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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2021

PRONOUNCED ON : 02.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1323 of 2014

Tamil Nadu Science and
Technology Centre
rep.by its Executive Director
Guindy, Chennai - 600 025.

... Appellant

-vs-

1.The Presiding Officer,
Principal Labour Court,
Chennai-600 104

2.C.E.A.Jayaseely

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act against the order dated 27.06.2014 passed in W.P.No.19975 of 2003 by a learned Single Judge of this Court.

Prayer in W.P.No.19975 of 2003:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari to call for the records connected with the award dated 20.05.2003 passed by the First Respondent in ID.NO.483/1997 and quash the same.

For Appellant : Mr.S.Ilamvaludhi
For R1 : Labour Court

For R2 : Mr.P.Rajendran

JUDGMENT

(V.SIVAGNANAM, J.,)

This Writ Appeal is directed against the impugned order passed by the learned Single Judge in W.P.No.19975 of 2003, dated 27.06.2014, confirming the award passed by Labour Court in I.D.No.483 of 1997, dated 20.05.2003, with a modification by directing the reinstatement of the second respondent herein in the post of Junior Laboratory Assistant instead of Science Park Assistant.



2. Brief facts leading to the filing of the writ appeal are stated below:-

The 2nd respondent-C.E.A.Jayaseely, was appointed as a Junior Lab Assistant by an order dated 18.04.1986 and joined in the office of the appellant on 24.04.1986. Her service was regularised with effect from 24.04.1986 by an order dated 18.12.1987. While so, she was transferred to the Science Park by an order dated 30.09.1988. Thereafter, Administrative Committee abolished the post of Junior Lab Assistant by its proceedings dated 26.06.1989. Consequently, service of the 2nd respondent was terminated by the appellant's office vide order dated 18.08.1989.

3. Since no prior notice was given to the 2nd respondent, she filed a Writ Petition in W.P.No.11501 of 1989, whereby, learned Single Judge, while ordering notice, granted an order of interim stay on 29.08.1989 in W.M.P.No.16337 of 1989, so as to enable her to work in the office of the appellant, pending disposal of the above Writ Petition. Since the office of the appellant did not respond to the said interim order, the 2nd respondent filed a Contempt Petition in Contempt Appln.No.344 of 1989 before this Court. This Court, by order dated 25.10.1989, dismissed the Contempt Petition stating that consequent to the abolition of post, the 2nd respondent was paid with all the benefits admissible to her as per the Industrial Disputes Act and the impression that the 2nd respondent was working as Science Park Assistant at the time of termination of service was wrong.

4. However, the 2nd respondent filed a Writ Appeal in W.A.No.968 of 1989 as against the order dated 29.08.1989 made in W.M.P.No.16337 of 1989 in W.P.No.11501 of 1989 with a prayer to allow the 2nd respondent to discharge the duties of Junior Laboratory Assistant in the office of the appellant, pending disposal of the Writ Petition in W.P.No.11501 of 1989. After hearing both sides, the Hon'ble Division Bench of this Court by its order dated 27.11.1989 dismissed the Writ Appeal filed by the 2nd respondent. Subsequently, left with no other option, the 2nd respondent had withdrawn the W.P.No.11501 of 1989 on 06.12.1996.

5. After a considerable period of time, again the 2nd respondent raised an Industrial Dispute in I.D.No.483 of 1997 before the 1st respondent- Labour Court, Chennai, whereby, by an award dated 20.05.2003, Labour Court set aside the order of retrenchment dated 18.08.1989 and directed the office of the appellant to accommodate the 2nd respondent in the post of Science Park Assistant with all consequential benefits.

6. Aggrieved by the order of the 1st respondent Court, the appellant had preferred Writ Petition in W.P.No.19975 of 2003. Learned Single Judge, by order dated 27.06.2014, modified the



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award passed by the Labour Court and thereby directed to reinstate the second respondent in the post of Junior Lab Assistant instead of Science Park Assistant. Aggrieved by the same, the present Writ Appeal has been filed by the appellant with the above stated prayer.

