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W.P.(MD)No.15392 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15392 of 2017

A.Delphine

... Petitioner

vs.

1.The Tamil Nadu Social Service Society,
represented by its Director,
No.35 B, Marsingpet Road,
Tiruchirappalli-620 001.

2.The Presiding Officer,
Labour Court,
Tiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the judgment, dated 27.03.2017, passed in I.D.No.60 of 2014, on the file of the Labour Court, Tiruchirappalli, to quash the same and to direct the 1st respondent to reinstate the petitioner in service with all service and monetary benefits and to direct the payment of back wages from the date of suspension till reinstatement.



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For Petitioners : M/s.A.Amala
For R1 : Mr.S.Chella Pandian
Senior Counsel
for Mr.K.Sekar
For R2 : Court

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the judgment, dated 27.03.2017, passed in I.D.No. 60 of 2014, on the file of the Labour Court, Tiruchirappalli and to direct the 1st respondent to reinstate the petitioner in service with all service and monetary benefits and to direct the payment of backwages from the date of suspension till reinstatement.

2. The 1st respondent is a Social Service Society which is registered under Tamil Nadu Societies Registration Act. It is funded by various Governmental and Non-Governmental Organization located in India as well as abroad. It is one of the official organizations of Tamil



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Nadu Bishops Council and it has its own by by-laws. The petitioner was appointed as Training Officer (Women) on 07.05.1993 and the salary was fixed at Rs.825-70-1175-100-1875 on probation for a period of one year. After satisfactory completion of probation, the petitioner was regularized on 03.08.1994.

3. The contention of the petitioner is that she opposed certain oppressive measures of the management and hence, the 1st respondent initiated disciplinary proceedings against the petitioner falsely levelling bald and baseless allegations and issued charge memo on 01.11.2002 and also was kept under suspension and the petitioner submitted a reply on 05.01.2002. On 04.03.2003 an enquiry officer was appointed. Through letter, dated 07.04.2003, the petitioner sought certain documents, but without providing the documents, the 1st respondent concluded the proceedings by passing an ex-parte order. Thereafter, without issuing second show cause notice, the petitioner was dismissed on 06.06.2003.



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The petitioner filed civil suit in O.S.No.759 of 2003 on the file of District Munsif Court, praying,

- a. To declare that the proceedings from memo, dated 01.11.2002 and culminated in proceedings, dated 06.06.2003 are all ab initio void, illegal, without jurisdiction, perverse, malafide, motivated and in violation of principles of natural justice.
- b. Consequential permanent injunction restraining the 1st respondent and its men from in any manner giving effect to the dismissal order dated 06.06.2003
- c. Declare that the plaintiff is deemed to be in the service of the defendant.
- d. Award cost of the suit.

4. The suit was decreed on 21.08.2006, as far as the prayer (a) and (b) are concerned, but, dismissed the suit as far as prayer (c) is concerned. Aggrieved over the same, the petitioner has preferred an appeal in A.S.No.39 of 2007 and the 1st respondent preferred an appeal in A.S.No.286 of 2007. The petitioner's appeal was allowed and the 1st respondent's appeal was dismissed, vide judgment, dated 24.11.2008.



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5. The 1st respondent preferred second appeal in S.A.(MD)No.977 of 2008 and S.A.(MD)No.978 of 2009. This Court allowed the appeal filed by the 1st respondent in part, whereby, the prayer (a) and (b) were decreed and the relief (c) and (d) were declined and this Court has held that the Civil Court has no jurisdiction and to enforce specific performance of contract of service. Aggrieved over the same, the petitioner has preferred Special Leave Petition and the same was dismissed on 23.01.2012.

