



W.P.Nos.28381 and 37775 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.28381 and 37775 of 2016

and

W.M.P.No.24499 of 2016

W.P.No.28381 of 2016:

The Management,
Perks Matriculation Higher Secondary School,
Represented by its Correspondent,
Mrs.Kalpana Srinivasan ,
Uppilipalayam,
Coimbatore – 641 015.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore - 18.

2. S.V.Shanthi

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the award passed by the first respondent herein in I.D.No.101 of 2010 dated 01.02.2016 and quash the same.



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For Petitioner : Mr.V.Vijay Shankar
For Respondents : Mr.S.Saravanan for R2
R1 - Labour Court

W.P.No.37775 of 2016:

S.V.Shanthi

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore - 18.

2. The Management,
Perks Matriculation Higher Secondary School,
Represented by its Correspondent,
Mrs.Kalpana Srinivasan ,
Uppilipalayam,
Coimbatore – 641 015.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records on the file of the first respondent in I.D.No.101 of 2010 dated 01.02.2016 and quash the same and consequently, direct the second respondent to reinstate the petitioner into service with continuity of service, backwages and all other attendant benefits.

For Petitioner : Mr.S.Saravanan
For Respondents : Mr.V.Vijay Shankar for R2
R1 - Labour Court



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COMMON ORDER

The issue raised herein arising out of the common award dated 01.02.2016 in I.D.No.101 of 2010 passed by the first respondent / Labour Court, hence these Writ Petitions are disposed of by this common order.

2. W.P.No.28381 of 2016 is filed by the Management of the School and W.P.No.37775 of 2016 is filed by the employee.

3. For the sake of convenience, the parties are referred to as 'Management' and 'employee'.

4. The case in nutshell is that the employee was engaged as Typist in the Management and the Management by a notice dated 06.03.2009 relieved the employee by giving three months notice due to computerisation. The employee has submitted her objection to the Inspector of Matriculation Schools on 09.03.2009. In the meantime, the Management



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by order dated 08.06.2009 relieved the employee from service. The employee sent a representation dated 11.06.2009 which was also not considered by the Management. On 01.07.2009, the Management sent a letter along with the cheque for a sum of Rs.89,700/- being full and final settlement of gratuity. Hence, aggrieved by the sudden retrenchment, the employee raised a Industrial Dispute and the Conciliation Officer submitted a failure report on 09.03.2010. After the failure report, the employee approached the Labour Court, Coimbatore in I.D.No.101 of 2010 to set aside the order of dismissal and to reinstate her into service with continuity of service, backwages and all other attendant benefits. The Labour Court had perused all the documents and the submissions made on both sides has passed an award directing the Management to pay a sum of Rs.2,00,000/- as compensation to the employee in lieu of reinstatement with continuity of service, backwages and other benefits by an order dated 01.02.2016. Both the employee as well as the Management have challenged this award by way of these Writ Petitions.



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5. The learned counsel for the Management contended that the Labour Court has wrongly invoked the Industrial Disputes Act since the Management is not an 'Industry' by itself and hence, the Industrial Disputes Act will not apply. That apart, since the employer / Management terminated the employee and it on compelling reason to dispense with the service as it post itself has become redundant. The learned counsel for the Management further contended that a sum of Rs.2,00,000/- as compensation which was arrived at by the Labour Court is excessive and far beyond of the said contemplated under the provisions of the Industrial Disputes Act. Hence, the learned counsel seeks to set aside the impugned award.

6. On the contrary, the learned counsel for the employee would submit that the Labour Court has erred in awarding only compensation in lieu of reinstatement with continuity of service, backwages and other attendant benefits. The Labour Court has failed to note that the petitioner is a non-teaching staff which comes under the category of workman within the meaning of section 2(s) of the Industrial Disputes Act and the Labour Court



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has decided the matter only under Section 25F of the Act which is erroneous. Hence, the learned counsel for the employee seeks to set aside the impugned award and to direct the Management to reinstate the employee into service with continuity of service, backwages and other attendant benefits.

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

8. It is too well settled by the Constitution Bench in the case of ***Bangalore Water-Supply and Sewerage Board vs R.Rajappa & Others*** reported in ***AIR 1978 SC 548***, wherein the Hon'ble Supreme Court has held that for the definition of the term 'industry' and to make any establishment liable under the definition of the word 'industry', a test should be considered. The test was named as the "Triple-Test", carrying certain conditions to be satisfied and proved to declare any establishment under the definition as mentioned in Section 2(j) of the Industrial Disputes Act, 1947.



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9. Applying the aforesaid judgment, it is evident that the Management running a School will not come under the purview of 'industry' and hence, the Labour Court was not justified in considering the Management as a 'industry'. Since the employee had already received a sum of Rs.89,700/- towards gratuity for the period for which she worked and that the compensation of Rs.2,00,000/- awarded by the Labour Court has already been deposited by the Management while this Court granted an interim stay on 16.08.2016, the question of setting aside the award does not arise. Since the employee was aged 47 years even at the time of filing of the Writ Petition in the year 2016 and by this time, she would be at the verge of attaining superannuation, no purpose would be served by setting aside the award and ordering any reinstatement. Moreover, the employee had already received the gratuity of Rs.89,700/-. However, the employee is at liberty to withdraw the compensation amount of Rs.2,00,000/- to the credit of I.D.No.101 of 2010, if the same has not yet been withdrawn already. Hence, W.P.No.33775 of 2016 filed by the employee is dismissed.



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10. With respect to W.P.No.28381 of 2016 filed by the Management, the same is also dismissed. By an order of this Court dated 16.08.2016 while granting interim stay, this Court had ordered to deposit a sum of Rs.2,00,000/- as compensation to the credit of I.D.No.101 of 2010. It is submitted by the learned counsel for the Management that the said amount has already been deposited. Hence, this Court is of the view that the said amount can be withdrawn by the employee, if it has not been already done, to which the learned counsel for the Management also concedes. Accordingly, W.P.No.28381 of 2016 is also dismissed.

11. In the result, both the Writ Petitions are dismissed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

19.07.2023

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

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To

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Labour Court,
Coimbatore - 18.
2. The Correspondent,
Perks Matriculation Higher Secondary School,
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M.DHANDAPANI, J.

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