



WP.Nos.7909 & 10776 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2023

PRONOUNCED ON : 19.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos. 7909 & 10776 of 2014
and
M.P.No.1 of 2014

W.P.No.7909 of 2014

The Management of
Brakes India Limited.,
Padi, Chennai – 50.

Rep by Group Personnel Advisor

....

Petitioner

Vs

1.The Presiding Officer,
1st Additional Labour Court,
Chennai – 104.

2.S.Packiaraj

....

Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 1st respondent in I.D.No.366 of 2007 and quash its award dated 17.12.2013.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.,
For R1 : Court
For R2 : Mr.C.K.Chandrasekaran



WP.Nos.7909 & 10776 of 2014

W.P.No.10776 of 2014

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S.Packiaraj

....

Petitioner

Vs

1.The Presiding Officer,
1st Additional Labour Court,
Chennai – 104.

2.The Management,
M/s.Brakes India Lid.,
Padi, Chennai – 50.

....

Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the award dated 17.12.2013 in I.D.No.366 of 2007 on the file of the 1st respondent and quash so far the payment 50% back wages and direct the 2nd respondent to pay to the petitioner full back wages from February 1995 to 22.05.2009 together with interest from 23.05.2009 and full P.F. both management contribution and employee contribution with interest as per the P.F.Act, full gratuity as per the Act upto 22.05.2009 with further interest till the payment is effected.

For Petitioner	:	Mr.C.K.Chandrasekaran
For R1	:	Court
For R2	:	Mr.Anand Gopalan for M/s.T.S.Gopalan and Co.,

COMMON ORDER

Both the Writ Petitions have been filed challenging the Award passed in I.D.No.366 of 2007 dated 17.12.2013 on the file of the first respondent herein.



WP.Nos.7909 & 10776 of 2014

2. The Management challenging the Award in W.P.No.7909 of 2014 and the claimant challenging the Award in W.P.10776 of 2014, insofar as the payment of 50% back wages.

3. The petitioner in W.P.No.7909 of 2014 is herein after called as “Management”. The petitioner in W.P.No.10776 of 2014 is herein after called as “Workman”.

4. The workman joined in the Management in the year 1974 as Grade-VI. Thereafter, he was promoted as staff Grade-V clerk in the year 1989. In the year 1989, he along with other co-workers had started “Padi Brakes India Employees Union” registered as CPT 998 of 1989 to promote the welfare of the workers. The workman was elected as General Secretary of the said Union. The Management is having its factory at Padi and engaged in manufacturing automobile brakes. According to the workman, they arranged for flag hoisting on 27.08.1990 and several trade union leaders were participated in the function. Therefore, the Management got upset and removed the flag post on the next day. Therefore, the Vice President of the Union preferred police complaint before the Inspector of Police, Korattur Police Station and FIR



WP.Nos.7909 & 10776 of 2014

was registered on the complaint. In order to take revenge, the Management foisted a false case as if he had assaulted one G.Padmanabhan, a co-worker and abused him with filthy language.

5. Pursuant to the same, the workman was terminated from his service on 20.02.1991 after conducting domestic enquiry. The Management filed a petition seeking approval of the workman's dismissal order as contemplated under Section 33(2)(b) of the Industrial Dispute Act (herein after called as "I.D. Act") and the same was rejected on 02.08.1991. It was challenged by the Management before this Court and though the challenge was rejected by the learned Single Judge of this Court in W.P.No.13773 of 1991 and the Hon'ble Division Bench of this Court had set aside the order of dismissing the approval petition in W.A.No.835 of 1993 to remand the approval for fresh disposal. The Approval Authority approved the order of dismissal by an order dated 14.01.1991.

