



W.A.(MD)No.1455 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.1455 of 2022

and

W.M.P.(MD)No.11725 of 2022

The Administrator,
Don Bosco Dominic Savio School,
Yagapa Nagar, Thanjavur, Thanjavur District.

... Appellant

Vs.

A.Inasimuthu

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the orders passed in W.P.(MD)No.10141 of 2019, dated 12.10.2022 on the file of this Court.

For Appellant : M/s.A.Amala

For Respondent : Mr.G.Karnan

JUDGMENT

(Judgment of the Court was delivered by **V.LAKSHMINARAYANAN, J.**)

This Writ Appeal challenges the order passed by the learned Single Judge dated 12.10.2022 passed in W.P.(MD)No.10141 of 2019.



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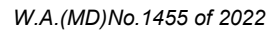
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2.The Writ Petition arose challenging the award of the Labour Court passed in I.D.No.31 of 2018, dated 25.07.2018 on the file of the Labour Court at Kumbakonam, Thanjavur District.

3.For the sake of convenience, the parties will be referred to as workman and management.

4.The workman joined in the management as Supervisor on 07.07.1985. From 1985 to 2010, there was no problem with the management. The workman, though was employed by the management, was sent to work under Salesian Fathers, who controlled the institution. He was denied employment. Hence, he issued lawyer's notice on 09.07.2010.

5.Accepting that the workman was employed under the management, a reply notice was sent by the management, stating that accident, due to which the workman suffered injuries, is not attributable to the management. There was no averment that the management called upon the workman to rejoin duty and he refused to do so. A re-joinder notice was issued by the workman, denying the



management, the workman proceeded to institute Industrial Dispute proceedings.

was dismissed. Hence, the present Writ Appeal is filed.

7. Heard the learned counsel appearing on either side.

8. The learned counsel appearing for the management would argue that the workman was not engaged by the appellant and he was only working in the cowshed of one of the priests of Salesian Father. She would further contend that the workman is not entitled to backwages, because he was gainfully employed elsewhere. This is effectively rebutted by the learned counsel for the workman.

9. We have considered the arguments between the parties.

10. At the outset, insofar as the first point is concerned, we have to point out that the management had issued appointment letter to the workman on



31.10.1995. From this, it is clear that the workman was engaged only as a Supervisor by the appellant and he was not working in the cowshed as alleged by the appellant. Apart from that, in the reply notice also, it was admitted by the appellant management that the workman had given employment by them. This fact was properly appreciated by the Labour Court, which come to the conclusion that the workman was the employee of the appellant.

11.Insofar as the second point that the learned counsel for the appellant would argue that since the workman had not come and reported for duty, he is not entitled to full backwages, is concerned, it is pertinent to point out that this is the case of non-employment, attributable to the management, not one due to the mistake of the workman. After trial, it was found out by the Labour Court that it was the management, which had denied employment to the workman.

12.The principle of 'No work No pay' was developed during the time the workmen indulged in strike. In other words, the principle is that if a workman participates in a strike, he is not entitled to get backwages, because he is keeping away from the employment on his own volition. This principle was slowly extended by judicial proceedings to other instances also but they covered cases,



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where the workman was partly or fully responsible for his non-employment. Such circumstances should have specifically pleaded and proved before the Labour Court. Unfortunately for the management, the said facts have not been pleaded and proved. Furthermore, we are sitting as appellate authority as against the order of the Writ Petition. Though entire Writ Petition is before us, scope of jurisdiction of the Court while considering the appeal or the Writ Petition as against the award of the Labour Court is limited.

13.The Writ Court only see the decision making process, not the decision itself. Due to vehement arguments of the learned counsel for the appellant, we went into the facts of the case. We are convinced that the award of the Labour Court is proper and the facts and circumstances of the case have been properly appreciated by the Labour Court and it does not warrant any interference. Therefore, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)
29.11.2023

NCC : Yes / No
Index : Yes / No
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