion that the guilt alleged against the second respondent was established beyond doubt only from the fact that he was holding the offertory money in his fist in a crumpled condition.

8. The fact remains that no formal charge memo was ever issued to the second respondent. Infact, any disciplinary action can be said to properly commence only with the issuance of the charge memo. Only if a charge memo is issued, the delinquent will know the allegations that he has to meet. Otherwise, the proceedings will be vitiated by the vice of vagueness. Even in



the present case, eventhough the allegation is that on a particular day, the second respondent attempted to commit theft of the offertory money, one witness made a submission that the second respondent habitually indulged in such misappropriation. If charge memo has been issued, the charges also would have been specific with details and particulars. In this case, no such charge memo was ever issued. The order of dismissal dated 22.09.2006 chose to terminate the second respondent from service of the Church permanently based on the findings of the enquiry report. There is nothing on record to show that the second respondent was furnished with a copy of the report and his remarks on the same were obtained. Thus, the usual formalities that have to be observed in respect of any disciplinary proceedings were not followed by the management before terminating the second respondent herein from service. However, the Labour Court gave an opportunity to the management to adduce fresh evidence. Eventhough such an opportunity was given, the management did not avail such opportunity. It is true that the employee for reasons best known to him chose to file W.P.No.12952 of 2010 questioning the preliminary award but, ultimately, the said writ petition was dismissed as withdrawn. Since the management did not avail the opportunity, which was given to it, it has to stand or fall on the strength of the enquiry report dated 30.10.2005. This Court is of the view that the preliminary award dated 30.03.2010 passed by the Labour Court is acceptable. Since no further evidence was adduced by the management before the Labour Court, this Court will have to proceed in the matter as if there was no legally acceptable material against the second respondent. Nevertheless, in view of the order dated 25.02.2015, passed in I.A.No.40 of 2015, the Labour Court did look into the enquiry report as well as the order of termination dated 22.09.2006. But, that cannot really improve the situation or advance the cause of the management. Therefore, this Court is of the view that the preliminary award as well as the final award passed by the Labour Court do not warrant any interference. There is no merit in this writ petition.

9. In the result, this Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Judge, Labour Court, Tirunelveli.

+1cc to Mr.M.P.SENTHIL, Advocate, SR.No. 67191

W.P (MD) No.10409 of 2015

06.06.2018