



W.P.No.26266 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.26266 of 2016
and
W.M.P.No.22520 of 2016**

The Management of Quaide-Millath College,
Represented by Dr.A.Rafi,
Tambaram Velachery Road,
Medavakkam,
Chennai - 601 302.

... Petitioner

Vs.

1. The Presiding Officer,
I Additional Labour Court,
Chennai.

2. D.Emimal

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the production of the records pertaining to the award dated 24.02.2016 passed in I.D.No.371 of 2014 passed by the first respondent, the I Additional Labour Court, Chennai and quash and set aside the said award.



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For Petitioner : Mr.G.Mutharasu
for Mr.S.Abdul Vahab

For Respondents : Mr.Kingly Solomon for R2
R1 - Labour Court

O R D E R

The award in I.D.No.371 of 2014 dated 24.02.2016 passed by the first respondent is under challenge in the present Writ Petition.

2. The petitioner / Management is a Charitable Trust running Minority Educational Institution. The second respondent joined as Junior Assistant in the petitioner College in the year 2006 and she proceeded on Maternity Leave for the second time from June 2012 to November 2012. At that point of time, the petitioner / Management has not sanctioned the leave and expressed the inconvenience in granting six months Maternity Leave instead of twelve weeks which was permissible under the Maternity Benefits Act, 1961 (as it was then). The second respondent however did not joined after completing twelve weeks leave period, for which, she was



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entitled to. On 28.01.2013, the second respondent sent a letter to the petitioner / Management making certain false allegations against the Management stating that she was prevented from joining and continuing on leave. Therefore, she filed an application before the Assistant Commissioner of Labour (Conciliation-I), in which, the petitioner / Management filed a counter denying the allegations made against them and asked her to join service and face the disciplinary proceedings for her unauthorised absence. However, the second respondent did not come forward to join service, she preferred Industrial Dispute in I.D.No.371 of 2014 before the first respondent / Labour Court. The first respondent / Labour Court after hearing both sides passed an award dated 24.02.2016 setting aside the termination of the second respondent directing the petitioner / Management to treat the period of absence from June 2012 to November 2012 as leave without pay and to consider the punishment of stoppage of increment for one year with cumulative effect in lieu of dismissal. The Labour Court also awarded 50% backwages with all attendant benefits to the second respondent from the date of dismissal to the date of reinstatement.



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Challenging this award, the petitioner / Management has preferred the present Writ Petition.

3. The learned counsel for the petitioner / Management at the outset challenges the award on the ground of non-consideration of the factual matrix in proper perspective by the Labour Court. The Labour Court has failed to appreciate the fact that during the pendency of the conciliation proceedings, the Management has offered to take back the second respondent in service, however the second respondent failed to join duty and the said statement is recorded in the conciliation failure report of the Assistant Commissioner of Labour (Conciliation-I). Therefore, the absence of the second respondent is wilful abandonment of service and the question of non-employment and dismissal from service does not arise. Moreover, it has been brought to the notice of the petitioner / Management that the second respondent was gainfully employed after her termination by the petitioner / Management and hence, the award of directing 50% backwages also is not tenable.



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4. On the other hand, the learned counsel for the second respondent has filed counter affidavit stating that the Labour Court has clearly applied the principles of natural justice only after a detailed analysis of the issue raised for consideration before the Labour Court and thereafter, the award of reinstatement with 50% backwages was passed. Moreover, the Labour Court has also held that twelve weeks Maternity Leave has to be considered as leave on loss of pay. Hence, the learned counsel seeks for dismissal of the Writ Petition.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. It is not in dispute that the second respondent was went on Maternity Leave for the second time between June 2012 and November 2012 and as per the provisions of the Maternity Benefits Act, as it was



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prevalent at that point of time, twelve weeks was permissible under the Act.

However, the second respondent has exceeded the said limit and proceeded on leave for six months. Therefore, the conclusion arrived at by the Labour Court to treat the twelve weeks as leave on loss of pay is justified. However, since an offer was made to the second respondent even at the time of conciliation proceedings and the second respondent failed to utilise that opportunity provided by the petitioner / Management and that she was gainfully employed elsewhere after her termination from the petitioner / Management. All these factual aspects which cannot be gone into by this Court sitting under Article 226 of the Constitution of India. The Labour Court conclusion of awarding 50% backwages and reinstatement into service is untenable. Hence, this Court feels that a lumpsum compensation of Rs.1,00,000/- can be awarded to the second respondent in lieu of reinstatement with 50% backwages as awarded by the Labour Court.

7. Accordingly, the Writ Petition is disposed of with a direction to the petitioner / Management to pay a compensation of Rs.1,00,000/-



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(Rupees One Lakh only) to the second respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.

Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

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