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WP No. 34894 of 2012 & 16647
2011



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-02-2025

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THE HONOURABLE MR JUSTICE M.DHANDAPANI

WP No. 34894 of 2012 & 16647 of 2011

WP No. 34894 of 2012

R.Vedasigamani

Petitioner(s)

Vs

1. The Management Of Christian
Medical College & Hospital, Post Box
No.3, Ida Scudder Road, Vellore 632
004, Rep. By its Secretary

2.The Presiding Officer
Principal Labour Court, Vellore

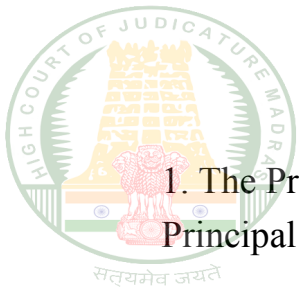
Respondent(s)

WP No. 16647 of 2011

1. The Management Of Christian
Medical College And Hospital, Post
Box No.3, Ida Scudder Road, Vellore
632 004, Rep. by its Secretary

Petitioner(s)

Vs



1. The Presiding Officer
Principal Labour Court, Vellore

2. Mr.Vedasigamani

Respondent(s)

Prayer in WP No. 34894 of 2012:

This writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records relating to I.D.No.164 of 2004 on the file of the 2nd respondent and quash the same so far with the respect to 25% back wages and direct the 1st respondent to take the petitioner back in to service with full back wages, continuity of service and all other attended benefits for the reasons stated above.

Prayer in WP No. 16647 of 2011:

This writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records connected with I.D. No. 164 of 2004 on the file of 1st respondent, Principal Labour Court, Vellore and to quash the award dated 18.2.2011 made therein.

WP No. 34894 of 2012

For Petitioner(s): Mr.V.R.Kamalanathan for
M/s.R.Gowtaman

For Respondent(s): R-2 Labour Court
Mr. Shivathanu Mohan for
M/s. S. Ramasubramaniam
Associates for R1

WP No. 16647 of 2011

For Petitioner(s): Mr. Shivathanu Mohan for
M/s. S. Ramasubramaniam
Associates



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For Respondent(s): Mr.V.R.Kamalanathan for
M/s.R.Gowtaman for R2
R-1 Labour Court

ORDER

While W.P. No.16647/2011 has been filed by the Management aggrieved by the order of the Tribunal ordering reinstatement along with 25% backwages with regard to the termination of the workmen, the writ petition in W.P. No.34894/2012 has been filed by the workman against the denial of full backwages to him consequent upon his reinstatement. Both the writ petitions are taken up and disposed of by this common order.

2. It is the case of the workman that he was employed as Cashier in the year 1985 with the respondent and, thereafter, promoted as Assistant Account/Assistant Chief Cashier from 1.4.99 and was serving the Management without any blemish. Whiles, the workman was placed under suspension on the allegation that he had demanded illegal gratification for processing two medical reimbursement certificates for which, it was alleged, that written complaints were lodged with the Management. With regard to the two complaints, separate enquiries were undertaken by issuance of show cause



notice calling for explanation to which explanation was submitted by the workman and not being satisfied, enquiry was initiated by appointment of an independent advocate. Upon completion of enquiry with regard to both the complaints, the enquiry officer held the workman guilty of the charges. On the basis of the report, further explanation was called for from the workman by providing a copy of the report and as the explanation submitted by the workman was found to be not satisfactory, the disciplinary authority imposed the punishment of dismissal from service on the workman, aggrieved by which the workman raised an industrial dispute before the Labour Court in I.D. No.164/2004.

3. Before the Tribunal, on the side of the workman, neither oral evidence nor documentary evidence was tendered. On the side of the Management, two witnesses were examined as M.W.s 1 and 2 and Exs.M-1 to M-30 were marked. The Labour court, upon considering the oral and documentary evidence, directed reinstatement of the workman with 20% backwages and aggrieved by the said order, the aforesaid writ petitions have been filed by the workman and the Management for the relief supra.



4. Learned counsel appearing for the Management submitted that in the enquiry, the workman was found guilty of the charges and was imposed with the punishment. Though initially the preliminary enquiry was held to be in violation of principles of natural justice, the workman was, thereafter, afforded opportunity and the enquiry was concluded. However, without appreciating the same, the Labour court has held that the Management had not proved the case, as one of the complainant with regard to the complaint did not turn up and there was no direct evidence with regard to the demand.

5. It is the further submission of the learned counsel that though the other complainant had been examined, who had spoken about the complaint given by him, however, the Labour Court held that M.W.2 had not deposed that there was any demand for bribe, which is erroneous, as the complaint had been established to have been given by M.W.2. However, on a misconceived notion and appreciation of the materials, the Labour Court had set aside the punishment and ordered reinstatement, which is perverse and illegal and the same requires to be interfered with.

6. Per contra, learned counsel appearing for the workman submitted that



the Labour Court though held that the enquiry was not properly held and that the Management had not proved the guilt of the workman through proper oral and documentary evidence, the Tribunal, while ordering reinstatement had not granted full backwages, which is erroneous and the same deserves to be interfered with by ordering full backwages.