6. Once again the workman challenged the order of approval in W.P.No.1908 of 1995 and the same was allowed by an order dated 12.02.1998. Aggrieved by the same, the Management preferred



WP.Nos.7909 & 10776 of 2014

W.A.No.413 of 1998 and the same was allowed by an order dated 04.01.2006. The workman preferred SLP as against the order of the Hon'ble Division Bench of this Court in SLP No.11742 of 2006 and the same was also dismissed on 31.07.2006. Thereafter, the workman filed a petition before the Assistant Commissioner of Labour (Conciliation) II, under Section 2A of the I.D. Act. It was resisted by the Management on the ground that it is not maintainable as the workman filed similar petition and the same was dismissed during the year 1996. However, the said application was rejected by the Assistant Commissioner of Labour (Conciliation) II. Therefore, the workman raised Industrial Dispute in I.D.No.366 of 2007 before the second respondent under Section 2A(2) of I.D.Act challenging the order of termination. The Labour Court had set aside the order of termination and ordered to re-instatement within a period of eight weeks from the date of receipt of the copy of the order with 50% of back wages at Rs.21,36,000/- including all attended benefits.

7. The learned counsel appearing for the Management submitted that already the Hon'ble Division Bench of this Court in W.A.No.413 of 1998 dated 04.01.2006 concluded that the charges against



WP.Nos.7909 & 10776 of 2014

the workman were conclusively proved and it does not warrant any interference once again by the Labour Court, since the Management had proved the charges against the workman on merits before the Conciliation Officer. The Labour Court should have only considered whether having regard to the finding of the guilt recorded by the Division Bench in W.A.No.413 of 1998, the propriety of the punishment was the only question to be decided in respect of power under Section 11(A) of I.D.Act. Without considering the evidence on record, the Labour Court interfered in the findings of the Assistant Commissioner of Labour and concluded that as if the incident on 28.06.1990 was not taken place and the Management had concocted the story to victimize the workman, that on 28.06.1990, the workman assaulted the co-employee Mr.Padmanabhan. Therefore, the Management made a *prima-facie* charge and let in evidence in support of the charge. It would amount to the *prima-facie* case of the guilt of the workman. Therefore, it cannot be said that there was no evidence at all in support of the charges against the workman.

8. The learned counsel for the Management further submitted that the workman had taken up the profession of law, he had acquiesced to the cessation of his employment with the Management as on January



WP.Nos.7909 & 10776 of 2014

1995. Therefore, the question of treating him as in employment beyond that date would not arise. The Labour Court, without considering the findings on merit made by the Hon'ble Division Bench of this Court dated 04.01.2006 in W.A.No.413 of 1998 and erroneously assumed that the Hon'ble Division Bench of this Court was given a finding that to see whether a *prima-facie* case was made out and therefore, such a finding will not binding on the Labour Court. This Court also referred to the evidence led by the parties and concluded on guilt of the workman, it would amount to a final verdict on guilt.

9. The learned counsel for the Management further submitted that in a dispute raised under Section 2-A of the I.D Act, exercising the powers vested under Section 11-A of the I.D.Act, the Labour Court ought to have considered the two issues viz., (i) whether the charges against the employee are proved (ii) If the charges are proved, whether the punishment imposed is proportionate. As against the approval of the dismissal order dated 20.02.1991, the workman filed W.P.No.1908 of 1995 and the same was allowed on 12.02.1998. Aggrieved by the same, the Management filed W.A.No.413 of 1998, in which, the Hon'ble Division Bench of this Court held that the workman abused the MW-1 in



WP.Nos.7909 & 10776 of 2014

a filthy language and threw a water tumbler on his forehead, which resulted in causing a bleeding injury on his forehead. It is further observed that there are enough material and evidence on record to show that the workman picked up a quarrel with MW-1, abused him in filthy language and caused him a bleeding cut injury on his forehead by throwing a water tumbler. Therefore, the charges against the workman were clearly proved. Hence, the Labour Court cannot look into the issue as to whether the charges are proved as contemplated under Section 2-A of the I.D.Act. Therefore, the Labour Court is required to consider the “proportionality of the punishment”.

10. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 SCC Online SC 1335** in the case of **Rajasthan State Road Transport Corporation Vs. Bharat Singh Jhala** and reported in **(2005) 3 SCC 134** in the case of **Mahindra and Mahindra Ltd., Vs.N.B.Narawade**.

11. The learned counsel appearing for the workman submitted that the Labour Court concluded that there was no evidence to substantiate the charge memo issued by the Management. Further held



WP.Nos.7909 & 10776 of 2014

that it is a clear case of no evidence victimised and unfair labour practice, and as such it declared that the termination itself is illegal. When it being so, the Labour Court ought to have award with full back wages instead of 50%. The Management indulged in unfair labour practice and failed to have followed the principles of natural justice, while passing the impugned order of termination. The workman's unblemished service and till starting Association of “Padi Brakes India Employees Union”, there was no charge against the workman. Only after starting the Association, after he became the General Secretary of the Union and after grand celebration of flag hoisting function on 27.06.2019, the next day i.e. On 28.06.2019, the Management had removed the flag and flag post. Therefore, the Vice President of the Union preferred a police complaint as against the Management. Hence, a false charge had been framed as against the workman with concocted story as if the workman had assaulted his co-worker viz., G. Padmanabhan and abused him with filthy language.

12. The learned counsel for the workman further submitted that the observation of the Hon'ble Division Bench of this Court in W.A.No.413 of 1998 was only a passing remark. Such observation is only an obiter dictum and is not a binding precedent. In fact, the order



WP.Nos.7909 & 10776 of 2014

passed in I.A.No.311 of 2011 in I.D.No.366 of 2007, the Management preferred W.P.No.21646 of 2013 and this Court remanded the case for fresh disposal with a direction that both the parties are entitled to lead evidence to prove their case, that too, after considering the order passed by the Hon'ble Division Bench of this Court. Aggrieved by the same, the Management did not prefer any appeal. It is well established principle of industrial adjudication that a finding under Section 33(2)(b) proceedings on a *prima-facie* basis cannot scuttle the proceedings of an industrial dispute under Section 2-A and the Court has all the powers to consider the entire issue on hand. The Management misinterpreted Section 33(2)(b) of the I.D.Act and the adjudication under Section 2 A (2) of the Act. The Approval Authority decided the *prima-facie* case. Even if the approval was granted, the Labour Court has ample power to decide under Section 11-A of I.D.Act, in respect of the enquiry is fair and proper and finding of the Enquiry Officer is perverse and the workman was dismissed from service, due to victimization and unfair labour practice and whether the charge is proved by the available evidence. The Labour Court is also empowered to decide whether the punishment inflicted on the workman is shockingly disproportionate to the alleged charges.



WP.Nos.7909 & 10776 of 2014

13. The Approval Authority formulated the following points for grant of approval as contemplated under Section 33 (2)(b) of I.D.Act is as follows :

- (a) Whether, the action of the Management was in accordance with the certified standing order ;
- (b) Whether the Management has paid one month wages ; and
- (c) Whether the application for approval was made simultaneously.

14. Therefore, the said approval was confirmed by the Hon'ble Division Bench of this Court. However, the Approval Authority failed to follow the guidelines issued by the Hon'ble Supreme Court of India in the case of ***Lalla Ram Vs. Management of D.C.M. Chemical*** reported in ***1978 (1) LLJ page 507 at Para 13*** as follows :

- (i) Whether a proper domestic enquiry in accordance with the relevant rules/Standing orders and principles of natural justice has been held;
- (ii) Whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out ;
- (iii) Whether the employer had come to a bonafide conclusion that the employee was guilty and the



WP.Nos.7909 & 10776 of 2014

dismissal did not amount to unfair labour practice and was not intended to victimize the employee ;

(iv) Whether the employer has paid or offered to pay wages for one month to the employee and

(v) Whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

15. Therefore, the workman raised Industrial Dispute questioning the validity of the dismissal order. The Labour Court rightly concluded that the charges were not proved as against the workman and set aside the order of dismissal. When the Labour Court concluded that the charges were not proved by the Management, the Labour Court ought to have ordered for entire back wages instead of 50%. Therefore, he prayed to set aside the award ordering 50% of the back wages and prayed for full back wages.

16. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent and perused the materials available on record.



WP.Nos.7909 & 10776 of 2014

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17. The workman joined in the Management in the year 1974 as workman Grade VI. In the year 1989, he was promoted to Staff Grade V clerk. The workman along with co-workers had started Union in the name and style of “Padi Brakes India Employees Union”, in which he was selected as General Secretary of the Union. They had arranged flag hoisting on 27.08.1990, in which several Trade Union leaders were participated in the said function. The next day, the Management removed the flag post, which was erected by the Union. The Vice President of the Union was lodged a complaint and FIR was also registered against the accused. On the date itself, there was an altercation between the workman and the co-worker viz., Padmanabhan, who belonged to another union. In the course of altercation, the workman had thrown a silver tumbler on the face of the said Padmanabhan and caused injury on his forehead. On the complaint given by the said Padmanabhan, the Management initiated disciplinary proceedings as against the workman by issuance of charge memo. Without satisfying the explanation submitted by the workman, the Management ordered for domestic enquiry. During the enquiry, the Management had examined two witnesses in support of the charges framed against the workman. The



WP.Nos.7909 & 10776 of 2014

Enquiry Officer found all the charges proved and the workman was awarded with punishment of dismissal from his service.

18. The Management filed a petition before the Conciliation Officer, for approval of order of dismissal as contemplated under Section 33 (2) (b) of the I.D.Act in Approval Petition No.586 of 1991. It was rejected and aggrieved by the same, the Management preferred W.P.No.835 of 1993 before this Court and the same was also dismissed. However, the Hon'ble Division Bench of this Court passed order in W.A.No.835 of 1993 setting aside the order passed by the Conciliation Officer and the learned Single Judge of this Court and remanding the matter back to the Conciliation Officer for fresh disposal. Again the Conciliation Officer passed an order, thereby approved the order of dismissal. Aggrieved by the same, the workman preferred W.P.No.1908 of 1995 and the same was allowed and set aside the order passed by the Conciliation Officer. Aggrieved by the same, the Management preferred W.A.No.413 of 1998, the Hon'ble Division Bench of this Court set aside the order passed by the learned Single Judge of this Court and allowed the Writ Appeal. The workman raised Industrial Dispute under Section 2A of the I.D.Act as against the order of dismissal. The Labour Court



WP.Nos.7909 & 10776 of 2014

had set aside the order of dismissal and ordered for reinstate with 50% of back wages.

19. The points for consideration in these writ petitions are that whether the Labour Court can go into the proven charges as against the workman under Section 11-A of the I.D.Act. It is relevant to extract the provision of Section 11-A of the I.D.Act, which is as follows :

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen :-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :



WP.Nos.7909 & 10776 of 2014

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

20. In this regard, the Hon'ble Supreme Court of India reported in **(2005) 3 SCC 134** in the case of ***Mahindra and Mahindra Ltd., Vs. N.B.Narawade***, held that after introduction of Section 11-A in the I.D.Act, certain amount of discretion is vested with the Labour Court/ in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well settled by the various judgments of the Hon'ble Supreme Court of India and it is certainly not unlimited. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.



WP.Nos.7909 & 10776 of 2014

21. The Hon'ble Supreme Court of India also held in the case

of ***Rajasthan State Road Transport Corporation Vs. Bharat Singh***

Jhala (Dead) reported in ***2022 SCC online SC 1335*** held that the

Industrial Tribunal approved the order of termination on appreciation of evidence let in before it, thereafter, the findings recorded by the Industrial Tribunal were binding between the parties. No contrary view would have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal.

