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W.P.Nos. 31951 of 2014 and 3825 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2024

DELIVERED ON : 22.08.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.Nos.31951 of 2014 and 3825 of 2015

and

M.P.Nos1of 2014 & 1 of 2015

[W.P.No.31951 of 2014]

Management of Oman Air
By its District Sales Manager,
Deshabandhu Plaza,
Ground Floor, No. 47, Whites Road,
Royapettah, Chennai 14

... Petitioner

Vs.

1.The Central Government
Industrial Tribunal cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai 106

2.Annie Thomas

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for records on files of the 1st respondent herein in its proceedings in the impugned



W.P.Nos. 31951 of 2014 and 3825 of 2015

award ID 78 of 2012 dated 05.09.2014 as without jurisdiction, manifestly erroneous in law, and against the direct decisions of the Supreme Court of India.

For Petitioner : M/s.T.V.Lakshmanan

For Respondents :
(for R2) : M/s.S.Satish Kumar
for M/s/Row & Reddy

(for R1) : Court

[W.P.No.3825 of 2015]

Ms.Annie Thomas

... Petitioner

Vs.

1.The Presiding Officer,
The Central Government
Industrial Tribunal cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai 106

2.Management of Oman Air
By its District Sales Manager,
Deshabandhu Plaza,
Ground Floor, No. 47, Whites Road,
Royapettah, Chennai 14

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of



India praying for issuance of a writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent, quash the award passed by the 1st respondent Tribunal in I.D.No.78 of 2012 dated 05.09.2014 in so far as denying 50% of the back wages and continuity of service and consequently direct the 2nd respondent to pay full back wages and continuity of service, award costs.

For Petitioner : M/s.S.Satish Kumar
for M/s/Row & Reddy
For Respondents :
(for R2) : M/s.T.V.Lakshmanan
(for R1) : Court

COMMON ORDER

A common order is being passed since the facts involved in both the writ petitions are one and the same. W.P. No 31951 of 2015 is filed by the Management challenging the award dated 05.09.2014 in I.D 78 of 2014. W.P. No 3825 of 2015 is filed by the workman challenging the award dated 05.09.2014 in I.D 78 of 2014 in so far as the award denies 50% of the back wages and continuity of service.



D) FACTS OF THE CASE:

2. The short facts which had led to the filing of this Writ Petitions are hereinbelow set out and the parties are referred to in the same ranking as in W.P.No.31951 of 2014.

3. The 2nd respondent was appointed as a Customer Service Agent (CSA) under the petitioner on 09.12.1998. The 2nd respondent has been discharging her duties efficiently. It is the case of the 2nd respondent that while she was so discharging her duties, one Siny Mary Varghese was appointed as a Station Manager of the Anna International Airport, Chennai. She had started harassing the 2nd respondent and was demanding that she executes the personal work of the said Siny. It is her further contention that at one point in time when she was unwell and unable to execute the personal work of the Station Manager, the Station Manager started ill treating her and was



trying to downgrade her. The 2nd respondent would submit that the said Siny had been showing interest in one Mr. Syed and she was trying to promote him as Duty Supervisor. To achieve the above goal the 2nd respondent was placed under suspension on 08.07.2011 and a charge memo dated 06.07.2011 was issued to her.

4. It is the contention of the 2nd respondent that the allegations contained in the charge memo relate to the events of the year 2010 which had been closed. The 2nd respondent thereafter gave her explanation to the charge memo denying the charges leveled against her. She had also lodged a complaint against the Station Manager before the Airport Police Station alleging harassment. The 2nd respondent had also instituted a civil suit before the District Munsif, Alandur to declare the charge memo issued to her as null and void and to grant a mandatory injunction to the defendants to restrain them from harassing the plaintiff.



