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W.P.No.3391 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12 /7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.3391 of 2024

K. Rajaraman ... Petitioner

Vs

The Management of
Andhra Social and Cultural Association
No.22 Vijayaraghava Road
T. Nagar
Chennai 600 017.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records connected with I.D.No.107 of 2022 passed on 25/9/2023 by II Additional Labour Court, Chennai.

For petitioners ... Mr.V.R.Kamalanathan
for Mr.R.Gowtaman

For respondent ... No appearance

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W.P.No.3391 of 2024

ORDER

This writ petition is filed aggrieved by the Award dated 25/9/2023 passed by II Additional Labour Court, Chennai in I.D.No.107 of 2022 in C.N.R.No.TNCH0E0001532022, seeking to quash the same.

2. Brief facts in a nut shell as per the affidavit enclosed to this Writ Petition are as follows:-

The petitioner was working as Assistant Accountant for Hall Booking for the past 33 years in respondent Cultural and Social Association. Respondent has received a credit card payment of Rs.20,000/- in the name of respondent Club from Mr.Krishna Kumar, for conducting a function to be held on 18/3/2020 in one Kauvery hall. However, on account of COVID 19, restrictions function could not be held and thereby, Mr.Krishna Kumar has requested to refund Rs.20,000/- paid by him.

3. Another person by name Mr.C.N.Jayakumar has conducted a function for which he has paid the charges by cash. Out of the money



W.P.No.3391 of 2024

paid by Mr.C.N.Jayakumar the petitioner has refunded Rs.20,000/- to Krishnakumar. Treating the act of the petitioner in not depositing the money paid by Mr.C.N.Jayakumar in the case counter of the respondent, as misconduct the petitioner was placed under suspension on 17/11/2020. The petitioner was victimized as he was the member of Bharathiya Mazdoor Union. While placing the petitioner under suspension, it was mentioned that necessary charge sheet will be served in due course of time. But subsequently, neither show cause notice was not issued, nor enquiry was conducted. But the petitioner was asked to give a pardon letter and basing on the said pardon letter, Management has dismissed the petitioner from service on 30/7/2021 in violation of principles of natural justice. Aggrieved by the same, petitioner has raised Industrial Dispute. After full fledged enquiry, labour Court has given a finding stating that the petitioner is not a workman that he was working in the Supervisory Cadre and the petitioner has committed misconduct and thereby, Industrial Dispute was dismissed.

4. It is submitted by the learned counsel for the petitioner that labour Court has not considered that principles of natural justice have been violated by the respondent prior to termination of the petitioner from



W.P.No.3391 of 2024

service and that the labour Court has passed the impugned order mechanically without appreciating the materials placed before it and that the labour Court has failed to appreciate that the petitioner has not committed any misappropriation. It is also submitted that finding of the labour Court that the petitioner is not a workman is erroneous.

5. As per the record, notice was served on the respondent management but there is no representation on behalf of the respondent. Learned counsel appearing for the petitioner has filed an affidavit of service, enclosing copy of the acknowledgment of the Registered Post to show that the respondent Cultural Association has revived the notice on 16.02.2024. It appears that the respondent is not interested to defend the case, thereby there is no representation.

6. Heard the learned counsel for the petitioner and perused the records.

7. On a perusal of the impugned orders of the labour Court, the labour Court has given a finding that the petitioner is not a workman and that he belong to Supervisory Cadre and that the petitioner has admitted



W.P.No.3391 of 2024

his misconduct.

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8. Originally, one Krishnakumar has booked one of the banquet halls of the respondent Cultural Association and paid Rs.20,000/- through one of the members of the Club by name Dr.Sunitha Ravi for a function to be held on 18/3/2020. However on the very next day, he has cancelled it on account of COVID 19 restrictions. Since the said Krishnakumar has paid Rs.20,000/- through on line by using credit card, the said amount was credited in the account of the respondent Cultural Association. Subsequently, one C.N.Jayakumar has paid cash in respect of booking of banquet hall.

9. Rs.20,000/- paid by Krishnakumar should be refunded to him by the respondent as he has cancelled the program. The petitioner has returned Rs.20,000/- to the Krishna Kumar out of the money paid by C.N.Jayakumar, thereby he could not deposit money paid by C.N.Jayakumar in the office counter. There is no complaint from Krishna Kumar since he has received his money of Rs.20,000/-. Similarly, there is also no complaint from the C.N.Jayakumar as he had paid money and conducted the function. The money received from C.N.Jayakumar was



W.P.No.3391 of 2024

returned to Krishnakumar thereby the petitioner was not in a position to deposit the money in to the respondent account. When the petitioner has adjusted the money paid by Jayakumar to refund Krishnakumar, prima facie it cannot be alleged that the petitioner has committed misappropriation.

