



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)Nos.9755 of 2011 and 15500 of 2012

and

M.P (MD) .No.1 of 2011

in

WP (MD)No.9755 of 2011

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W.P. (MD)No.9755 of 2011

The President

CSI Diocese of Kanyakumari

Moderator Gnanadason Polytechnic

Distillery Road, Nagercoi,

Kanyakumari District.

... Petitioner

Vs.

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

2.A.John Rajan

... Respondents

(cause title amended vide order
dated 09.02.2021 in W.M.P (MD)
No.22043 of 2019)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned award passed by the 1st respondent Presiding Officer in ID case No.82 of 1994 dated 26.04.2011 and to quash the same.

For Petitioner	: Mr.K.Prabhu for M/s.S.Xavier Rajini
For R2	: Mr.R.Thangasamy
For R1	: Court

W.P (MD)No.15500 of 2012

K.John Rajan

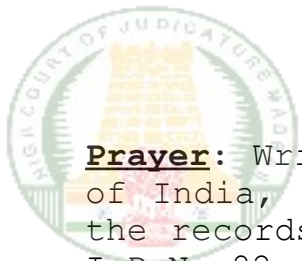
... Petitioner

Vs.

1.The President
CSI Diocese of Kanyakumari
Moderator Gnanadason Polytechnic
Distillery Road, Nagercoi,
Kanyakumari District.

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

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent award dated 26.04.2011 in I.D.No.82 of 1994 to quash the operating portion of the award in rejecting the backwages, continuity of services with all other attendant benefits and consequently, directing the 1st respondent to reinstate the petitioner in service with backwages continuity of service and other attendant benefits.

For Petitioner : Mr.R.Thangasamy
For R1 : Mr.Muthukumar
for Mr.Sree Kumaran Nair
For R2 : Court

COMMON ORDER

These writ petitions have been filed challenging the order dated 26.04.2011 passed by the 1st respondent in ID No.82 of 1994 and to quash the same.

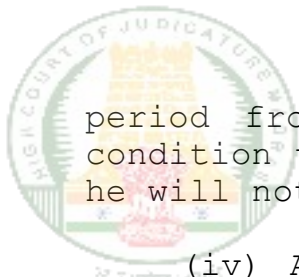
2. Since identical issues arising out of common set of facts are involved, both the Writ Petitions are taken up for hearing together and disposed of by a common order.

3.The facts of the case, in a nutshell, are as follows:-

(i) The petitioner in W.P.(MD)No.9755 of 2011 is the President of CSI Diocese of Kanyakumari, which runs numerous educational institutions in the District of Kanyakumari, The Diocesan is governed by its own constitution and the Diocesan council is the supreme body. The day-to-day administration of the Diocese is taken care of the Executive Committee elected by the Diocesan Council. The petitioner college is one among the recognized educational institution owned by the Diocese and the said College was established in the year 1983.

(ii) The Correspondent of the College initiated disciplinary proceedings against the second respondent viz., John Rajan, who was working as a Workshop Assistant in the College, on the basis of the complaint given by one Christy Karuna Bai alleging that the second respondent abused her in vulgar words and misbehaved. As the charge was serious in nature, the second respondent was placed under suspension from 29.01.1993. Thereafter, preliminary enquiry was conducted on 10.02.1993 and a charge memo was issued to the second respondent on 13.04.1993.

(iii) The second respondent submitted his explanation, pursuant to which, enquiry was conducted by the enquiry committee and recorded the statement of the second respondent and the witnesses, by providing sufficient opportunity to the second respondent. As the charges levelled against the second respondent were proved, the Correspondent imposed the punishment of the suspension for the



period from 29.01.1993 to 23.04.1993 without salary and further condition that the second respondent has to give an undertaking that he will not resort to such practice in future.

(iv) Aggrieved over the same, the second respondent has filed an appeal before the Chairman-Bishop, on 01.05.1993. The said appeal was rejected and terminated the second respondent from service, against which, the second respondent has raised an industrial dispute in I.D.No.82 of 1994, before the first respondent on 26.04.2011. The said ID was partly allowed directing the petitioner College to permit the second respondent to continue in duty, without back-wages and continuity of service.

(v) Challenging the said Award, the petitioner College has filed writ petition in W.P(MD)No.9755 of 2011. As against the denial of back-wages, the workman has filed the writ petition in W.P (MD)No.15500 of 2012.