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5. In the said suit, the 2nd respondent had also filed two interlocutory applications in I.A.Nos.1340 and 1341 of 2011 for an injunction not to interfere in the course of employment of the 2nd respondent as CSA and for a mandatory injunction not to harass her respectively. Since the matter was sub-judice, the 2nd respondent through her counsel represented before the Enquiry Officer that the enquiry may not be proceeded with. However, despite the interim orders granted, the enquiry officer proceeded to conduct the enquiry and pass orders and on the basis of this enquiry report, the 2nd respondent was terminated from the service of the petitioner by an order dated 22.02.2012.

6. The 2nd respondent would submit that the termination is grossly illegal and the charges leveled against her were without any basis. The 2nd respondent had submitted that the first charge that on



account of her conduct the probation period was extended cannot be a ground of misconduct as the 2nd respondent's services were ultimately confirmed and she had rendered more than 16 years of unblemished service.

7. Further, she had been appointed in December 1998 and was only a trainee in the year 1999. The 2nd respondent had given an explanation for each of the charges that had been leveled against her and it was her contention that the allegations in the charge memo was without any substance. It is also her case that the Management had conducted a farce of an enquiry and without considering her explanation had proceeded to pass orders dismissing her from service. Therefore, the 2nd respondent had raised the Industrial Dispute.

8. The petitioner had filed a counter statement inter alia contending that the 1st respondent was indulging in forum shopping as she had already instituted a suit seeking to declare the charge memo



as null and void. Therefore, the Industrial Dispute has to be dismissed.

9. The petitioner would submit that the enquiry was conducted after giving sufficient opportunity to the 2nd respondent and it was the 2nd respondent who had chosen not to participate in the proceedings.

10. The petitioner Management had questioned the locus standi of the 2nd respondent to raise the Industrial Dispute. The petitioner would submit that the allegations that the 2nd respondent had an unblemished record was totally incorrect. In fact, right from the beginning the petitioner had not been carrying on her duties and responsibilities and was also interfering with the work of her colleagues. That apart, she was very quarrelsome and on several occasions, the Management had received complaints against the 2nd respondent. However, the petitioner had chosen to take a lenient view since the airline was having a small establishment in this country and



wanted the staff to grow as a team. Therefore, the 2nd respondent was let off with a warning on several occasions. This leniency had been taken advantage by the 2nd respondent.

11. The petitioner would further submit that a mere reading of the charges framed against the 2nd respondent would clearly indicate that it is not only a mere personal failure of the 2nd respondent but also that her conduct was marring the atmosphere of the office itself and therefore the termination was fully justified. The petitioner would submit that the contention that action was not taken on the earlier charges as it was not proved was totally false. The petitioner had given a long rope to the 2nd respondent.

12. The petitioner would further submit that the 2nd respondent's probation had been repeatedly extended and this clearly shows that the 2nd respondent's performance was not satisfactory.



Even during the enquiry, the enquiry officer had sent notices to the 2nd respondent for the hearing and despite receiving the same, the 2nd respondent had deemed it fit not to appear and participate in the proceedings.

13. The 2nd respondent had sent a letter informing the enquiry officer that an injunction had been granted. However, since the interim order lacked clarity, the 2nd respondent was asked to appear and provide her explanation which she did not. Each of the charges were set out and the petitioner had stated as to how the 2nd respondent was guilty of those charges.

14. The petitioner would submit that despite earlier warnings the 2nd respondent had refused to mend her ways and her conduct was becoming a threat to the overall atmosphere at the work place and therefore they were compelled to terminate her services particularly



when the enquiry officer had recorded that the charges had been proved. The 2nd respondent who was very much aware about the result, which was a foregone conclusion, had refused to participate in the proceedings and expect for filing a statement of defence had not proceeded to participate in the proceedings. The petitioner had followed due procedure by calling upon the 2nd respondent to submit her further explanation to the enquiry report. They therefore sought to have the dispute dismissed.

15. The 1st respondent had considered each of the charges, the explanation offered and the finding of the enquiry officer and ultimately held that the termination was not justified and that the 2nd respondent has to be reinstated in service with 50% backwages.

