



W.P(MD)No.3156 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3156 of 2020

and

W.M.P.(MD)No.2693, 2694 and 12935 of 2020

The Management of Kodaikanal
International School,
Through its Correspondent,
Kodaikanal.

... Petitioner

Vs.

C.John

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records and quashing the original impugned Award dated 23.9.2019 in ID.No.03/2012 passed by the Presiding Officer, Honourable Labour Court (Dindigul Camp Court case) Trichirapalli.

For Petitioner : Mr.G.Kalyan Jhabakh,
For Mr.Surana and Surana.

For Respondent : Mr.H.Lakshmi Shankar



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ORDER

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Heard the learned counsel on either side.

2.The writ petitioner is an educational institution. The respondent herein was appointed as a Driver in the petitioner school on 21.11.2000. The management issued charge memo dated 03.06.2011 alleging that the respondent had given false information regarding his age and qualification while seeking appointment. Few other charges have also been levelled. The respondent was dismissed from service on 27.06.2011. The petitioner filed I.D.No.3 of 2012 before the Labour Court, Tiruchirappalli (Dindigul Camp). The management contested the respondent's allegations. Evidence was adduced on either side. The Labour Court vide award dated 23.09.2019 in I.D.No.3 of 2012 set aside the order of dismissal. The management was directed to reinstate the respondent with all the attendant benefits. The management was directed to pay 50% of the backwages to the respondent from the date of dismissal till his reinstatement. Questioning the same, this writ petition came to be filed.



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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned award and allow the writ petition as prayed for. The learned counsel took me through the communications issued by the management during the course of his service in which the workman has been faulted for his negligent conduct. He also took me to the date of birth of the respondent as found in his school record. According to the workman, he was born on 19.05.1969 but then his driving license issued on 16.12.1983. The learned counsel would argue that the respondent had obtained the driving license when he was under-aged and that he had given false information while seeking appointment and that is why, the impugned charge memo came to be issued. His core argument is that if the Labour Court had found that proper enquiry was not conducted, then it should have given liberty to the management to adduce evidence before the Labour Court. The learned counsel also placed reliance on quite a few decisions in this regard. The failure on the part of the Labour Court to afford an opportunity to the management has caused serious prejudice and the



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learned counsel in the alternative would submit that the matter can atleast be remanded. He also would state that the workman being a driver and Kodaikanal being a tourist destination, the workman would not have been idle. He submitted that the question of paying backwages would arise, only if the workman has not been gainfully employed during the period in question.

4.The respondent has filed counter affidavit and the learned counsel took me through its contents. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Whenever the workman alleges that enquiry was not properly conducted, the Labour Course would frame a preliminary issue and upon finding the issue in favour of the workman, the management will be given an opportunity to adduce evidence before the Labour Court itself. The question arises if the same principle would apply where the workman alleges that no enquiry was conducted and the management asserts that enquiry was conducted. In my view, not much turns on its



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distinction. The Labour Court could have framed a preliminary issue and given an opportunity to the management to adduce evidence before itself.

6.The question that arises is whether on this ground, I can set aside the impugned award and remand the matter to the file of the Labour Court. In my view, such a course of action need not be taken in this case. The charge against the workman is that he gave false information at the time of seeking appointment. The learned counsel for the workman took me through the terms of the appointment order. In the appointment order itself, it has been mentioned that the workman's date of birth as per records produced is 19.05.1969 which date has been accepted by the administration as the true date of birth of the appointee. The petitioner was appointed only as driver. Even according to the management, the Driving License No.2194/83 issued on 16.12.1983 was produced. Since the driving license obtained in the year 1983 as well as the school records were produced by the workman, the charge that he furnished false information while seeking appointment falls to the ground. Even from the materials that have now been produced before me, I come to the conclusion that this charge is clearly not maintainable. It is quite



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possible that the workman obtained license when he was under-aged.

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This Court has consistently held that a driving license once renewed becomes valid for all purposes and the fact that the initial license was issued when the applicant was under-aged will pale into insignificance. The other charges are quite vague. That is why, the Labour Court rightly set aside the order of termination and directed the management to reinstate the respondent. The Labour Court has been fair to the management by awarding only 50% of the backwages. In any event, I do not want to go into the issue of backwages. It is stated by the learned counsel for workman that claim petition has been filed before the Labour Court and the management appears to have contested the case of the workman that he was not gainfully employed. This can be gone into by the Labour Court itself. I sustain the impugned award of the Labour Court to the extent that it set asides the order of termination and directs reinstatement of the workman. As regards the issue whether the workman was gainfully employed or not, the matter that can be pursued in the claim petition. That issue is left open.

7.The writ petition is dismissed with the aforesaid observations.



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No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
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G.R.SWAMINATHAN, J.

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