22. It is also relevant to rely upon the Judgement of the Hon'ble Supreme Court of India reported in ***2008 III LLJ 1 (SC)*** in the case of ***Mavji C. Lakum Vs. Central Bank of India***, held that under Section 11A was quite justified in using its discretion. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence/interfering with the quantum of punishment. There can be no dispute that power under Section 11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied



WP.Nos.7909 & 10776 of 2014

with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Therefore, the Labour Court has got ample power to decide under Section 11-A of the I.D.Act that the enquiry conducted by the Management is fair and proper and the findings of the enquiry officer is perverse.

23. After enquiry, the enquiry officer found both the charges proved against the workman and he was dismissed from service. It was challenged by way of Industrial Dispute in I.D.No.366 of 2007. While pending dispute, the workman filed an application in I.A.No.311 of 2011 for direction directing the Management to pay eligible payment, principal and interest amounting to Rs.29,82,022/-. The Labour Court had partly allowed the said application and directed the Management to pay a sum of Rs.3,65,419/- with interest at the rate of 12% per annum from 01.02.1995 to till date of payment after deducting a sum of Rs.2,37,415/- within a period of four weeks from the date of receipt of a copy of the order. In view of the above order passed in I.A.No.311 of 2011, the Labour Court dismissed the I.D.No.366 of 2007. It was challenged by the Management in W.P.No.21646 of 2013 and this Court, by an order



WP.Nos.7909 & 10776 of 2014

dated 14.08.2013, set aside both the orders passed by the Labour Court and remanded back to the Labour Court with liberty to let in oral evidence and produce documents before the Labour Court with consent of both parties.

24. Accordingly, before the Labour Court, the workman was examined himself as WW1 and documents were marked as Exs.W1 to W18. On behalf of the Management, they had examined one witness as MW1 and documents were marked as Exs.M1 to M32.

25. The charge against the workman is that while the workman was on duty on 28.06.1990, he abused a co-worker in filthy language and threw an eversilver tumbler on his face and caused bleeding injury on the right forehead just above his right eye. In order to prove the said charge, the Management had examined the complainant and the eye witness before the Enquiry Officer. In order to defend the said charge, the workman had examined eight witnesses. However, the complaint of the said Padmanabhan was not supported by the other two eye witnesses. Further, the complainant had also improved his version before the Enquiry Officer. He never whispered about the hurt and also



WP.Nos.7909 & 10776 of 2014

abused him in filthy language. Therefore, the charge of the Management was not supported by the said Padmanabhan.

26. According to the Management, immediately, the said Padmanabhan was taken to Kilpauk Medical College and Hospital, Chennai and the Accident Register was recorded from the said Padmanabhan. On perusal of the Accident Register revealed that it was recorded as fall injury as stated by the said Padmanabhan. No were whispered about the cut injury sustained in the incident because of the workman by throwing tumbler. Further, the OP chit and casualty entry register was marked as Exs.M15 and M22. However, those documents were not examined and the Management also refused to produce the medical record of the said Padmanabhan. That apart, the Management produced certificate issued by one Dr.Seshadri, that too after 4 ½ years from the date of alleged incident with wrong side injury. Therefore, the evidence of Dr.Sheshadri is rightly disbelieved by the Labour Court.

27. The workman had examined eight witnesses to defend the charges and they categorically deposed that the workman was not present at the time of the alleged incident in the canteen. They all categorically



WP.Nos.7909 & 10776 of 2014

and cogently deposed and as such, their deposition cannot be thrown out, though they belonged to the same Union of the workman. Initially, the Assistant Labour Commissioner rejected the Approval Petition and only on the direction issued by this Court approved the order of dismissal. The standard of proof in a departmental enquiry are not required to be proved like a criminal case. The origin of the complaint and the charge against the workman was not corroborated by the medical evidence and the complaint.