II) SUBMISSIONS:



16. Mr.T.V.Lakshmanan, learned counsel appearing on behalf of the petitioner would seek to challenge the award firstly on the ground of jurisdiction, secondly on the right of the 2nd respondent to claim backwages and thirdly that she has not proved that in the interregnum she was not gainfully employed. With reference to the first issue namely, jurisdiction it is the argument of the learned counsel that it is for the workman to prove that she is a workman and she cannot rely upon the statement of the petitioner. He would further submit the claim statement does not give any details about the nature of work discharged by the 2nd respondent and the 2nd respondent has also not deemed it fit to produce her appointment letter.

17. He would draw the attention of the Court to Paragraph No. 13 of the typed set of papers where the 2nd respondent's identity number is described as Staff No.9306. The very nomenclature would clearly show that the petitioner is not a workman as contemplated under Section 2(s) of the ID Act and that apart she was described as a



Customer Service Agent. He would further argue that, in their counter statement to the claim petition, the petitioner has clearly questioned the jurisdiction of the Tribunal in Paragraph Nos.1 and 17. Though the plea of jurisdiction has been taken, the 2nd respondent has not chosen to prove that she is a workman. The onus of proof is more upon the workman since an objection to the jurisdiction of the Tribunal has been taken on the ground that the petitioner is not a workman. It is also the contention of the learned counsel that even if the petitioner had not raised the plea of jurisdiction, there is an onus cast upon the 2nd respondent at the outset to prove that she is a workman entitled to the protection under the Industrial Dispute Act.

18. He would rely upon the judgement of the Hon'ble Supreme Court reported in *(2004) 8 SCC page 387 - Mukesh K.Tripathi Vs. Senior Divisional Manger, LIC*, where a contention was raised before the Tribunal that the appellant therein was not a workman within the



meaning of Section 2(s) of the Industrial Dispute Act. The Hon'ble Supreme Court observed that the appellant therein had not taken any steps to adduce evidence whatsoever with reference to the nature of his duties so as to establish that he had performed any skilled, unskilled, Manual, technical or operational duties. The learned Judge had observed that the onus was on the appellant to prove that he is a workman and since he had failed to prove the same he is not entitled to any relief.

19. He would submit that the 1st respondent Tribunal has not even raised this issue as a point for consideration. For the very same proposition, the learned counsel would rely upon yet another judgement of the Hon'ble Supreme Court reported in **(2005) 3 SCC 232 -Sonepat Cooperation Sugar Mills Ltd Vs. Ajit Singh**. This is also a case where the issue as to whether the person moving the Labour Court was a workman was the point in dispute. In fact, in the



said case, this issue was taken up as a preliminary issue by the Labour Court and the Labour Court held that applicant therein was a workman. The said order was challenged before the High Court, where a learned Single Judge had held that the applicant was not a workman and the same was reversed by the Division Bench. Ultimately, when the matter had come up before the Hon'ble Supreme Court, the learned Judges after referring to earlier judgments on this issue held that the issue as to "whether an employee answers the description of the workman or not has to be determined on the basis of a conclusive evidence and the question would require full consideration".

20. The next argument which has been advanced is that the 2nd respondent is not entitled to backwages. The learned counsel would submit that the enquiry has been held by following due procedure and notices had been issued to the petitioner who despite receiving it had



not deemed it fit proper to appear before the enquiry officer. She had submitted her statement of defence and explanation and thereafter submitted her explanation to the further show cause notice and her dismissal was ordered only after considering the above. He would submit that the Labour Court is not called upon to re-appreciate as to whether the charges have been made out and to consider the gravity of the offences. In this regard, he would rely upon the judgement of the Hon'ble Supreme Court reported in ***AIR 2018 SC 4668 -M.L.Singla Vs. Punjab Natinal Banck and Ors.*** The case in question was similar to the facts of this case in as much as the enquiry officer had held the petitioner guilty of all charges against which the workman had approached the State Government for referring the matter to the Labour Court and the Labour Court had by award dated 13.05.2006 held that the enquiry officer's finding on certain points was perverse and set it aside. Further, since the 1st respondent bank had failed to adduce evidence with regard to the gainful employment after his



