



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.03.2018

DELIVERED ON : 04.06.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.3656 of 2014 and
W.P. (MD) No.6615 of 2015 and
M.P. (MD) No.1 of 2014

M.Mani ... Petitioner in all petitions

Vs.

1. The Labour Court,
Tirunelveli.
2. Christian Mission Service,
Silverdale Coonoor,
Nilgiri District.
3. The Area Manager,
C.M.S. Area Office,
Christian Mission Service,
Azhagiapandipuram,
Kanyakumari District.

... Respondents in all petitions

PRAYER IN W.P. (MD) .No.3656 of 2014 : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent Labour Court in I.D.No.21 of 2009, dated 28.01.2014 and to quash the same and consequently direct respondents 2 and 3 to reinstate the petitioner with backwages and with all monetary, attendance and fringe benefits to the petitioner.

PRAYER IN W.P. (MD) .No.6615 of 2015 : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed in C.P.No.129 of 2012, dated 16.12.2014 on the file of the Labour Court, Tirunelveli and to quash the same and direct respondents 2 and 3 to disburse the claim amount of the petitioner as claimed in C.P.No.129 of 2012.

(in all petitions)

For Petitioner : Mr.M.R.Sreenivasan

For R-2 & R-3 : Mr.T.Arul

: Court



C O M M O N O R D E R

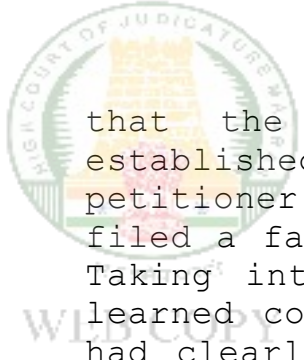
The petitioner in both these Writ petitions is one and the same. The petitioner was employed in the second respondent Society. He became a regular employee on 30.07.1988. The second respondent is having a Rubber Estate, Children's Home and few other institutions. The petitioner was transferred from Puthenkadai to Thadikkarankonam to work as farm Assistant by order dated 01.12.2001. The relationship between the Writ petitioner and the Management appeared to have come under strain from 2005 onwards. He was suspended from service on 01.12.2007. On 03.05.2008, the second respondent issued Charge Memo. An enquiry was conducted. The petitioner remained ex-parte. On 28.01.2009, the petitioner was terminated from service. Questioning the same, the petitioner filed I.D.No.21 of 2009 before the Labour Court, Tirunelveli. The same was dismissed on 28.01.2014. Questioning the same, W.P.(MD)No.3656 of 2014 came to be filed.

2. The petitioner also filed C.P.No.129 of 2012 before the Labour Court, Tirunelveli, in the meanwhile, claiming certain monetary benefits. The said claim petition was also dismissed on 16.12.2014. Assailing the said order, W.P.(MD)No.6615 of 2015 has been filed.

3. Heard the learned counsel appearing for workman/Writ petitioner and the learned counsel appearing for the respondents.

4. The learned counsel for the petitioner has filed written submissions and enclosed the case laws also. The contention of the learned counsel for the petitioner is that the second respondent is running a children's home and the petitioner reported the undesirable activities of the warden. Since the area manager supported the warden, they have engineered his dismissal. The learned counsel would contend that the Labour Court rightly held that the domestic enquiry was not fairly conducted. The Management was given liberty to adduce fresh evidence before the Labour Court. It can be seen from the records that the person who deposed before the Labour Court had no direct knowledge of the events in question. The documents marked on the side of the Management even if taken as a whole did not establish the charges framed against the petitioner. According to the petitioner, he has been unfairly victimized and that the Labour Court had erroneously dismissed the I.D., and claim petition. The petitioner seeks reinstatement with backwages and also disbursement of the attendant benefits. The learned counsel for the petitioner submitted that both the Writ petitions deserve to be allowed.

<https://hcservices.courts.gov.in/hcservices> The Management has filed counter affidavits in both the Writ petitions. The learned counsel appearing for the Management pointed out that the evidence on record would speak for itself and



that the charges framed against the petitioner have been established. He also highlighted the conduct of the Writ petitioner. The Writ petitioner had indulged in forum shopping. He filed a false criminal case against the officials of the Society. Taking into account the overall conduct of the petitioner, the learned counsel for the Management submitted that the Management had clearly lost confidence in him and that therefore, he wanted this Court to sustain the dismissal orders passed by the Labour Court.

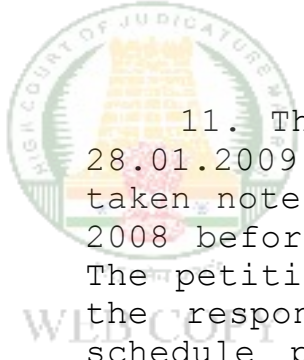
6. This Court went through the materials on record and considered the rival contentions.

7. The petitioner had been serving the respondent Management right from 1988. The problems appears to have arisen in August 2005. A vacancy arose in the post of School Assistant in the Welfare school run by the Society. The petitioner was armed with a letter of support from Bishop. But then, the petitioner was not appointed to the said post. This appears to have been the starting point for the strain in the employer-employee relationship in this case.

