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W.A.No.2066 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2066 of 2019

Annai Madha Educational Institution,
rep. by its Correspondent
S.Rasavenkatesan

... Appellant

VS

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

2.N.Mayavel

... Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters Patent Act
against the order dated 11.08.2018 passed in W.P. No.15632 of 2016.

For Appellant : Mr.R.Nalliyappan

For Respondents : R1-Court

No appearance for R2

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This writ appeal has been filed challenging the correctness of the
order dated 11.08.2018 passed in W.P. No.15632 of 2016.



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2.Learned counsel appearing for the appellant submitted that the appellant is the Correspondent of the Educational Institution and the second respondent, who was working as a Driver in the appellant Institution, used to drive the bus with students in the year 2013. While so, the bus met with an accident on account of his rash and negligent driving and thereafter, he did not report to work. After the accident took place, a criminal case was registered against the second respondent. Subsequently, the appellant came to know that the second respondent joined a School, namely, Kokulam High School, Lakkur Road, Venganur Post, Thittagudi Taluk, Cuddalore District and worked as a Driver till 14.02.2015 and thereafter, he joined another Institution, namely, Prime International School, Salem Main Road, Sirunesalur, Veppur Taluk, Cuddalore District and worked from 01.08.2015 to 01.08.2016 and also joined another Institution namely, Dhanalakshmi Srinivasan Higher Secondary School, Perambalur on 08.10.2016, without giving any letter of resignation to the appellant. But, suppressing all these facts, the second respondent raised an Industrial Dispute in I.D. No.2 of 2015 before the Labour Court, Cuddalore for granting continuity of service with back wages stating that since he was terminated from service on and from 07.06.2014, without any basis, the termination is illegal.



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3.Learned counsel appearing for the appellant further submitted that though the appellant had engaged a counsel to defend their case, unfortunately, the counsel did not file vakalat and did not inform the status of the case to them. Only after notice was served in C.P. No.15 of 2016, they had enquired their counsel regarding the Labour Court proceedings in which the Labour Court passed an exparte award in favour of the second respondent. When challenging the same, the appellant came with the Writ Petition in W.P. No.15632 of 2016, this Court, observing that even in case of termination on account of misconduct, show cause notice should have been issued, has dismissed the same. Aggrieved by the same, the appellant is before this Court.

4.Learned counsel for the appellant further submitted that when they have come to this Court with the above writ petition to set aside the exparte Award for the reason that the same was passed without hearing the other side, the learned Single Judge, on perusal of the Award passed by the Labour Court, came to the conclusion that the Management did not file any counter and did not adduce any evidence and the workman himself has been examined and the failure report has been marked. On perusal of the Award passed by the Labour Court, the learned Single Judge, while coming to the conclusion that



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all relevant aspects were taken into account and the Award passed by the Labour Court cannot be said to be illegal, has dismissed the writ petition. When the accident took place in the year 2013, the second respondent, after causing the accident, carrying the children in the bus, due to rash and negligent driving, did not report for duty. Therefore, the appellant Institution also did not bother to invite him back to the service, but, this aspect has been completely ignored by the learned Single Judge. Secondly, by filing additional documents to show that the second respondent, after leaving the employment from the appellant School, was gainfully employed in some other Schools, namely, Kokulam High School, Lakkur Road, Venganur Post, Thittagudi Taluk, Cuddalore District, Prime International School, Salem Main Road, Sirunesalur, Veppur Taluk, Cuddalore District and Dhanalakshmi Srinivasan Higher Secondary School, Perambalur, the appellant has proved their case, but, the Labour Court as well as the learned Single Judge have not considered this aspect. Learned counsel for the appellant, by filing additional typed set of papers, drawing our notice a Service Certificate dated 18.01.2019 issued by the Headmaster, Dhanalakshmi Srinivasan Higher Secondary School, Perambalur, who has certified that the second respondent was gainfully employed from 08.10.2016, submitted that since the above Service Certificate shows that he is gainfully employed, he is not



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entitled for back wages. Therefore, the learned counsel for the appellant prays for allowing this appeal.

5. But, we are unable to find any justification on the said letter dated 18.01.2019. Since the letter dated 18.01.2019 has not been brought to the notice of the Labour Court or the learned Single Judge, without examining the said letter on the basis of oral and documentary evidence to support the same, we cannot take it on record. Even if the letter is taken note of, it would not go to show that the second respondent cannot be given the benefit of back wages for the relevant period. Secondly, when the second respondent raised I.D. No.2 of 2015 before the Labour Court on the ground that he was terminated from service on and from 07.06.2014, the stand before us by the appellant school is that he remained absent. When the second respondent was employed admittedly in the appellant School in the year 2007 and he was allowed to continue till the accident took place, namely, in the year 2013, the claim of the appellant that the second respondent himself remained absent and he did not join duty is far from acceptance. As a matter of fact, the appellant should have issued notice and invited him for enquiry by serving a charge memo for the rash and negligent driving of the appellant for the cause of the accident. The said legal exercise has not been done by the appellant.



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K.KUMARESH BABU,J.**

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Therefore, we are not inclined to entertain this writ appeal filed by the appellant. Accordingly, this writ appeal stands dismissed. No costs.

[T.R.,J.] [K.B.,J.]
11.07.2022

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To

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

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