dismissal, the Workman would be entitled to 50% backwages along with the relief of reinstatement. The bank filed a Writ Petition which was allowed and the award was set aside. Against which the workman had moved the Hon'ble Supreme Court. Ultimately, the Hon'ble Supreme Court observed that it is to be first decided if the award of the Labour Court was correct and suffers from no illegality along with the impugned order. The Hon'ble Supreme Court held that if the conclusion were to be arrived at that the domestic enquiry was legal and proper then the next question to be decided is whether the dismissal is commensurate to the gravity of the charges. Where the punishment was disproportionate, then the Labour Court was entitled to interfere with the quantum of punishment. When so deciding, the Tribunal was not required to go into the correctness of the enquiry report. He would submit that the ratio laid down in the above judgement would apply squarely to the case on hand.



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21. He would further submit that the 2nd respondent has not let in any evidence whatsoever to show that she is not gainfully employee. In these circumstances, he would submit that the orders passed by the Tribunal has to be set aside.

22. Per contra, Mr.S.Satish Kumar, learned counsel appearing for the 2nd respondent would submit that the very enquiry proceedings is vitiated in as much as the enquiry officer has proceeded with the enquiry despite the fact that an order of interim injunction had been granted in a Civil Suit. He would submit that in the counter to the interlocutory applications filed by the 2nd respondent, the petitioner had taken a stand that the suit was not maintainable as it was only a Labour Dispute and has to be sorted out under the Industrial Dispute Act. Therefore the present contention that the 2nd respondent had to prove that she is a workman cannot be countenanced.



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23. He would further submit that in their counter, the petitioner had also set out that the disciplinary proceedings were underway and the same had been suppressed by the second respondent to obtain an interim order and that the 2nd respondent has not participated in the proceedings despite being put on notice about the same. Ultimately, on the basis of the counter filed by the petitioner as well as the arguments, the interlocutory applications filed by the 2nd respondent in the suit O.S.No.478 of 2011 came to be dismissed.

24. It also appears that the second respondent had filed a memo seeking to raise the validity of the domestic enquiry conducted by the respondent as a preliminary issue. Thereafter, the petitioner had filed W.P.No.7878 of 2014 seeking a mandamus to the 1st respondent, Tribunal to permit the petitioner full and fair opportunity under the Industrial Dispute Act and to decide all the issues including the



jurisdictional issue as to whether the 2nd respondent was a workman while adjudicating ID.No.78/2012. The said Writ was dismissed with a liberty being granted to the petitioner to move the Tribunal. This Court had observed that the petitioner has to move the Tribunal if they wanted an issue to be considered a preliminary issue. Thereafter, it is seen that the preliminary issue regarding the validity of the enquiry was considered in detail by the first respondent and by order dated 24.03.2014 the preliminary issue was answered by giving liberty to the parties to adduce evidence before the Tribunal and directed the petitioner management to produce the witnesses examined in the enquiry proceedings before the Tribunal for cross examination on behalf of the 2nd respondent workman. The order did not consider the issue of jurisdiction. This order has not been challenged by the petitioner.

25. He would rely upon the judgment of Division Bench of this



Court reported in **2002 (2) LLN 725 - Management of Hindustan**

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Motors Ltd. Vs. Lakshmiah and another to state that it is for the employer to substantiate its contention that the 2nd respondent was not a workman. He would also rely upon the judgement reported in **(2006) 6 SCC 548 - Anand Regional Coop. Oil Seedsgrowers' Union Ltd. Vs. Shaileshkumar Harshadbhai Shah**. The learned counsel would submit that the burden is upon the employer to prove the charges and the proof has to be clear and unambiguous. The employee is not required to prove his innocence.

