



W.A.(MD).No.79 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.10.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.79 of 2015
and
M.P.(MD).No.1 of 2015

The Management,
Arul Anandar College,
Karumathur,
Madurai District – 625 514.

.. Appellant/Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Buildings,
Melur Road,
Madurai – 625 020.

2.M.Rajendran (Died)

..Respondents/Respondents

3.R.Lakshmikantham

4.R.Ganesh

5.R.Amutha

6.R.Murugesan

..Respondents



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(R-3 to R-6 are impleaded as LR's of the deceased second respondent vide Court order dated 18.07.2023 made in C.M.P.(MD).No.6301 of 2021 in W.A.(MD).No.79 of 2015)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the Appeal; to set aside the order passed in W.P.(MD).No.1412 of 2010 dated 31.10.2014.

For Appellant : Mr.S.Seenivasagam

For R-3 to R-5 : M/s.B.Sargunam

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The present Writ Appeal arises out of the common order dated 31.10.2014 passed in W.P.(MD).No.6527 of 2009 and W.P.(MD).No.1412 of 2010.

2. W.P.(MD).No.6527 of 2009 was instituted to direct the Management of Arul Anandar College, Karumathur, Madurai to pay backwages and other terminal benefits to the writ petitioner as directed by the Labour Court, Madurai in the Award dated 02.04.2009 passed in I.D.No.579 of 1989.



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3. W.P.(MD).No.1412 of 2010 was instituted by the Management of Arul Anandar College, Karumathur, Madurai challenging the validity of the award passed by the Labour Court dated 02.04.2009 in I.D.No.579 of 1989.

4. The present Writ Appeal has been filed by the Management of Arul Anandar College against the order passed in W.P.(MD).No.1412 of 2010. The learned Single Judge passed a common order dated 31.10.2014 in both the Writ Petitions in W.P.(MD).No.6527 of 2009 and W.P.(MD).No.1412 of 2010. However, the Management has not chosen to prefer any appeal against W.P.(MD).No.6527 of 2009, which was instituted by the deceased employee to implement the award of the Labour Court passed in I.D.No.579 of 1989.

5. The second respondent workman was appointed as Head Clerk in the appellant College on 01.08.1970. He was awarded selection grade in the post of Head Clerk on completion of ten years of service. Charge memos were issued against the deceased employee, setting out certain allegations.



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Admittedly, domestic enquiry was conducted and the deceased employee participated in the domestic enquiry partly and thereafter, remained absent.

6. The Enquiry Officer submitted his report, which was accepted by the employer and the major penalty of termination from service was imposed. Challenging the order of dismissal, a reference was sought for, which was declined by the Government in G.O.No.1547 dated 13.07.1984. The Government Order was challenged in W.P.No.9959 of 1985. The said Writ Petition was allowed by the Division Bench of the High Court of Madras on 08.08.1989 and the following observations were made:

“4. It has been more than once held that when a dispute is one which would come within the ambit of the Industrial Disputes Act and which could be agitated in a civil court, the Industrial Disputes Act, being an appeal enactment dealing with special kind of disputes the reliefs and remedies will have to be worked out under the said enactment alone excepting under certain circumstances where injunction etc could be granted as held in 1975 SC 2238. Therefore, any reference to the disputes which has arisen between the management and non-teaching staff, in view of the decision in CHRISTIAN MEDICAL COLLEGE HOSPITAL EMPLOYEES UNION AND



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ANOTHER -V- CHRISTIAN MEDICAL COLLEGE (VELLORE) ASSOCIATION AND OTHERS (1988 1 LLJ 263), the provisions of the Industrial Disputes Act would apply. Even then, learned counsel Mr.Martin would bring to the notice of this court a slightly different approach made in the decision dealing with teachers in SUNDRAMBAL -V- GOVERNMENT OF GOA, DAMAH AND DIS (AIR 1988 Sc 1700) pertaining to this aspect, but the present matter comes squarely under CHRISTIAN MEDICAL COLLEGE HOSPITAL EMPLOYEES UNION AND ANOTHER-V-CHRISTIAN MEDICAL COLLEGE (VELLOR) ASSOCIATION AND OTHERS (1988 1 LLJ 263). The dispute which has arisen is one which will have to be resolved by applying the provisions of the Industrial Disputes Act.”

7. Consequent to the judgment of the Division Bench of the High Court of Madras, a reference was made in G.O.Ms.No.1773 dated 04.10.1989 by the Government of Tamil Nadu. Pursuant to the reference, I.D.No.579 of 1989 was taken on file by the Labour Court, Madurai and issues were adjudicated. The Labour Court after conducting trial passed an award in favour of the deceased employee granting the relief of reinstatement with backwages along with attendant benefits.



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8. The award was challenged in W.P.(MD).No.1412 of 2010.

Simultaneously, the deceased employee, M.Rajendran filed W.P.(MD).No.6527 of 2009 seeking implementation of the award. Both the Writ Petitions were heard together by the learned Single Judge and the issues raised between the parties were considered.

9. The findings of the learned Single Judge in the order impugned reveals that the appellant Management failed to establish and produce evidence to prove the charges against the deceased employee. In this regard, in paragraph 22 of the impugned order, the learned Single Judge made a categorical finding as follows:

“22. Keeping in mind the ratio laid down in the above decision, this Court finds that the Management had not tendered any evidence, much less, acceptable evidence, so as to prove their stand that the first respondent was not a "workman" as defined under Section 2(s) of the I.D. Act and in view of the same, the contention of the Management falls to the ground.”

The learned Single Judge elaborately considered the issues raised between the parties and also the findings of the Labour Court, which were made



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based on the documents and evidences filed by the Management and the deceased employee.

10. We have independently gone through the nature of the allegations framed against the deceased employee in the charge memorandums. The allegations are not relating to misappropriation, fraud or corruption. Per contra, all the allegations are relating to certain routine lapses alleged to have been committed by the deceased employee during the course of his employment. Such flimsy allegations do not warrant major penalty. More so, both the Labour Court as well as the learned Single Judge of this Court have taken concurrent view in respect of the charges as well as the failure on the part of the Management to prove the charges framed against the deceased employee before the Labour Court. Thus, we are of the opinion that the alleged charges framed against the deceased employee are minor in nature, more so, such charges, even if proved, do not warrant imposition of major penalty of termination from service. In any event, the punishment of termination from service is not in proportionate with the gravity of the allegations and therefore, we form an opinion that the charges are, if proved also, the punishment of termination from service will be disproportionate.



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11. Mighty Management could able to protract the litigation for more than 42 years. On every stage, petitions were filed to drag on the proceedings, which caused prejudice to the interest of the workman, who died even before reaching finality in the litigations. Considering the long pendency of the litigation and the plight of the family of the deceased employee, we are not inclined to interfere with the order passed in the Writ Petition.

12. In view of the fact that concurrent views are taken both by the Labour Court as well as the learned Single Judge and on our independent consideration, we do not find any reason to interfere with the order passed by the learned Single Judge, the Writ Appeal fails and consequently, the order of the learned Single Judge dated 31.10.2014 passed in W.P.(MD). No.1412 of 2010 stands confirmed. In respect of the order passed in W.P. (MD).No.6527 of 2009, the appellant Management is directed to implement the order within a period of eight (8) weeks from the date of receipt of a copy of this judgment.



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13. Accordingly, the Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
12.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

The Presiding Officer,
Labour Court,
District Court Buildings,
Melur Road,
Madurai – 625 020.



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