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W.P.No.32610 of 2018 & W.M.P. Nos.37809 & 37812 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.Nos.32610 of 2018 &
W.M.P. Nos.37809 & 37812 of 2018

Mercy David

... Petitioner

Vs.

1. The Principal
Mountain Home School and Junior College
Balclovo
Coonoor 643 102.

2. Home Missionary Society of India
Represented by its Secretary/President
No.1/21, Poniammal Street
Egmore, Chennai 600 008

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the Additional Labour Court, Coimbatore in I.D. No.151 of 2009 dated 12.12.2017, quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service and other related back wages.



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For Petitioner : Mr.M. Shreedhar
For R1 : Mr.S.Mukunth, Senior Counsel
for M/s. Sarvabhauman Associates
For R2 : Mr.Adrian D. Rozario

ORDER

Challenge in this Writ Petition is made to the orders dated 12.12.2017, passed in I.D. Nos.151 of 2009 by the Additional Labour Court, Coimbatore.

2. The petitioner was working as a Clerical Assistant in the 1st respondent School from 16.05.2005 and her services were confirmed on 01.06.2006. She was drawing a salary of Rs.4,647/-. According to the Writ Petitioner she was terminated from service on 19.07.2008 without conducting any enquiry and without following the provisions contemplated under Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). She therefore approached the Industrial Tribunal by way of filing a petition in I.P. No.151/2009 under Section 2(A)(2) of the Act to set aside the order of termination dated 19.07.2008. The present respondents filed a detailed counter before the Labour Court.



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3. The learned Presiding Officer, Additional Labour Court, Coimbatore, after analysing the evidence on record, vide his orders dated 12.12.2017, set aside the order of termination dated 19.07.2008 passed by the 1st respondent and directed them to pay a compensation of Rs.1,00,000/- in lieu of all the reliefs claimed by the petitioner within one month from the date of coming into force of the Award and further held that the petitioner is not entitled for any other benefits excluding gratuity. Aggrieved by the said orders, the present Writ Petition is filed.

4. Mr.M. Shreedhar, learned counsel for the petitioner submitted that when the Labour Court had set aside the order of termination, it ought to have ordered for reinstatement of the petitioner with full back wages and other benefits. In this regard, he relied on the decision of the Hon'ble Supreme Court in ***Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others*** reported in **2013 (10) SCC 324**, wherein it has been held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

“38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is



the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.”

He would further contend that citing the service period of three years as one of the reasons for denying her reinstatement, continuity of service and back wages, by the Additional Labour Court is a gross injustice. He therefore, prayed for allowing this Writ Petition.

5. Per contra, learned counsels for the respondents contended that the Labour Court, after analysing the evidence on record, passed a well considered order and therefore no interference is warranted by this Court and prayed for dismissal of the Writ Petition.



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6. A perusal of the records shows that the petitioner was working as a Clerical Assistant in the 1st respondent School from 16.05.2005 and her services were confirmed on 01.06.2006 and later she was promoted as Personal Secretary to the Principal. She was drawing a salary of Rs.4,647/- The Writ Petitioner was terminated from service on 19.07.2008. The Labour Court had set aside the order of termination on the ground that the respondents had not adduced any evidence to show that the petitioner is not a "workman" as provided under the Industrial Disputes Act. However, based on the evidence on record the Labour Court came to a conclusion that she is a workman within the definition of Section 2(s) of the Act.

6.1. It is pertinent to mention here that the petitioner did not plead that she was not employed elsewhere during the relevant period and it was also not proved by her by adducing acceptable evidence. It is settled law that the initial burden is on the employee to prove that she is not gainfully employed anywhere. In the decision of the Hon'ble Supreme Court in *Jagbir Singh vs Haryana State Agriculture Marketing Board and Another reported in (2009) 15 SCC 327*, it has been held thus :



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"It is true that earlier view of the Supreme Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, the Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure.

7. The factors which are relevant for determining the same, inter alia, are:

- (i) whether in making the appointment, the statutory rules, if any, had been complied with;*
- (ii) the period he had worked;*
- (iii) whether there existed any vacancy; and*
- (iv) whether he obtained some other employment on the date of termination or passing of the award.*

8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the



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constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of [Section 6-N](#) of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748].)

13. In this view of the matter, we are of the opinion that as



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R.HEMALATHA, J.

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