26. On the merits of the case, the learned counsel for the respondents would submit that the allegations that the 2nd respondent was performing poorly pales into insignificance in the light of the letters of appreciation that has been issued to the 2nd respondent over a period of time which would go to show that she has been discharging her duties well. Once the termination is found to be illegal then it is



incumbent upon the Labour Court to award full backwages. There is no reasoning given as to why backwages had been denied to the 2nd respondent. He would rely upon the judgment of the Hon'ble Supreme Court reported in **(2013) 10 SCC 324 - Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ed) and others** in support of his arguments that the employee would be entitled to full backwages if the termination is found to be bad and reinstatement has been directed.

27. Finally, the learned counsel would submit that the punishment is shockingly disproportionate. The charges levelled against the 2nd respondent does not warrant the termination and in support thereof he would rely upon the judgement of the Hon'ble Supreme Court reported in **(1998) 3 SCC 192- Colour Chem Ltd Vs. A.L.Alaspukar and Others.**



III) DISCUSSION:

WEB COPY 28. Heard the counsels on either side.

29. Since the preliminary plea of the petitioner is that the 2nd respondent is not a workman and consequently an industrial dispute cannot be raised, it would be useful to first consider this point and if it is answered in favour of the petitioner, a discussion is not required on the other points. The 2nd respondent who had been served with a charge memo had approached the Civil Court by filling O.S.No.478 of 2011 on the file of the District Court, Alandur. In the averments contained in the said pleading, the 2nd respondent has not set out the nature of her work but however in Paragraph No.11 she has made reference to the fact that the 3rd respondent, namely, Shiny Mary Varghese was her Superior and she was interested in one Mr.Syed who she was keen on appointing as a Deputy Supervisor for which purpose she was adopting illegal methods to throw the 2nd respondent



herein out of job would clearly show that the second respondent is not an Officer.

30. The petitioner has described the second respondent as a Customer Service Agent. In the counter filed by them to the interlocutory applications in the above referred suit, the petitioner herein has taken out a stand that the Civil Court does not have jurisdiction as the dispute is purely is one between an employer and an employee and the same has to be referred to a Labour Court or a Court of enquiry and the same could be sorted out under the Industrial Dispute Act. Therefore, a clear stand has been taken by the petitioner in the suit that it is the Labour Court that has to decide the dispute. However, when the Industrial Dispute had been raised and the petitioner had entered appearance, the petitioner had filed W.P.No.7898 of 2014 seeking a mandamus to the 1st respondent to grant the petitioner herein (the 1st respondent before the Tribunal) full



and fair opportunity to decide on all issues including the jurisdictional fact as whether the 2nd respondent is a workman or not in adjudicating I.D.No.78 of 2012. This Court while rejecting the writ petition has given liberty to the petitioner to raise this as a preliminary issue by filing appropriate applications vide order dated 17.03.2014. However, the petitioner has not chosen to file such a petition and therefore, the first respondent has proceeded to pass orders only upon the memo raised by the second respondent to decide the validity of the domestic enquiry conducted by the respondent as a preliminary issue.

31. Even when cross examining the second respondent, no questions regarding the nature of her work and the lack of jurisdiction has been posed to her. In the light of the above facts, it has to be held that the petitioner had acquiesced to the jurisdiction of the first respondent and therefore, this Court has to necessarily reject the contention of the petitioner that the first respondent lacks jurisdiction



as the second respondent is not a workman.

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32. Therefore, this Court proceeds to consider the next argument that is; the Labour Court cannot re-appreciate the finding of the Enquiry Officer. In the light of the order on the preliminary point, the Enquiry Officer's report stands superseded, the evidence taken by the Enquiry Officer stands substituted by the evidence that has been let in by both parties before the first respondent.

33. Let us now analyze the charges that have been framed against the second respondent.

34. Charge 1 states that the probationary period of the petitioner has been extended on several occasions, as the petitioner has failed and neglected to improve the performance.



