



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 21.03.2018

Pronounced on: 04.06.2018

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THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.15475 of 2016
and W.M.P. (MD) No.11374 of 2016

The Chairman
Adarsh Educational Trust,
Adarsh Vidya Kendra,
Vettoornimadam,
Nagercoil - 629 003.

.... Petitioner

Vs.

1.L.Radha

2.The Presiding Officer
Labour Court,
Tirunelveli,
Tirunelveli District.

.... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the second respondent relating to the proceedings in I.D.O.P.No.37 of 2015 dated 20.07.2016 and quash the same.

For Petitioner : Mr.K.Govindarajan
for Mr.V.M.Balamohan Thambi

For R1 : No appearance

ORDER

The petitioner is a Registered Trust. It is running a CBSE school at Vettoornimadam, Nagercoil, Kanyakumari District. The first respondent herein, L. Radha, was appointed as Typist on 01.06.1998.

2. It is the case of the management that the first respondent and two others namely Rajalakshmi and Nagarani, were found to have misappropriated the school funds and also falsified the documents. Therefore, the management suspended them. A charge memo was issued on 27.07.2011. The first respondent gave her reply on 06.08.2011. An Enquiry Officer was appointed. There were a



number of charges pertaining to all the 3 delinquents. As regards the first respondent herein, the Enquiry Officer held that charge Nos. 2, 8 and 9 stood proved.

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3. Thereafter, the petitioner dismissed the first respondent and two others from service on 23.05.2013. Questioning the order of termination, the first respondent filed I.D.No.37 of 2015 before the Labour Court, Tirunelveli. By the impugned award dated 20.07.2016 I.D.No.37 of 2015 was allowed and the management was directed to re-instate the first respondent in service with continuity of service. Backwages were also awarded. Questioning the same, the present Writ Petition has been filed.

4. Heard the learned counsel for the petitioner, who reiterated all the grounds set out in the affidavit filed in support of this writ petition. There is no appearance on the side of the first respondent. This Court considered the contentions raised by the learned counsel for the petitioner and also the evidence on record.

5. As pointed out earlier, only 3 charges were held to be proved against the first respondent and they are charge Nos. 2, 8 and 9. Charge No.2 is that the first respondent received a sum of Rs.500/- on 06.04.2009, but, did not account for the same. The Labour Court observed that the charge itself does not allege that the amount was misappropriated by the employee. The Labour Court in paragraph Nos. 11 and 12 of the impugned award had dealt with this charge. The first respondent instead of writing Rs.72,380/- in the Cash Book had written Rs.71,880/-. After noticing the difference, the same was entered in the journal at page No.80. After taking note of Ex.M.34 (Ledger Book for the year 2009-2010), the Labour Court found that the entry in question is reflected at page No.46.

6. That apart, the Labour Court also found that this amount was collected by Mrs.Nagarani from one Gopi Krishnan, son of Usha Devi. Therefore, the Labour Court found that this charge was erroneously held to be proved. The reasons set out by the Labour Court in paragraph Nos.11, 12 and 13 of the impugned award are perfectly sound and do not warrant interference.

7. Charge No.8 is to the effect that a cheque bearing No.0469140 dated 26.06.2007 for a sum of Rs.62,948/- was drawn in the name of one Paramasivam, but, the first respondent had accepted the same in the voucher and misappropriated the said sum. The Labour court had dealt with this charge in paragraph Nos. 14, 15, 16 and 17 of the impugned award.

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

8. It is admitted by the management that the cheque in



question was drawn in the name of one Paramasivam. It was deposited only in the said name and that it was received only by Radha. Thus, bank transactions were admitted by the management witness himself. It is true that the first respondent had signed in Ex.W.16. The said sum was meant to be paid to one Radhamani, the Proprietor of a Furniture Shop. The said Paramasivam is none other than the husband of the said Radhamani. The Labour Court in paragraph No.15 of the impugned award has referred to the admission of the management witness in this regard. The management witness has fairly admitted before the Enquiry Officer that Radhamani is none other than the wife of the said Paramasivam. This finding has not been questioned as baseless or perverse in the grounds set out in the affidavit filed in support of the writ petition by the management. The Labour Court came to the conclusion that certain furniture such as Bench and Desk were purchased from the shop in question belonging to the said Radhamani and that the amount was paid to Paramasivam, the husband of Radhamani. Therefore the Labour Court arrived at a finding that the first respondent did not misappropriate the sum of Rs.62,948/-. If really the amount that should have gone to Paramasivam was swallowed by the first respondent, the said Paramasivam definitely would have lodged a complaint. In this case, there is no such complaint.

9. Charge No.9 was that the first respondent misappropriated a sum of Rs.42,000/-. The Labour Court came to the conclusion that the relevant records were not produced for consideration before the Labour Court. Since the relevant documents were withheld by the management, the Labour Court has rightly come to the conclusion that in the absence of relevant documents, it is not possible to affirm the finding that charge No.9 was said to have been proved.

10. The Labour Court in paragraph No.19 of the impugned award has specifically remarked that the witness examined on the said of the management at no point of time uttered that the first respondent misappropriated the amount in question. In fact, even in the final report filed by the police, there is no such allegation against the first respondent. The Labour Court therefore took the view that the first respondent is a victim of cross fire between the present management and the previous management of the institution. Therefore, the order of dismissal was rightly set aside and a direction to re-instate the first respondent was rightly ordered.

11. It is seen that the first respondent had joined in some other job later. Therefore, it is open to the first respondent to move the Labour Court under Section 33 C(2) of the Industrial Disputes Act, for recovery of the benefits payable to



her in terms of the impugned award. There is absolutely no merit in this writ petition. In the affidavit filed in support of the writ petition, the findings of the Labour Court have not been specifically challenged. The petitioner has not established as to how the finding of the Labour Court can be characterized as perverse or erroneous. There is no merit in the writ petition and the same stands dismissed. No costs. Consequently, connected W.M.P. (MD) No.11374 of 2016 is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Tirunelveli,
Tirunelveli District.

+ 1 cc TO Mr.V.Bala Mohan Thambi , Advocate in SR No. 66559

CM

AE/SV/SAR3/13.06.2018/4P/3C

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