8. It is seen from various documents on either side that the Writ petitioner has levelled scandalous allegations against the other staff working in the children's home. The Labour Court has extracted those complaints in extenso. That is why the Labour Court came to the conclusion that it would not be possible to retain the petitioner in service, as he had attempted to bring down the image of the home in the eyes of the general public. Since the relationship between the petitioner, warden and the area manager came under so much strain, the petitioner was transferred from Puthenkadai to Thadikkarankonam on 20.07.2006.

9. It is seen that the petitioner did not accept the said order of transfer. In fact the petitioner's letter dated 30.12.2006, demands cancellation of the transfer order. It is also seen that the petitioner did not co-operate in the conduct of the domestic enquiry.

10. More than anything else, the petitioner had suffered an injury on 18.04.2007, when he attempted to ward off bite by hornets. But, he gave a false complaint to the police as if the petitioner was attacked by the estate manager. This complaint was later closed as "Mistake of fact". The Labour Court took into account all these factual aspects and came to the conclusion that the charges framed against the Writ petitioner herein stood established. Considering the nature of allegations made against the petitioner, it was further concluded that the punishment of ~~divines postag~~ very much commensurate to the gravity of the charges.

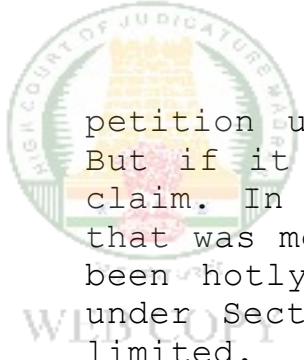


11. The petitioner was dismissed from service by order dated 28.01.2009. His conduct moving two civil suits should also be taken note of. On 26.08.2008, the petitioner filed O.S.No.305 of 2008 before the Principal District Munsif Court, Padmanabhapuram. The petitioner wanted decree for permanent injunction restraining the respondents to evict him from the schedule property. The schedule property is belonging to the Management. In the said suit, the petitioner could not get any interim order. Therefore, he filed O.S.No.549 of 2008 before the Principal District Munsif Court, Nagercoil, seeking the very same relief. He also obtained an order of ex-parte injunction in I.A.No.885 of 2008. Based on the Status Quo ordered, the petitioner appears to have trespassed into the children's home and occupied the residential Quarters. After getting interim order on 29.09.2008 in O.S.No.549 of 2007, the petitioner withdrew O.S.No.305 of 2008 on 13.10.2008. The learned District Munsif, Nagercoil, returned the plaint on 15.12.2008 for re-presentation of the same before the District Munsif Court, Padmanabhapuram. This aspect of the matter is referred to in some detail only to show the character and conduct of the Writ petitioner.

12. Before the Labour Court, the petitioner had marked as many as 35 documents as Exhibits W.1 to W.35. On the side of the Management, Exhibits M.1 to M.61 were marked. The charges levelled against the Writ petitioner are three in number. The first charge is that the petitioner was absent. Charges 1 and 2 refer to unauthorised absence. Charge No.3 is that the petitioner had attempted to intimidate the Management into accepting his demand. The petitioner is said to have threatened to commit suicide. When an enquiry was constituted to look into the allegations made by the petitioner, the petitioner did not extend his cooperation. The petitioner had lodged a false criminal complaint against the other staff of the institution. The petitioner was also alleged to have been indulged in insubordination. From the material available on record, the Labour Court came to the conclusion that all the charges stood established. Exhibit M.8, dated 22.05.2007, is the complaint submitted by the petitioner to the police authorities. The Labour Court noted that the petitioner after suffering injury due to fall from a tree, had chosen to falsely include the area manager. Obviously, such a person cannot be retained in service. When the petitioner was transferred, the petitioner ought to have joined the duty in the transferred place. It is clear that the petitioner did not comply with the order of transfer. Instead he chose to engage the management into controversies. The complaints made by the petitioner would certainly bring down the reputation of the institution. Therefore, the Labour Court rightly held that the charges levelled against the petitioner stood proved and it rightly dismissed I.D.No.21 of 2009.

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

13. The Labour Court also rightly dismissed C.P.No.129 of 2012 also. Of course, there is no limitation for lodging a claim



petition under Section 33(C)(2) of the Industrial Disputes Act. But if it is belatedly filed, it affects the genuineness of the claim. In this case, the petitioner has raised a monetary claim that was more than 12 years. This claim made by the petitioner had been hotly contested and denied by the Management. Jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is rather limited. It is more in the nature of the execution proceedings. Where the claim of the petitioner is hotly questioned by the Management, the remedy under Section 33(C)(2) of the Industrial Disputes Act is clearly not available. In the very nature of things, in view of the issues raised by the Management, C.P.No.129 of 2012 was not maintainable.

14. This Court finds no merits in these Writ petitions.

15. Hence, both the Writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Labour Court,
Tirunelveli.

+ 2 ccs TO Mr.M.R.Sreenivasan , Advocate in SR No. 66657,66658

pmu

AE/SV MMS/SAR1/27.06.2018/5P/4C

COMMON ORDER

MADE IN

W.P.(MD).No.3656 of 2014 and

W.P.(MD)No.6615 of 2015 and

M.P.(MD)No.1 of 2014

04.06.2018