7. Learned counsel for the appellant submitted that the Tamil Nadu Science and Technology Centre is a society registered under the Registration of Societies Act and it came into existence in the year 1982. Thereafter, in the year 1986, it was proposed to set up an Electronic and Communication Gallery. For exhibiting the items kept in the gallery, one Senior Laboratory Assistant and one Junior Laboratory Assistant posts were created to assist the Curator (Electronics) and accordingly, Tmt.N.Mythili who was holding Diploma in Electronics and Communications, was appointed as Senior Laboratory Assistant in the scale of Rs.610-1075 on 18.04.1986, and Tmt.Jayaseely/second respondent herein, who was holding National Trade Certificate in Electronics, was appointed as Junior Laboratory Assistant in the scale of Rs.50-845 on 18.04.1986. But, those appointments were made purely on temporary basis and they would be removed from the service without prior notice. After some time, the work connected with gallery was completed and therefore, the Executive Director ordered the second respondent herein to work in the Science Park under the control of Curator Physics and this has been specifically mentioned in Memo dated 05.10.1988 of the Executive Director. As per Rule 41(vii) of Articles of Association of the Society, Governing Body is empowered to constitute Sub-Committee and accordingly, Administrative Sub-Committee was constituted in the meeting held on 29.03.1988 consisting of Secretary, Electronics, Science and Technology, Executive Director, Science and Technology Centre and Deputy Secretary to Government, Finance Department. Since the work connected with Science Gallery was over, it was resolved in the 4th meeting held on 26.06.1989 to abolish the posts of S.G.Superintendent and Junior Laboratory Assistant. Accordingly, the service of the second respondent was terminated vide proceedings dated 18.08.1989 and on the same day, she was paid with duty pay, notice pay and compensation of service rendered by her as Junior Laboratory Assistant as per Section 25(g) of the I.D. Act.

8. Continuing further, he would argue that since the second respondent discharged her duties as Assistant in Science Park, she was called as Science Park Assistant, however, the post held by her only was Junior Laboratory Assistant and she was paid salary in the said post only. It is further submitted that while she was working as Junior Lab Assistant, she was transferred and posted to work in the Science Park vide proceedings dated 30.09.1988 and thereby, she joined duty on 03.10.1988. Since the Gallery was closed, the service of Senior Laboratory Assistant alone was proposed to be utilized for



maintenance and upkeep of Electronics and Communication Gallery. Finally, on 26.06.1989, the 4th Administrative Sub-Committee resolved to abolish the post of Junior Laboratory Assistant on completion of the work for which the post was created and this was also approved by the Hon'ble Minister for Education and Chairman of the Centre on 17.08.1989. In view of abolition of the post of Junior Laboratory Assistant, the service of the second respondent was terminated with effect from 18.08.1989 and since she was not issued with prior notice, she was paid with one month salary, besides paying compensation for the services rendered by her as per Section 25(g) of the I.D. Act. Thus, he argued, there was no procedural flaw or violation of principles of natural justice while issuing the order of the termination to the second respondent, as alleged by the second respondent.

9. It is further contended that the finding given by the Labour Court that the Sub Committee has no power to appoint one Mr.Manoharan in the year 1991 as Junior Lab Assistant cannot stand to legal scrutiny, as no document was placed before the Presiding Officer to substantiate that the said Manoharan was appointed as Junior Lab Assistant, however, the fact remains that he was appointed on 27.05.1994 as a Gallery Mechanic in the time scale of pay of Rs.950-20-1150-25-1500/-, that too, by the Screening Committee. Further, the appointment order dated 18.04.1986 of the second respondent itself would show that the post of Junior Laboratory Assistant is a temporary post and it was created only for the purpose of conducting exhibition. Thus, when there was no documentary evidence produced by the second respondent that one Mr.Manoharan was appointed in the place vacated by her, the findings of the Labour Court as well as learned Single Judge holding that issuance of charge memo and revocation of suspension would amount to victimization and unfair labour practice, that too, without taking note of the dismissal of the similar plea made by the second respondent in the first round litigation, cannot be sustained, and accordingly, learned counsel prayed for allowing the writ appeal by quashing the impugned order passed by the learned Single Judge.

10. Per contra, learned counsel for the second respondent contended that after the learned Single Judge dismissed the contempt petition on 25.10.1989 in Cont.Appln.No.344 of 1989, W.A.No.968 of 1989 filed by the second respondent was also dismissed on 27.11.1989 and thereafter, the second respondent herein was advised to withdraw W.P.No.11501 of 1989 to approach the Labour Court and accordingly, when she raised an Industrial Dispute, after the failure report submitted by the Conciliation officer, it was argued before the Labour Court that the second respondent was accommodated in the post of Science Park Assistant after the abolition of the post of Junior Laboratory Assistant and she worked till 18.08.1989 and she was issued with second charge memo on the ground that the second respondent and



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her husband threatened the officer of the appellant management. Thereafter, during the enquiry, she was not given an opportunity of personal hearing and ultimately, she was terminated from the services, which is nothing but victimization and unfair labour practice.