6. The contention of the petitioner is that since the Civil Court has held that the disciplinary proceeding as null and void, consequential benefit of reinstatement with backwages is automatic. Moreover, the petitioner is a workman as defined in the Industrial Disputes Act. Hence, the petitioner preferred a petition to Chief Minister Cell on 11.05.2013 and the same was forwarded to the Assistant Labour Commissioner, Trichy, for conciliation. But the conciliation failed on 16.09.2013 and



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hence, the petitioner preferred I.D.No.60 of 2014. In ID, the 1st respondent has taken a stand that the petitioner is not a workman and the industrial dispute is not maintainable on the principles of *res judicata*, since the Civil Court has already decided the disputes on merits. Moreover, the claim of the petitioner for reinstatement and backwages is barred by limitation, since the industrial dispute was raised after a period of three years from the date of dismissal. Thereafter, vide order, dated 27.03.2017, the industrial dispute was dismissed for the reason that it is barred by limitation as well as against the principles of *res judicata*. But, the contention of the petitioner is that the Labour Court has erroneously come to the conclusion that the petitioner after dismissal from service, on 06.06.2003 has raised the industrial dispute which is beyond the period of limitation based on the subsequent amendment in the year 2010. The amendment came into effect in the year 2010 and can be given prospective effect only and it cannot be relied for the order which was



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passed in the year 2003. Moreover, the Labour Court has come to the conclusion that the Civil Court has held that Court cannot grant reinstatement with backwages, since the same is beyond the jurisdiction of Civil Court as per Section 14 of Specific Relief Act. The petitioner submits that through the common judgment in second appeal, the Civil Court has held that the Civil Court has got jurisdiction only to go into the validity of order of dismissal, but granting reinstatement with backwages was specifically barred under Section 14 of the Specific Relief Act. In such circumstances, the dismissal of industrial dispute on the ground of limitation and principles of *res judicata* is unwarranted. The 1st respondent has passed the order in a vindictive manner without following the principles of natural justice. Because of the said illegal order, the petitioner has suffered loss and hardship. Hence, the petitioner has come up with this writ petition.

7. The 1st respondent has filed a counter affidavit stating that the



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Labour Court has no jurisdiction. In the earlier round of litigation before the Civil Court, a specific plea was raised by the petitioner that the Labour Court has no jurisdiction. Accepting the same, the civil suit was entertained. In such circumstances, now, the petitioner cannot take a stand that the issue can be raised in Labour Court and the Labour Court has jurisdiction. The petitioner is barred by invoking provisions of Industrial Disputes Act and contest the case before the Labour Court, because of the stand taken by the petitioner.

8. Moreover the claim of the petitioner in this writ petition was specifically considered by the Civil Court and the litigation has ended after the dismissal of Special Leave Petition. The petitioner having failed in all her attempt to get reinstatement, has again filed a petition before the Assistant Commissioner of Labour and raised Industrial Dispute. Moreover, the said petition was dismissed on the ground that the matter was already considered and hence, it is hit by principles of *res judicata*.



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Moreover, in the earlier litigation, the petitioner had filed a suit for reinstatement as she was a private employee under contract of employment and invoked civil remedy. Now, the petitioner is estopped from claiming her dismissal as industrial dispute as she has exhausted all her legal remedy before the Civil Court. Moreover, it is purely a contractual employment between the petitioner and the 1st respondent. The said contractual employment cannot be specifically enforced and to circumvent the order, the present writ petition is filed.

9. Heard M/s.A.Amala, learned Counsel appearing for the petitioner and Mr.S.Chellapandian, learned Senior Counsel appearing for the 1st respondent and perused the records.

10. It is an admitted fact that the petitioner was employed as training officer during the month of May 1993. For certain allegations, a charge memo was issued and the petitioner was suspended. Thereafter,



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based on the enquiry report, she was dismissed from service. The contention of the petitioner is that she sought certain documents in order to participate in the enquiry proceedings especially she sought copy of Special By-Laws, which govern the Society. The Special By-Laws also deals with the issue of suspension and disciplinary proceedings of the Society. But the same was never served to the petitioner at the time of disciplinary proceedings and hence the petitioner could not participate in the disciplinary proceedings. Even according to the 1st respondent an ex-parte order was passed, in such circumstances the order of dismissal was passed violating the principles of natural justice. Hence the had contested the case by filing the civil suit.

11. On perusal of the prayer in the civil suit, it is seen that the petitioner has sought (a) to declare the charge memo as well as punishment order as null and void and (b) prayer to grant permanent injunction restraining the 1st respondent from giving effect to the



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dismissal order, dated 06.06.2003 and the Civil Court has rightly allowed the prayer (a) and (b). The petitioner sought (c) to declare the petitioner as deemed to be in service in the 1st respondent and cost. The Civil Court has held that it is a contractual employment between the petitioner and the 1st respondent and the Civil Court has no jurisdiction to grant relief of deemed to be in service of the 1st respondent Society.