4. The learned counsel appearing for the petitioner in W.P.(MD) No.9755 of 2011 submitted that the Enquiry Committee conducted an enquiry on 31.03.1993 and 13.04.1993 by providing sufficient opportunity to the second respondent, witnesses were examined in the presence of the workman and the workman was permitted to cross-examine the witnesses, their statements were recorded by the Enquiry Officer and thereafter, the punishment was imposed by the original authority.

5. Continuing further, the learned counsel submitted that based on the complaint given by one Christy Karuna Bai, the said punishment was imposed, which is sustainable. During pendency of the writ petition, the petitioner has superannuated and practically it is not possible to reinstate the workman into service. Hence, the learned counsel prays for allowing of the Writ Petition filed by the President of CSI Diocese of Kanyakumari and dismissal of the Writ Petition filed by the Workman.

6. Per contra, the learned counsel appearing for the workman submitted that though the petitioner Management conducted the enquiry on 31.03.1993 and 13.04.1993, no opportunity was given to the second respondent to cross-examine the witnesses and the said statements were not marked before the Labour Court. Without providing sufficient opportunity, the said punishment was imposed by the petitioner College, which is clear abuse of process of law. It is his further submission that during the non-employment period, the petitioner College has not proved that the workman was gainfully employed during the dismissal period. Hence, denial of back-wages is *non est* in the eye of law. Accordingly, the learned counsel prays for allowing of the writ petition filed by the workman and dismissal of the wit petition filed by the Petitioner College.

<https://hcservices.ecourts.gov.in/hcservices/> heard the learned counsel appearing for the



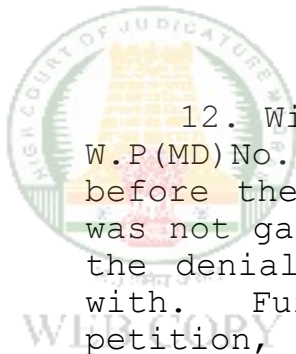
petitioner College and the learned counsel appearing for the respondent Workman and perused the materials available on record.

8. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court, in a catena of decisions, has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

9. The facts in the present case are not in dispute. Admittedly, the workman has entered into service as Workshop Assistant in the petitioner College in the year 1988. It is not in dispute that the employer and employment relationship between the petitioner College and the workman. It is seen that on 29.01.1993, one Christy Karuna Bai gave a complaint against the workman alleging that he misbehaved with her and on the same day, the workman was placed under suspension, by the College Management. Thereafter, a charge memo was issued, in which, the workman has submitted his detailed explanation. In order to prove the case, five witnesses were examined before the enquiry committee.

10. On a perusal of the Enquiry Committee's finding reveals that five persons were examined and however, no proof was available whether these persons were cross examined by the workman. Apart from the findings, there are three statements marked viz., Ex.P.5-complaint of Usha Darling, Ex.P.6-complaint of Nirmala. On a perusal of Ex.P.5 reveals that she gave "Conduct Certificate\ to the workman as good. Further, in her statement and she clearly deposed that the workman attitude with the said Usha Darling is decent. However, Ex.M.5 to Ex.M.10 were examined by the workman and those details are not available in the enquiry reports/Ex.M.12. Therefore, it is clear from the above that no reasonable opportunity was given to the workman to prove his case and also, before imposing the punishment for denial of salary during the suspension period and also termination.

11. For the above reasons, this Court is not inclined to interfere with the Award of the Labour Court and hence, this Writ Petition filing by the Management in W.P.(MD)No.9755 of 2011 is dismissed.



12. With regard to the writ petition filed by the workman viz., W.P(MD)No.15500 of 2012, for denial of back-wages is concerned, before the Labour Court, it was not proved by the workman that he was not gainfully employed during the non-employment period. Hence, the denial of back-wages by the Labour Court cannot be interfered with. Further, it appears that during the pendency of the writ petition, the petitioner has reached the age of superannuation and therefore, the order of reinstatement is not possible. However, the petitioner College is directed to settle the terminal benefits and other benefits to the workman within a period of twelve weeks from the date of receipt of a copy of this order. This Court makes it clear that the workman is not entitled to any back-wages from the date of dismissal till the date of superannuation. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court,
Tirunelveli

+1CC to M/s.ISAAC CHAMBERS, Advocate (SR-12978)

+1CC TO M/s.K.SREEKUMARAN NAIR, Advocate(SR-13001)

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