28. That apart, the Assistant Commissioner of Labour failed to follow the guidelines issued by the Hon'ble Supreme Court of India reported in **1998 (1) LLJ Page 507 Para13** in the case of **Lalla Ram Vs. Management of D.C.M. Chemical.**

(i) Whether a proper domestic enquiry in accordance with the relevant rules/Standing orders and principles of natural justice has been held;

(ii) Whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out ;

(iii) Whether the employer had come to a bonafide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee ;



WP.Nos.7909 & 10776 of 2014

(iv) Whether the employer has paid or offered to pay wages for one month to the employee and

(v) Whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

29. After the amendment of Section 11-A, Labour Courts are empowered to reappraise the evidence of the domestic enquiry and to satisfy themselves that the findings of the domestic enquiry are correct. The Tribunals have no liberty to consider not only whether the findings of misconduct are correct but also to differ from such findings if employee makes out a proper case. Further, the scope of the preliminary enquiry under Section 33(2)(b) of the I.D.Act is a fair and proper domestic enquiry conducted by the Management by following the principles of natural justice under Section 33(2)(b) of the I.D.Act, the Labour Court has got only limited power. If a *prima-facie* case is made out by the Management that the enquiry was conducted complying with the principles of natural justice. The Labour Court cannot go into deeply by re-appreciating the findings given by the Enquiry Officer under Section 33(2)(b) of the I.D. Act. But under Section 11-A of the I.D.Act,



WP.Nos.7909 & 10776 of 2014

the Labour Court has got wide power to consider and scrutinies the entire evidence adduced by both the parties including the correctness of the findings given by the Enquiry Officer.

30. The Hon'ble Division Bench of this Court held in W.A.No.413 of 1998, by an order dated 04.01.2006, in respect of the proceedings initiated under Section 33(2)(b) of I.D.Act. Therefore, it would not binding the proceedings initiated under Section 2-A of the I.D.Act by the workman. It has to be determined independently without influencing the findings given in the preliminary issue under 33(2)(b) of the I.D.Act. Therefore, the Labour Court has rightly re-appreciated the evidence as directed by this Court in W.P.No.21646 of 2013, by an order dated 14.08.2013. Further, the workman was victimised by the Management for the previous enmity between them. The workman lodged complaint as against the Personnel Divisional Manager of the Management about corrupt practice. In fact, he instituted defamation suit and the same was also dismissed as against the workman. Further, the Management, in order to victimise the workman for starting Trade Union and also hoisting flag, removed the flag on the next day. Therefore, the Management indulged unfair labour practice and victimised the workman and dismissing him from service.



WP.Nos.7909 & 10776 of 2014

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31. Insofar as re-instatement and back wages of the workman is concerned, admittedly, the workman had attained the age of superannuation on 23.05.2009. Therefore, the question of re-instatement does not arise. Insofar as the back wages is concerned, even in the year 1995 itself, the workman enrolled him as an Advocate in the Bar Council of Tamil Nadu and Puducherry and practicing as an Advocate. However, the Management failed to prove the income of the workman by producing any document. The workman also admitted that he is a practicing Advocate since 1995, though his income was not proved by the Management. Therefore, the workman commenced his practice as an Advocate only after from his dismissal from service by the Management that too from the year 1995 onwards. After his dismissal, in order to survive, he had started his practice for his livelihood and also for his family. Therefore, it cannot be a ground for denying the entire back wages to the workman. Hence, the Labour Court has rightly awarded 50% of back wages with interest at the rate of 12% per annum. Hence, this Court finds no infirmity or illegality in the award dated 17.12.2013 in I.D.No.366 of 2007 passed by the Labour Court and both Writ Petitions are liable to be dismissed.



WP.Nos.7909 & 10776 of 2014

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32. Accordingly, both the Writ Petitions stand dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.07.2023

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Index: Yes/No
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To

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



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WP.Nos.7909 & 10776 of 2014

G.K.ILANTHIRAIYAN,J.

Lpp

Pre-delivery order in
W.P.Nos. 7909 & 10776 of 2014
and
M.P.No. 1 of 2014

19.07.2023