12. On appeal, the first appellate Court has allowed all the prayers including prayer (c). On second appeal, the Court has declined the prayer (c) and has held as under:

“22. Having due regard to the aforesaid principles discussed above, I am of the opinion that the first appellate court was not justified in granting the declaration that the Plaintiff is deemed to be in service of the Defendant and a consequential relief of permanent injunction restraining the Defendant from interfering or withholding the attendant benefits of her services with the Defendant pursuant to the dismissal order dated 6.6.2003. Under those circumstances, even though violation of the principles of natural justice in the enquiry conducted by the Appellant it is established by the Respondent, it can only result in the order of dismissal being held to be wrongful and in consequence, making



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the Appellant liable for damages. But, the said order cannot be held to be one entitling the Respondent to ignore it and ask for being treated as she is in service. At present, I am not concerned with the question of damages, because no such claim has been made by the Respondent in the suit.

23. In view of the above, the Judgement and Decree of the first appellate court, in so far as the reliefs of (c) declaration that the Plaintiff is deemed to be in the service of the Defendant and (d) permanent injunction restraining the Defendant from interfering or withholding the attendant benefits of her services with the Defendant pursuant to the dismissal order dated 6.6.2003 are concerned, are set aside and in other respects, the Judgement and Decree of the first appellate court are confirmed.”

13. The Second Appellate Court has held that the dismissal is wrongful act and the employee is entitled to damages but the Court cannot order for damages, since no such claim was made by the employee in the suit. Hence, the second appellate Court declined to declare the plaintiff as deemed to be in service. And also declined to grant permanent injunction restraining the employer from interfering or withholding the attendant benefits based on the dismissal order. Now, the



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claim of the petitioner is to grant the monetary benefits for the period of suspension as well as to grant monetary benefits from the date of dismissal till today, since dismissal has been declared null and void.

14. On perusal of the three judgments rendered by the Trial Court, Appellate Court and Second Appellate Court, this Court is of the considered opinion that the Courts have seriously erred in not granting overall relief to the writ petitioner. The Courts unanimously having held that the suspension and dismissal as null and void, the Courts ought to have granted consequently relief of reinstatement. Or atleast granted compensation. The Courts have entertained technical plea of the management and has held that “the Courts cannot declare the plaintiff as deemed to be in service”. Also has held that the petitioner is entitled to damages, but the petitioner has not sought for damages in the prayer and hence the Courts cannot grant damages. When the Courts have



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entertained such a hyper technical plea, then the Courts ought to have invoked the last prayer “to any other relief that this Hon’ble Court deem fit and proper” and granted the relief of damages. Unfortunately, the Courts have gone into the trap of “hyper technical”, in the process had caused serious and severe damage to the writ petitioner. As per records the petitioner was aged 49 years at the time of filing this writ petition and she is now 54 years old. The petitioner still has four more years of service until her superannuation. The petitioner had lost the valuable time and service. At least the Courts ought to have granted the equity relief to the petitioner. This Court cannot close its eyes and move on.

15. The learned Senior Counsel appearing for the 1st respondent submitted that the petitioner has taken a specific stand before the Civil Court that industrial dispute cannot be raised and the Labour Court has no jurisdiction, accepting the plea the Civil Court has entertained the civil suit. Now, the petitioner has filed a petition before the Labour



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Court which is totally against the stand taken by the petitioner before the Civil Court. However, the learned Counsel for the petitioner submitted that the Civil Courts had held that since it is only a contract between the petitioner and the 1st respondent, Civil Court has no jurisdiction. Moreover, the 1st respondent is not controlled by the State Government and it is not aided by the State Government. The contract between the employer and employee can be executed only between the parties and the Court cannot incorporate the terms and conditions on its own and Courts cannot direct the parties to execute the contract against their willingness. In the present case, since the 1st respondent is no willing to extend the contract of employment with the petitioner, the Court has declined to do so. It is absolutely right in stating that the contract cannot be extended. Therefore, the part of the prayer in the suit to declare the petitioner is deemed to be in service cannot be granted. The Courts having held so either ought to have directed the petitioner to approach the Labour Court