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34.1 To substantiate the above, the Management has relied upon two orders extending the period of performance, which had been marked as Exs.M12 and M13. Both the orders are verbatim the same except for changing the date up to which the probationary period is extended. Further, it is seen that the petitioner has not been relieved from the service of the first respondent by not extending the period of probation on account of her alleged poor performance.

34.2 The petitioner has examined two witnesses on their side. MW1, who is the Officer Finance of the petitioner, has depend that he has no personal knowledge about the allegation and that he was only speaking on the basis of the records. He would also admit that no warning has been given on the basis of Exs.M12 and M13. He would admit that Exs.W1 to W7 are all appreciation letters given to the second respondent by the Management of the petitioner. He would also admit that in the two extension letters, Ex.M12 has not been



served on the second respondent, as her signature is not found therein.

However, in Ex.M13, the signature of the petitioner is very much available. MW2 has also not adduced any evidence with reference to the above. Be that as it may, considering the fact that the services of the second respondent had been regularized and taking into account the letters of appreciation marked as Exs.W1 to W7 disprove the first charge.

35. Charge 2 relates to an incident that had taken place on 11.06.1999, when the second respondent had failed to handle passengers, who had delayed/mishandled baggage and had not left any instructions for the same to be taken care of by the other staff and this caused an operational difficulty and dislocation to the airline.

35.1 This allegation is sought to be proved through Ex.M14. This is an *inter se* letter addressed by the Airport Officer to the Area



Manager and the petitioner has nothing to do with the contents of the letter, since the allegations had been made against her behind her back. Once again, this is an incident of the year 1999 and it is after this incident, the second respondent has been regularized. The petitioner admittedly had been appointed as Customer Service Agent only on 09.12.1998 and when the alleged incident had taken place, she was hardly 6 months in the role of Customer Service Agent and it can be safely presumed that the petitioner could not have acted independently and would have been receiving instructions from his superiors.

35.2 MW1 in his cross-examination would submit that with reference to this incident, no warning was given to the petitioner. There is no question asked in respect of M14. Likewise, MW2 also does not speak about the same. MW3 would submit that the letter was given by her to the second respondent. However, a perusal of the said



exhibit clearly shows that it is addressed by the Airport Officer/MAAWY and on the right hand corner, it is addressed to the Area Manager. There is nothing to show that this letter has been served on the second respondent and it is not known as to how MW3 would state that the letter was written by her to the petitioner. M14 is dated 11.06.1999 and MW3 would state that she had addressed M14 to the second respondent in respect of an incident that has taken place on 22.09.2010. This itself would falsify the charge.

36. Charge No.3 relates to an incident on 30.12.1999, when the second respondent had allowed a deportee to leave the airport without obtaining a signature on the indemnity form and without collecting the COD of Rs.17,070/-. To substantiate the above, Ex.M15 dated 30.09.1999 is filed. Once again, M15, confidential letter, was sent by the Airport Officer to the Regional Manager RMISC. This letter has not been addressed to the petitioner. That apart, the incident had taken



place within 9 months of the second respondent entering the services of the petitioner. This incident has also not been proved through MWs.

1 to 3.

37. Charge No.4 relates to the failure of the petitioner to collect 4 cartons received through OCS on account of the petitioner's delayed attendance. Here, again a reliance is placed on Exs.M15A, M15B and M15C. There is no signature of the petitioner in Exs.M15A, M15B and M15C and Ex.M15 once again was not addressed to the second respondent. The petitioner has not substantiated the same through oral examination of MWs., 1 to 3.

38. Charge No.5 relates to the transfer of the second respondent from the airport to the town office which the petitioner would submit was on account of the petitioner's unsatisfactory performance and the petitioner would rely upon Exs. M2 and M16. This charge is sought to



be proved through Ex.M16. A perusal of the exhibit would show that the petitioner was being transferred to assist in the sales and she was also asked to adjust with the remaining staff. There is nothing to show that the transfer was punitive.

