



W.P.No.683 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 16.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.683 of 2008

Felicia Christadoss

.. **Petitioner**

Vs.

1.The Presiding Officer
II Addl. Labour Court
Chennai.

2.The Management
Eward Computer Centre
Rep.by its Correspondent

3.The Board of Higher Education
Diocese of Madras
Church of South India
Rep.by its Manager and Bishop

.. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent pertaining to the award dated 05.09.2003 in I.D.No.844//90, quash the same and consequently direct the respondents 2 and 3 to reinstate the



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petitioner with continuity of service, back wages and all other attendant and consequential benefits.

For the Petitioner : Ms.V.Porkodi
for Mr.V.Ajoy Khose

For the Respondents : Dr.Fr.A.Xavier Arulraj
Senior Counsel
for Ms.A.Arul Mary for R2
For R1 – Labour Court

ORDER

This Writ Petition is filed challenging the impugned Award dated 05.09.2003 in I.D.No.844 of 1990, in and by which the claim preferred by the Workman was rejected by the Labour Court. The Labour Court found that the Workman viz., *Felicia Christadoss*, was only a teacher and as such will not fall within the definition of 'Workman' under Section 2 (s) of the Industrial Disputes Act (in short 'the ID Act'). Aggrieved by the same, the Workman is before this Court.

2. Heard, *Ms.Porkodi*, the learned counsel appearing on behalf of the Workman and *Dr Fr.A.Xavier Arulraj*, the learned Senior Counsel appearing on behalf of the Management.



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3. The brief facts in which the Writ Petition arises is that by an order of appointment dated 05.02.1985, the Workman was appointed as EDP Coordinator. It is essential to extract the offer of appointment and the relevant portion is as follows:-

“Dear Miss/Mrs. Felicia,

With reference to the personal interview, you had with on February 1, 1985, I am sure you will be happy to know that you are one of the shortlisted candidates for the position of EDP Coordinator. Before making the final selection, I thought it better, certain things are made clear for better understanding.

We are planning to install three, Fourth Generation WIPRO Z-650, High Precision scientific /Business online Computer Systems in the Following three schools

1. BAIN Matriculation & Higher Secondary School, Kilpauk, Madras - 600 010.
2. Ewart matriculation & Higher Secondary School, • Puresawalkkan, Madras - 600 007.
3. Bain matriculation and higher Secondary school, Anna Nagar, madras - 600 040

These schools , apart from the life oriented program on computer science, will develop a lot of other, Jobs and process them. to assist the school. administration

your responsibilities are as follows;-

1. Management. & Control of the Computer Centre.
2. System analysis & Design.
3. Systems programming & Successful Implementation.
4. Organising special short-term special training programs.

Of course, in a school environment , you can not avoid teaching



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and you have to do a bit of teaching also. You will be assisted by a group of well qualified and experienced teachers, who are trained on computers.

You will be reporting to the correspondent and principal direct and the salary scales as applicable to post graduate teachers as per the government rules will be fixed with allowances. This will be around Rs. 1200/- per month.”

4. When the petitioner was so working, one day a sum of Rs.19,638/-, which she had kept in the table drawer was stolen. It seems that a complaint was lodged, however, the money could not be recovered. Under the said circumstances, a charge memorandum was issued to the Workman on 30.05.1988 and six charges were levelled against the Workman. The charges against her are that she failed to remit the money which was collected in the Centre in time. For ready reference, the charges are extracted hereunder:-

“i. that she failed to remit into the school office the sums of money which were in her custody on 7th April 1988 inspite of clear instructions that such collections made by her at the Centre shall be handed over to the school clerk every Thursday; that she failed to remit the collections made from 4th, 5th, and 6th April 1988, which amounted to a large sum of Rs.11,900/- (Rupees eleven thousand nine hundred only) on the 7th April 1988, according to instructions.

ii. ?that she failed to remit into the school office at least on 14.4.1988 the sums of money collected on April 4th, 5th, 6th, 7th, 8th, 11th and 12th 1988, as per the directions of the Management issued in this regard. The amount payable to the nohool from April 7th to 12th, 1988 amount to Rs.6,055/- after substracting Rs.700/- for a cheque, Rs.600/- refund of feos and bills for Ro.245/-. The entire num of money in her custody should have been romitted at



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lenst on 14.4.1988 as per the directions issued to her.

iii. that she failed to remit to the school clerk with proper details of receipts the sum of Rs. 900/- being the Jubilee Entry fees. This amount should have been remitted as early as February 1988, soon after competitions were held or at the latest on 31.3.1988 at the time of closure of the financial year when she was asked to settle all accounts and on no account should this amount have been with her till 14.4.1988.

iv. that she failed to take proper action hand over to the faculty member, Mr. Kathirvelu, the salary due to him for March 1988 viz., Rs.583/- and had kept it in her possession till 14.4.1988;

v. that she had unauthorisedly kept such large sum of money viz. Rs.19,638/- (Rupees nineteen thousand six hundred and thirty eight only) in her table drawer without remitting it to the management although she had been previously directed specifically not to keep the funds of the Management in her custody; and

vi. that she had kept the money carelessly and negligently in her table drawer instead of keeping it in the locker of the Godrej cupboard provided for safe keeping cash.”