11. Learned counsel for the second respondent would further argue that when MW1 admitted before the Labour Court that after the termination of the services of the second respondent, one Mr. Manoharan was appointed as Junior Laboratory Assistant in the year 1991 and when a specific question was put to MW1 as to whether the management would produce the appointment order of the said Manoharan, MW1 has admitted that the said order of appointment was not marked as exhibit. Therefore, the Labour Court has rightly come to the conclusion that the termination of the second respondent was nothing but victimization and unfair labour practice and this was rightly affirmed with a modification by directing the reinstatement of the second respondent herein in the post of Junior Laboratory Assistant instead of Science Park Assistant. Therefore, such a well-reasoned order passed by the learned Single Judge confirming the award passed by the Labour Court with slight modification does not call for interference, he pleaded.

12. Heard the learned counsel appearing on either side and perused the materials available before this Court.

13. Admittedly, the Administrative Sub-Committee, in the meeting held on 26.06.1989, had resolved to abolish the post of Junior Laboratory Assistant and accordingly, consequent to the abolition of the said post, the service of the second respondent herein was terminated with effect from 18.08.1989 and she was permitted to relieve from the service on the afternoon of 18.08.1989 and on the same day itself, she was paid with duty pay, notice pay and compensation for the services rendered by her as Junior Laboratory Assistant as per Section 25(g) of the I.D. Act. Challenging the order of termination, she had filed W.P.N.o.11501 of 1989, whereby, this Court, by order dated 29.08.1989, granted an order of interim stay. However, despite the order of interim stay, she was not allowed to work, hence, she had filed Cont.Appln.No.344 of 1989, whereby, learned Single Judge, while dismissing the contempt petition on 25.10.1989, held that there was no post borne in the Establishment of Science and Technology Centres with the designation of Science Park Assistant and the post held and salary drawn by the second respondent herein was in the post of Junior Laboratory Assistant only and it was further clarified that since she was working in the Science Park, she was called as Science Park Assistant, however, her designation as per rolls of the Establishment was Junior Laboratory Assistant only. In all her communications, she used to state her designation as Junior Laboratory Assistant and the termination of her service was consequent to the



abolition of the said post and she has been paid with all the benefits admissible to her as per Section 25(g) of the I.D. Act and thus, there was no merit in the contempt petition and accordingly, it was dismissed.

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14. Aggrieved by the order of learned Single Judge, when writ appeal No.968 of 1989 was filed, the same was also dismissed on 27.11.1989 holding that the Administrative Sub Committee by a resolution dated 26.06.1989 had abolished the post of Junior Laboratory Assistant along with other redundant post of Superintendent, for, there was no work for such posts, and it is further held that on the day when she filed the writ petition neither the post existed nor she was holding the office. After the dismissal of the writ appeal, the second respondent herein had withdrawn the writ petition No.11501 of 1989. Finally, she approached the Labour Court by raising an industrial dispute in I.D.No.483 of 1997, which is second round of litigation. When no document was produced before the Labour Court that one M.Manoharan was appointed as Junior Laboratory Assistant after the second respondent was terminated from service, Labour Court has wrongly come to the conclusion that her termination was mere victimization and unfair labour practice. A mere perusal of the proceedings dated 27.05.1994 of the Executive Director of Tamil Nadu Science and Technology Centre, Chennai, would depict that the Executive Director has not appointed Mr.M.Manoharan as Gallery Mechanic in the year 1994, whereas he was selected by the Screening Committee and he was temporarily appointed as Gallery Mechanic in the time scale of pay of Rs.950-20-1150-25-1500 on 27.05.1994, therefore, the order of the Labour Court was factually incorrect in reaching a conclusion that one Mr.Manohar was appointed as Junior Laboratory Assistant in the year 1991 after the termination of the second respondent herein from the services. Hence, when the second respondent herein was terminated on 18.08.1989 and on the same day itself she was relieved from the duty, the appointment of Mr.M.Manoharan on 27.05.1994 in the post of Gallery Mechanic would clearly depict that he was neither appointed in the year 1991 in the place of the second respondent herein nor she was in service in the year 1991 as erroneously held by the Labour Court. For proper appreciation, relevant portion of the said proceedings dated 27.05.1994 is extracted below:-

"Thiru M.Manoharan a candidate selected by the Screening Committee is temporarily appointed as Gallery Mechanic in the time scale of pay of Rs.950-20-1150-25-1500.