7. The facts with regard to the complaint and the conduct of the enquiry are not disputed. The conduct of the enquiry has also not been questioned by the workman. Therefore, the manner in which the enquiry has been conducted need not be gone into.

8. A perusal of the materials available on record reveal that though it is alleged that the workman had demanded illegal gratification for which two complaints, one by M.W.2 and another one by the relative of a patient, who did not turn up for the enquiry, had been given, however, M.W.2 had not spoken in clear terms about the demand for bribe by the workman. Though it is claimed by the Management that M.W.2 had admitted Ex.M-13, however, he has not spoken anything about the demand made.



9. Except for the evidence of M.W.1, who has admitted that he is not an eye witness to the demand, there is no other person, who has spoken about the said demand. However, the evidence of M.W.2 cannot be brushed aside as he has admitted himself to be the author of Ex.M-13 and it has to be looked holistically along with the evidence of M.W.2, but equally with a look into his evidence as he has not spoken anything about the demand for illegal gratification by the workman. However, the evidence of M.W.2 coupled with Ex.M-13 cannot be held to have not pointed a finger on the workman, though the weight of the evidence is lacking.

10. Insofar as the second complaint is concerned, viz., Ex.M-3 alleged to have been given by one relative of a patient, however, the author of the said complaint had not turned up for deposing about the demand. Therefore, the veracity of the complaint has not been tested through any testimony of the witness of the management. Equally, M.W.1, who has spoken about the said complaint, Ex.P-3 has not stated that he was an eye witness to the said demand. In the absence of any credible evidence, except for Ex.M-3, the complaint against the workman, with regard to this occurrence cannot be said to be



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11. In case of allegation of illegal gratification, it has been the ratio laid down by the courts that demand and receipt of illegal gratification has to be made. However, in the present case, the question is purely on demand, on which the disciplinary action has taken place.

12. True it is that it is the Management which has to prove the case, but it is only insofar as disciplinary enquiry is concerned, where, according to the Labour Court, the Management had placed documents and examined witnesses. But before the Labour Court, though the workman has raised the dispute, he has not thought it fit to examine witnesses including himself and has also not marked any documents. Therefore, throwing all the weight on the Management alone to prove its case cannot be justified. Equally, it is for the workman to establish that the case projected by the Management is false. However, the workman has not taken any steps to establish his pure innocence.

13. As pointed out above, there are flaws on the side of the Management as well as the workman and one cannot be held to outweigh the other so as to give



the benefit to one party. However, the Labour Court had ordered reinstatement of the workman with 25% backwages which is put to test before this Court. On

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the above materials, it can safely be concluded that neither party can be said to have established their case in a clear and unambiguous manner.

14. There is no material placed by the Management that prior to this occurrence, the workman had demanded illegal gratification which has been within the knowledge of the Management and that action was taken against him. The workman avers that he has put 16 years of unblemished service and out of blue these complaints have been made. The workman was in employment with the Management since 1985 till his dismissal in the year 2001. When the service record of the workman does not reveal any scars in his employment, that also needs to be weighed with the complaint made against the workman, which has been given by two patients, who have no axe to grind against the workman.

15. With all the aforesaid lacunae in the materials, which haunts both sides, the order of reinstatement of the workman with 25% backwages cannot be said to be an action to meet the ends of justice. However, it is not to be lost sight of that the workman was employed for 16 years and no action had been



taken against him during the said period and on the date when the writ petition was filed, the workman was aged 56 years and when the impugned order was passed in the year 2011, the workman was aged 55 years. Between October, 2001, the date of his termination and the date of the award in February, 2011, the workman having not been employed, but definitely, would have attained his superannuation in about 3 to 4 years time, granting the relief of reinstatement with 25% backwages ordered by the Labour Court would not balance the scales of justice.

16. In the above circumstances, the Tribunal ought to have invoked Section 11-A of the Industrial Disputes Act and should have awarded compensation in lieu of reinstatement as the materials on record cannot be inferred in favour of either party to give any relief to one side. Therefore, lumpsum compensation alone would be the fair relief, which would meet the ends of justice, as no useful purpose would be served in ordering reinstatement. Further, the workman having not worked, the principle of 'No work, No pay' will also stand attracted.

17. In such view of the matter, the order of reinstatement with 50%



backwages passed by the Tribunal is modified and this writ petition is disposed of directing the Management to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) in full quit to the workman in addition to the amount already deposited by the Management, which will also be payable to the workman along with the accrued interest.

18. Accordingly, this writ petition is disposed of directing the Management to deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the credit of I.D. No.164/2004 on the file of the Labour Court, Vellore, within a period of twelve weeks from the date of receipt of a copy of this order and on such deposit being made, the Labour Court is directed to disburse the said sum along with the amount already in deposit to the credit of I.D. No.164/2004 along with accrued interest to the workman, under proper acknowledgement within a period of four weeks thereafter. There shall be no order as to costs.

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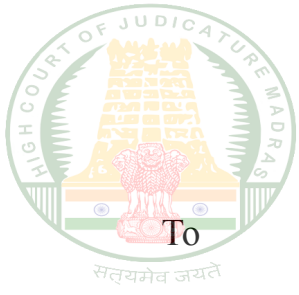
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Index: Yes/No

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M.DHANDAPANI J.

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