5. The Workman denied the charges and an enquiry officer was appointed in which detailed enquiry was undertaken. In the enquiry, the Workman also had due legal assistance. Thereafter, a second show-cause notice was issued. Even though three actions were proposed in the second show cause notice, by giving up the other measures of retaining the certificates and also recovery of money, the punishment of termination from service alone was imposed on the Workman.



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6. Aggrieved thereby, the Workman raised a dispute. Conciliation failed.

The Claim Petition filed by the Workman under Section 2 (A) (2) of the ID Act was taken on file as I.D.No.844 of 1990. The claim statement was resisted by the Management inter-alia by contending that the petitioner was only a teacher and also her work involves supervisory and managerial functions and therefore, she can never be a Workman as per the definition contained in Section 2(s) of the ID Act. The Labour Court after appreciation of evidence, rejected the claim of the Workman. As against which, the Workman has filed the present Writ Petition.

7. The learned counsel appearing on behalf of the Workman by pointing out the duties and responsibilities and also the name of the post would submit that certainly the Workman was not appointed as Teacher. The mere fact that she was granted the scale of a PG Assistant by itself would not make her a PG Teacher. She would further draw the attention of this Court to the findings of the Labour Court. She would submit that the duties and responsibilities are extracted from Ex. M.1, in which also the duties and responsibilities are not predominantly teaching. Incidentally, because the petitioner was well qualified, she was



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teaching the 12th standard students alone. That was only a minor portion of her work. The major portion of her work involves looking after the Centre, which is more predominantly clerical and skilled in nature. Therefore, the Labour Court ought to have seen that she was only a Workman. In support of her contentions, she would rely upon the Division Bench Judgment of this Court in ***Management of Hindustan Motors Ltd. Vs. Lakshmiah and another***¹ by relying upon paragraph No.11 to contend that the dominant purpose of the employment should be looked into. She further submits that once the dominant purpose is clerical/skilled in nature, then it can be seen that the enquiry was not fair and proper. Further, there was no ample evidence which was let in during the enquiry or before the Labour Court to consider that the charges are proved. It was a case of theft and therefore, it was beyond the control of the Workman. In any event, the punishment is excessive and disproportionate.

8. Per contra, *Dr.Fr.A.Xavier Arulraj*, the learned Senior Counsel appearing on behalf of the Management would submit that by the Judgment of the Hon'ble Supreme Court of India in ***Miss.A.Sundarambal Vs. Govt. of Goa, Daman and***

¹ (2002) 2 LLN 725



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Diu and Others² the said dictum being followed and reiterated in the Judgments of the Supreme Court in ***Haryana Unrecognised Schools' Association Vs. State of Haryana***³ and ***Ahamadabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer and Others***,⁴. It is now well settled that a teacher is not a Workman within the definition of Section 2 (s) of the ID Act. Even concerning the definition of the employee under various labour enactments such as the minimum wages act, etc., it has been categorically held that the teacher will not come within the said definition. He would submit that the Labour Court was right in holding that the petitioner was a teacher. He would draw the attention of this Court that the petitioner herein is a well-qualified person with a PG degree and also a B.Ed degree. The scale of pay that was granted to her was also the PG teacher's scale of pay. As a matter of fact, in the cross-examination, the petitioner herself admitted that she was also teaching in a computer centre run by the School, the predominant purpose would be nothing but teaching.

9. The Management witness has also spoken that she was categorically

2 (1988) 4 SCC 42

3 (1996) 4 SCC 225

4 (2004) 1 SCC 755



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teaching the 11th and 12th standard subjects. Therefore, it can be seen irrespective of the workload, the predominant purpose was only teaching, and when the predominant purpose is teaching, merely because incidentally she was performing the other clerical works about the centre, the same cannot be considered for the purpose of holding that the person was only a Workman. The charges have been properly levelled. The enquiry officer conducted a detailed enquiry. The petitioner had all the assistance. It is a well-considered report. After considering the report, by even taking a lenient view, without recovering the amount due, etc., the punishment of termination from service alone was imposed. Had the petitioner been diligent and deposited the money with the Principal, paid the salary to the respective staff and kept the balance cash in the locker, she would not have been held liable. It is her negligence that leads to the loss for the Management. Therefore, there is nothing for this Court to interfere in the Writ Petition.

10. I have considered the rival submissions made on either side and perused the material records of the case.



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11. The first question to be decided by this Court is whether or not the petitioner is a Workman.

12. It is trite that the Court will not go with the nomenclature of the posting, but has to consider what is the predominant purpose of employment and what is the predominant work that was carried on by the person. The appointment order is extracted supra. A reading of the same it would be clear that the predominant purpose of the employment is the looking after and control of the computer centre, system analysis and design, system programming and successful implementation and organising short-term special training programmes. It is only an incidental part of her job to do a bit of teaching. The order of appointment is issued by the Management.