10. Further, it is a classic case where the principles of natural justice have been grossly violated prior to inflicting the capital punishment of terminating the petitioner from service. The petitioner was suspended on 17/11/2020 in anticipation of initiation of disciplinary proceedings. It is clearly mentioned in the suspension orders that necessary charge sheet will be served on him in respect of mis conduct committed by him in due course. But admittedly, no charge sheet was issued. No show cause notice was issued. No enquiry was conducted. According to the respondent Management, since the petitioner has admitted the guilt by way of giving pardon letter, there was no necessity.

11. Even if a letter has been given admitting the guilt, it has to be considered under what circumstances, such letter was given and whether there was any coercion or undue influence on him. Therefore, a fair



W.P.No.3391 of 2024

opportunity should have been given to the petitioner by way of conducting an independent enquiry by allowing the parties to lead the evidence, etc. However no enquiry was conducted, therefore, this itself is sufficient to set aside the impugned orders passed by the labour Court.

12. Even otherwise, on perusal of pardon letter which has become basis for the respondent Management to terminate the services without enquiry, it cannot be concluded that the petitioner has confessed the guilt. This letter is in English. Admittedly, the petitioner does not know English. It is alleged by the petitioner that his signature was obtained in a letter against his wish and he does not even know the contents. It has not been counter signed by anybody stating that contents of the letter were read over and explained to the petitioner in Tamil Language. Therefore, it is not clear whether the petitioner has signed the said letter of pardon dated 28/12/2020 after reading the contents and after duly understanding the consequences of signing the said letter.

13. Further the crucial second paragraph of the Pardon letter reads as under:-

“In this regard, I hereby express my deep regret and



W.P.No.3391 of 2024

WEB COPY

sincere apology for the inadvertent procedural accounting mistake committed by me, when I was on duty during January/February 2020.”

14. At any stretch of imagination, the above referred sentence cannot be taken into consideration as the confession of the misconduct. The petitioner has stated in the said letter that he has committed procedural accounting mistake. It has not explained further. It is the case of the respondent that the petitioner has misappropriated money paid by Jayakumar for conducting a function by not depositing the same in the counter of the respondent cultural Associations. It is not mentioned by the Management as to what was the amount paid by Jayakumar for conducting function, thereby it is not clear what was the amount misappropriated by the petitioner. The petitioner in this letter of alleged confession has not stated that he has misappropriated the money paid by Jayakumar. The allegations levelled against the petitioner is not in respect of accounting issue. The allegation levelled against the petitioner is in respect of misappropriation. Therefore, when the allegation is in respect of misappropriation of the amount paid by Jayakumar, this letter of pardon shall be in respect of misappropriation but not in respect of



W.P.No.3391 of 2024

accounting. Hence the letter cannot be treated as a confession that he has committed misappropriation.

15. It is very unfortunate that the respondent Management without properly appreciating the contents of the pardon letter has straight away given the capital punishment to the petitioner who has worked for the more than 33 years with the respondent cultural association. Giving such kind of punishment without any show cause notice, basing on alleged pardon letter, amounts to violation of principles of natural justice. Therefore, finding of the labour Court that the petitioner has committed misconduct is erroneous and thereby perverse.

16. The other issue raised by the petitioner basing on the impugned order is that the labour Court has held that the petitioner is not a workman but has worked in the respondent Cultural Association in the Supervisory Cadre. The labour Court has come to the conclusion in the impugned order that petitioner is a Supervisor whose duty is to look after banquet hall and if any function is being conducted in the hall and to collect the money from parties, directly or through credit card.



W.P.No.3391 of 2024

17. The question as to whether the petitioner is a Supervisor or Workman as defined under Section 2(S) of the Industrial Dispute Act has to be decided basing on the nature of the work undertaken by the petitioner. It is the contention of the petitioner that though he was designated as Assistant Accountant in the second respondent club, he has no power to take decision and his duty is to comply the directions of the Senior Executives of the Association and on the date when Accountant was not physically available, he has followed the directions of the Senior Executive of the association. Further he has no power to grant leave to any of the persons, there are no subordinates working under him. The Labour Court has mis-led by the designation of the petitioner as Assistant Accountant and passed orders.

18. In view of the above, this Court is not in agreement with the finding of the Labour Court that the petitioner is not a workman. In such a view of the matter, the impugned award dated 25.09.2023, passed in I.D.No.107 of 2022 passed by the Additional Labour Cout, Chennai-104 is liable to be quashed.



W.P.No.3391 of 2024

19. Accordingly, this Writ Petition is allowed and the impugned award dated 25.09.2023 in I.D.No.107 of 2022 passed by the Additional Labour Cout, Chennai-104 is hereby quashed. No costs.

12.07.2024

mvs/jai

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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W.P.No.3391 of 2024

Dr.D.NAGARJUN, J.

mvs/jai

Pre-delivery Order
W.P.No.3391 of 2024



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W.P.No.3391 of 2024

12/7/2024