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for the entire claim. Or at least for the claim of reinstatement and consequential reliefs ought to have granted liberty to approach the appropriate forum. It is pertinent to state here that the drafting of plaint, written statement and prayer is absolutely essential in suit. The Lawyer ought to have drafted so that the petitioner is getting the correct and appropriate relief. As stated supra the Courts further held that since damages was not prayed, the Courts have declined to grant the damages. But this Court has already held that the Courts ought to have invoked the last prayer of “to other relief the plaintiff is deem fit and proper” and granted the relief of damages. However, now this Court sitting under Article 226 is having ample power to modify the prayer, grant the consequential relief and to grant relief under equity. Therefore, the plea of the 1st respondent cannot be entertained.

16. The next contention that was raised by the 1st respondent is that the claim of the petitioner is barred by limitation. On perusal of the



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Labour Court order, the Labour Court has misconstrued the prayer of the petitioner and has held that the petition is filed for quashing the punishment order, dated 06.06.2003 and consequently, to grant reinstatement and attendant benefits for the same. The said portion of the order is extracted here under:

“தீர்வு”

இத்தொழில் தகராறு தாவா, தொழில் தகராறுகள் சட்டம் 1947 பிரிவு 2(ஏ)(2)ன் கீழ் தாக்கல் செய்து, எதிர்மனுதாரரின் 6.6.2003ந் தேதிய வேலை நீக்க உத்தரவை ரத்து செய்து, மனுதாரருக்கு மீண்டும் பணியும், தற்காலிக வேலை நீக்கம் செய்யப்பட்ட நாள் முதல் ஊதிய உயர்வும், பின்சம்பளமும் வழங்க உத்தரவிடக் கோரி மனுதாரரால் தாக்கல் செய்யப்பட்டுள்ளது.“

The prayer in the petition filed under Industrial Dispute Act is extracted here under:

“It is therefore that the Hon'ble court may be pleased to pass the following reliefs in favour of the petitioners against the respondent.

a) Directing the respondent to reinstate in the service of the petitioner with all her back wages allowances and increment from the date of suspension to till date.

b) Grant such other relief the Hon'ble court deems fit and



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that both are totally different. The petitioner sought to declare the petitioner as deemed to be in service, which means to declare as if the petitioner is in service. But before the Labour Court the petitioner is seeking reinstatement, which means to put the petitioner back in the position which she lost. Therefore, the plea of res judicata is also rejected.

18. This Court is of the considered opinion that once the punishment is declared void, the petitioner is entitled to reinstatement, continuity of service, but backwages may not automatic. The Second Appellate Court had declined to entertain the prayer to declare the petitioner is deemed to be in service, because the Court was under Section 100 of CPC. Since under second appeal the power of the Court may limited, but as held supra the Second Appellate Court ought to have invoked the last prayer “to grant relief the Court think deem fit and proper”. Therefore, this Court is inclined to grant damages to the



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petitioner. The petitioner has sought to grant salary from the year 2002 to 2023. For the year 2004, the petitioner would have received a salary of Rs.8,450/- as per the statement of accounts submitted by the petitioner. Hence, the petitioner is claiming periodical increments for all these years and has submitted a calculation sheet fixing the salary as Rs.28,16,658/-. The said calculation was refuted by the 1st respondent by citing that the petitioner is not entitled to any increments or other increase based on the time scale of pay. Moreover the petitioner is not entitled to the salary based on the principle of “No Work No Pay”

19. Therefore, this Court is inclined to restrict the claim of the petitioner and is directing the 1st respondent to pay Rs.15,00,000/- (Rupees Fifteen Lakh only) to the petitioner. The said amount shall be paid within a period of four weeks from the date of receipt of a copy of this order. If the 1st respondent fails to pay within the said period, the same carries interest at the rate of 8% from the date of default. The



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impugned order passed by the Labour Court is quashed.

20. With the above said direction, the writ petition is allowed. No costs.

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

03.03.2023

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To

The Presiding Officer,
Labour Court,
Tiruchirappalli.



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S.SRIMATHY, J

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