He is informed that his services are liable to be terminated at any time without assigning any reason therefor. This appointment is made on the condition that he will not have any right to claim the past services rendered by him on contract basis to be counted for any purpose at a future date."



15. Secondly, without any pleading made by the second respondent or without any documentary evidence placed before the Labour Court, on the basis of admission made by MW.1-Jayalakshmi that the said Manoharan was appointed as Junior Laboratory Assistant in the year 1991, which was factually erroneous statement, Labour Court ought not to have reached a wrong conclusion. Therefore, on this score, finding given by the Labour Court without application of mind is liable to be set aside. Learned Single Judge also has come to the conclusion in para 10 that one Mr.Manoharan was appointed in the same post as Junior Laboratory Assistant after the second respondent herein was terminated from the services, without referring to the proceedings dated 27.05.1994 appointing one Mr.M.Manoharan in the post of Gallery Mechanic, extracted above. Therefore, the findings given by the Labour Court as well as learned Single Judge are liable to be interfered with.

16. Moreover, it is to be noted that during the first round of litigation before this Court, learned Single Judge, by order dated 25.10.1989 passed in Cont.Appln.No.344 of 1989, while dismissing the contempt application, held that the impression that the second respondent herein was working as Science Park Assistant at the time of termination of service is wrong. For better appreciation, relevant portion of the order is extracted below:-

6..... It is now explained in paragraph 6 of the affidavit filed in support of WMP.No.17318 of 1989 as follows:

"There is no post borne in the Establishment of this Science and Technology Centres with the designation of Science Park Assistant. The post held and salary drawn by the petitioner was in the post of Junior Laboratory Assistant only. It was because she was working in the Science Park, she was being called as Science Park Assistant but her designation as per rolls of the establishment is Junior Laboratory Assistant only. In all her letters, she used to mention her designation as Junior Laboratory Assistant only. The termination of her services was consequent on the abolition of the post and she has also been paid all the benefits admissible to her as per I.D. Act. The allegation that the termination is illegal, arbitrary, discriminatory and out of malafide is utterly false and frivolous".

From the above, it is now clear that the impression that the petitioner was working as Science Park Assistant at the time of



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termination of service is wrong. Therefore, the respondents are right in taking the stand that the order has already been given effect to and they cannot implement the order of stay. In view of the above conclusion, I do not think there is any case for contempt. Accordingly, the contempt application is dismissed. No Costs."

17. As against the above said order, when Writ Appeal No.968 of 1989 was preferred, the Hon'ble Division Bench, by judgment dated 27.11.1989, while confirming the order passed by the learned Single Judge, held that on the day when the second respondent filed the writ petition neither the post existed nor she was holding the office, and by holding so, it is further observed as follows:-

"2. In the concluding sentence in paragraph 8 of the affidavit, the appellant admitted that on 18.08.1989 Friday evening all of a sudden the impugned order was given effect to from that day. It resulted in the abolition of the post held by her and she had been relieved from the post on that day. It is thereafter she having filed the writ petition, pending disposal of the writ petition cannot ask for restoration of the post and continue her to be retained in the post. The Administrative Sub-Committee by a resolution dated 26.06.1989 had abolished the said post along with other redundant post of Superintendent. Earlier on 27.12.1988, it had abolished four other posts, because, there was no work for such posts. On the day when she filed the writ petition neither the post existed nor she was holding the office and hence the learned Judge had rightly rejected the plea for granting stay as prayed for. Hence, the appeal is dismissed."

18. In the first round of litigation, as could be seen from the above said extracted portion, when the learned Single Judge and the learned Division Bench have given a logical conclusion, overriding the same, in the second round litigation, the Labour Court and the learned Single Judge, without even verifying the facts of the order passed by the learned Single Judge and the learned Division Bench, reached a fallacious and illogical conclusion, which, in our considered view, cannot be allowed to stand. Therefore, the impugned order passed by the learned single judge is liable to be set aside and accordingly, it is set aside.



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19. In fine, for the reasons stated above, the writ appeal stands allowed. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jer/rkm
To
The Presiding Officer,
Principal Labour Court,
Chennai-600 104.

+1cc to Mr.S.Ilamvaludhi , Advocate SR.No. 37272
+1cc to Mr.P.Rajendran, Advocate SR.No. 37250

W.A.No.1323 of 2014

LN(CO)
A.SK(19.08.2021)