39. Charge No.6 relates to the complaint made by the Co-Staff, which is sought to be proved through Ex.M17 dated 18.10.2003. This is a letter said to be given by four staff members, V.Venkataramanan, A.Tajamul Rizwan, Radhika Menon and Maxwell Joseph stating that they had been treated badly by Annie Thomas. None of them have been examined to prove the above. On the contrary, MW2 would submit that he has not made any written complaint about the problem that he faces while working with the second respondent. MW1 has also not adduced evidence with reference to the above.

40. Charge Nos.7 to 10 relate to an incident that had taken place



on 25.11.2023, 11.06.2005, 22.04.2007 and 22.03.2009, where memos have been issued to the petitioner. The letter directs the second respondent to mend her ways and that in case, she fails to do so, she would be rostered to another area. The witnesses, who have been examined on the side of the management, have not adduced evidence on the same.

41. Charge No.11 deals with an incident on 23.03.2009, where the petitioner was issued with disciplinary warning notice listing out the misdemeanor while dealing with the superiors and her lack of respect for the same. The Management have relied on Ex.M22 to support the same. The letter is more in the form of a show cause notice directing the petitioner to give an explanation as to why the disciplinary action should not be taken against the second respondent for the incidents mentioned in the notice. An incident which the Management has strongly relied upon is where the second respondent



had put the pre flight papers prepared by MW3 into the dustbin.

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42. MW3 during his cross-examination has clearly stated that the petitioner also used to prepare the pre-flight charts. He has clearly stated that he has not seen the petitioner throwing away the charts into the dustbin. He also admitted that he has not given any complaint to the management regarding the said issue. In fact charge Nos.12 and 13 relate to this incident. Here again, the petitioner has not been able to elicit any contradictory evidence from WW1. The charge memos would clearly show that the incident which took place nearly 20 years prior to the charge memos have now been set out against the second respondent.

43. Be that as it may, when all the charges are taken together and the evidence let in examined except for the insolent behaviour of the petitioner to her superiors, there does not appear to be any serious



allegations against the petitioner and even those allegations have not been proved. Therefore, the finding of the first respondent that for a case of insubordination, the punishment by termination is excessive, has to necessarily be upheld.

44. Once the Tribunal had come to a conclusion that the charges have not been proved and the termination is illegal, the first respondent erred in directing the petitioner to pay only 50% of the back wages. The award is silent as to the reasons why the first respondent was restricting back wages to 50%. Therefore, the order of the first respondent in so far as it grants only 50% of the back wages is set aside and the petitioner is directed to reinstate the second respondent with full back wages, continuity of services with all attendant benefits.

45. The judgment of the Hon'ble Supreme Court in *Deepali*



Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (died)

and others reported in ***(2013) 10 Supreme Court Cases 324*** supports the above conclusion. The Hon'ble Supreme Court in this case was considering the order of the High Court denying full back wages on reinstatement. The learned Judges after referring to the various judicial pronouncements observed that for the wrongful termination of service, reinstatement with full back wages is the normal rule. The learned Judges had observed as follows:

"38.5 The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under [Article 226](#) or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the



employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.
"

46. The third plea regarding the alternate employment has not been canvassed by the petitioner and is an argument that is raised now. Therefore, the said contention has to be rejected.

47. Therefore, in the light of the above judgment and considering the fact that the punishment of termination is perverse and not commensurate to the alleged charge of insubordination, W.P.No.31951 of 2014 stands dismissed. Since this Court following the *Deepali Gundu Surwase's case (cited supra)* has held that the



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denial of full back wages and continuity of service by the first

respondent is bad, W.P.No.3825 of 2015 stands allowed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

22.08.2024

Index : Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

shr/mm

To

1.The Presiding Officer,
The Central Government
Industrial Tribunal cum Labour Court,
Shastri Bhavan, Haddows Road,
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