13. Further, a wholesome reading of the Chief examination and cross-examination of the evidence of the Workman and the evidence adduced on behalf of the Management, only reiterates the position. The Management's witness was cross-examined and he was not in a position to state whether the petitioner's



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name was mentioned in the school diary as a teacher or not and he was not in a position to state how many hours a day the petitioner was teaching. As a matter of fact, in this case, there is fairness all along on both sides, about the facts and there is not much controversy.

14. It can be seen that predominantly the Workman was employed only coordinating the centre, such as maintaining the records, collecting money from the students of the same school as well as other schools, who came to the centre to take other programmes, coordinating with the faculties. Therefore, the predominant purpose of the employment of the petitioner cannot be said to be teaching and I am of the view that the findings of the Labour Court in this regard are unacceptable and go directly contrary to the entire evidence on record.

15. Once the petitioner is not a teacher, the second contention of the Management is that still her position is managerial in nature. The cross-examination reveals that she must manage the centre and not manage the other faculty and teachers concerned. No evidence has been let in by the Management that she had the power to grant them leave, to take disciplinary action etc., on the



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other hand, it seems to be the duty of the Principal. Therefore, the managerial function means, managing the computers and the centre and she was not managing the other employees or supervising them. Thus, I hold that the petitioner is a Workman within the definition of Section 2 (s) of the Act.

16. Once the petitioner is held to be a Workman, then the other questions to be decided is that

- (1) whether or not the enquiry was fair and proper;
- (2) whether there was any evidence concerning the charges and whether the findings of the enquiry officer were in accordance with law;
- (3) whether the punishment was justified.

17. Even though there was no occasion for the Labour Court to pass a preliminary award concerning the fairness of the enquiry and thereafter let in evidence regarding the merits of the charges, etc., in this case, at the initial stage itself, a detailed trial was undertaken. The Workman was examined as **W.W.1**, and **Exhibits W.1 and W.2** were marked. On behalf of the Management, **M.W.1**



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was examined, and **Exhibits M.1 to M.117** were marked. When the termination was dated 02.09.1989, this Court is now deciding about the same as on 16.12.2024. Therefore, it would be a grave injustice to both parties to remand the matter to the Labour Court at this stage. Therefore, this Court itself, under Article 226 of the Constitution of India, can decide upon the other questions also.

18. A perusal of the enquiry report and the other proceedings, it cannot be said that the procedure was unfair or there was no opportunity for the Workman. The enquiry has been duly conducted, and the Workman also had legal assistance. Therefore, I hold that the Management had conducted the enquiry fairly and properly.

19. Secondly, it cannot also be stated that the charges are erroneous or that there was no material at all. The enquiry officer itself has gone into every charge and has held that only six out of four charges alone proved. But it can be seen the offence of theft is beyond the control of the petitioner. The only thing that is attributable to the petitioner is her negligence. There is ample evidence to prove the same, which is running as an essential element in all these proven charges.



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Therefore, in this case, I cannot hold that there was evidence to prove the charges.

20. Finally, the question which is to be considered is whether the punishment is justified. When the enquiry procedure is fair and proper and when there is evidence in respect of the charges, the scope of this Court regarding the punishment is limited. That is if only the punishment is unduly harsh or shockingly disproportionate this Court can interfere. On the overall facts and circumstances of the case, there is no allegation of any other misconduct against the petitioner when she was dealing with the duties of the computer centre and the centre was also being run properly. Suddenly if a third person breaks open the centre and commits theft, and that results in the Management charging the petitioner, considering the overall facts and circumstances of the case, I am of the view, that the punishment of termination from service is unduly harsh on the petitioner. Therefore, I hold that the punishment is not justified.

21. It has to be taken note that the petitioner was terminated from service



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as early as in the year 1989. Therefore, instead of ordering reinstatement or back wages, this is a case where this Court can order compensation, in lieu of reinstatement with back wages. The same is ordered towards all the claims of the petitioner towards gratuity or any other claims of back wages etc., and the petitioner will not be entitled to any other benefit except the compensation.

22. This Court also cannot go into the usual method of calculation, because at the relevant period of time, the salary of the petitioner was Rs.2,000/-. The age of the petitioner is considered. The fact that theft remains undetected even after a police complaint is considered. She was in employment only for four years is kept in mind. There is a huge time lapse from 1989 to 2024. Considering all facts and circumstances, I am of the view that ordering to pay a sum of Rs.60,000/- as compensation would be fair and proper in this case, and accordingly, this Court directs the respondent – Management to pay the same. The petitioner shall make a representation to the Management by duly enclosing the website uploaded copy of this order. On such receipt of the same, the respondent – Management, without waiting for the certified copy of this order, shall pay the compensation amount of Rs.60,000/- within twelve weeks



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therefrom.

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23. With the above direction, this Writ Petition stands disposed of. No costs.

16.12.2024

Neutral Citation : Yes

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To
The Presiding Officer
II Addl. Labour Court
Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

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