

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 08.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.27614 of 2014

The Management of Dharmamurthi
Rao Bahadur Calavala Cunnan
Chetty's Hindu College,
Represented by its Hononoury Secretary M. Venkatesaperumal
Dhamamoorthy Nagar,
Pattabiram,
Chennai - 600 072.

..Petitioner

vs

1. Presiding Officer/District Judge (FAC)
III- Additional Labour Court
Chennai - 600104.

2. N. Yoseph

...Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a writ of certiorari
calling for the records of the first respondent in I.D.No.568 of
2006 and quash its Award dated 22.08.2014 and pass orders.

For Petitioner : Mr. S. Ravindran, Senior Counsel
for S.Bazeer Ahamed

For Respondents : R1- Labour Court
Mr. K.M. Ramesh for R2

सत्यमेव जयते
O R D E R

The award dated 22.08.2014 passed by the first respondent
management in ID.No.568 of 2006 is under challenge in the above
Writ Petition.

2. The learned Senior counsel appearing for the writ
petitioner management made a submission that the writ petitioner
institution is a reputed Educational Institution run by a public
charitable trust started during the year 1920. On account of
frequent complaints from the staff members as well as from the

students who are all pursuing education in the institution, the management has taken action against the second respondent - employee for certain grave misconduct.

3. The learned Senior counsel made a submission that the women students have made several complaints against the second respondent which prompted the management to initiate action and accordingly the he was terminated from service. The loss of confidence made the management to terminate the services of the second respondent and therefore there is no infirmity as such in respect of the action initiated by the management.

4. The learned Senior Counsel is of the opinion that the writ petitioner management being an educational institution, confidence amongst the students as well as the colleagues is of paramount importance and in the event of loss of confidence, it may not be possible for the writ petitioner management to run the institution peacefully. When several and frequent complaints are received from the women students of the institution then it became necessary for the management to address the issues and initiate proper action and therefore the order of the Labour Court for reinstatement with full backwages is perverse and liable to be scrapped.

5. Perusing the award of the Labour Court, it is found that the order of reinstatement with backwages was passed mainly on the ground that no enquiry was conducted. Though the order of termination was issued by the writ petitioner management, they had not justifiably established the same before the Labour Court. At the outset, the Labour Court arrived at a conclusion that the second respondent was terminated without notice or enquiry and the said factors are more specifically admitted by the management before the Labour Court. This being the factum, the order of termination is undoubtedly in violation of the principles of natural justice. No employee can be terminated without conducting an enquiry and providing an opportunity to defend his case. When the management itself admitted the fact that no enquiry was conducted inspite of the allegations then the Labour Court is right in coming to the conclusion that the order of termination is untenable, however this Court has to consider certain mitigating factors.

6. The learned Senior counsel appearing on behalf of the petitioner made a submission that the petitioner is an educational institution and on account of the frequent complaints from the women students, the management was forced to take such decision. But those factors were not considered by the Labour Court despite the fact that, the pleadings were made

before the Labour Court in this regard. Confidence amongst the students, teachers and other staff in an educational institution is to be undoubtedly maintained and in the event of any such frequent complaints, the management is bound to initiate action. However in the present case, the procedures are not followed.

7. The enquiry was not conducted and in view of the said fact, the order of termination issued was not in compliance with the principles of natural justice. The Labour Court passed an order to reinstate the petitioner with backwages. Under these circumstances, this Court is not inclined to interfere with the order passed by the Labour Court as there is no infirmity. However regarding the backwages are considered, the mitigating factors are to be considered and apart from that "no pay no work" principle is to be applied as the second respondent was a staff working in educational institution and under these circumstances 100 % back wages awarded by the Trial Court is modified to 50 %. Accordingly the order of reinstatement passed by the Labour Court is confirmed but the backwages are reduced from 100 % to 50 %. With these modifications, the Writ Petition stands partly allowed.

8. The learned Senior Counsel made a submission that at the time of admission of the present writ petition, 100 % back wages was deposited before the Labour Court to the credit of ID.No.568 of 2006. The writ petitioner is permitted to withdraw the 50 % of the backwages along with accrued interest by filing an application. The Labour court is directed to return the 50 per cent of the back wages within a period of 4 weeks from the date of receipt of a copy of this order. In respect of reinstatement as well as continuity of service, the order of the Labour Court is confirmed. The second respondent is not entitled to claim any further amount towards back wages more specifically from the date of award till the date of disposal of the present Writ Petition.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrn

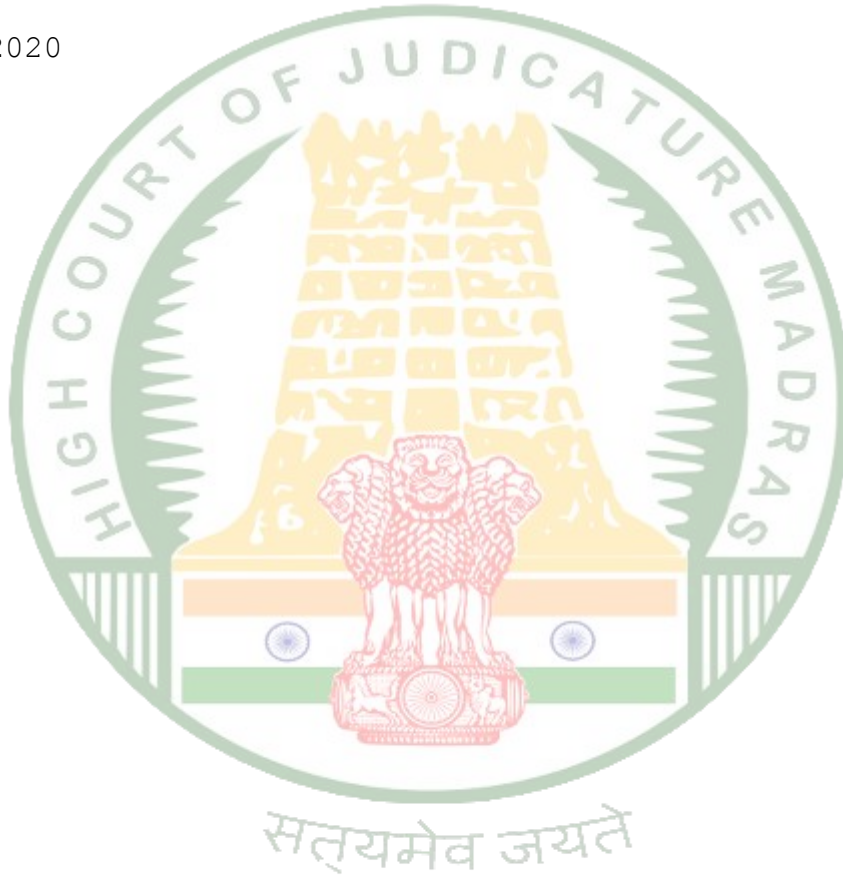
To

1. Presiding Officer/District Judge (FAC)
III- Additional Labour Court
Chennai - 600104.

+1cc to Mr.S.Bazeer Ahamed, Advocate sr.93252
+1cc to Mr.K.M.Ramesh, Advocate sr.93206

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