



W.P.No.20472 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.2.2025

Pronounced on : .2.2025

CORAM:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 20472 of 2020

and

W.M.P.No. 25247 of 2020

Tamil Nadu Private Professional Colleges

Association – Health Sciences,

Represented by its Secretary,

‘Prasanna Enclave’, 1st Floor, No.30,

Bharathi Avenue, Kotturpuram,

Chennai – 600 085.

.... Petitioner

Vs.

P.Ganesh

Son of Periyasamy,

No.20, 8th Street, Bharathi Nagar,

Korukkupettai, Chennai – 600021.

...Respondent



W.P.No.20472 of 2020

Prayer in W.P.No. 20472 of 2020

To issue Writ of Certiorari or any other writ order or direction in the nature of Writ of Certiorari calling for the records of the Presiding Officer, IInd Additional Labour Court, Chennai, in its order dated 06.11.2019 issued in I.D.no.101 of 2011, quash the same and pass such further or other orders as this Hon'ble Court deems fit.

Prayer in W.M.P.No. 25247 of 2020

To issue an order of Interim Stay staying the operation of the impugned order dated 06.11.2019 issued by the Presiding Officer, IInd Additional Labour Court, Chennai, in I.D.no.101 of 2011 pending disposal of this writ petition.

Appearance of Parties:

For Petitioner : Mr. Abishek Jenasenan, Advocate

For M/s. Abishek Jenasenan,
Aparajitha Vishwanath and
Arun Dhanapalan, Advocates

For Respondent : Mr.S.Sathish, Advocate

For M/s. S.Sathish, K.Rangesh
and S.Meenakshi Sundaram, Advocates



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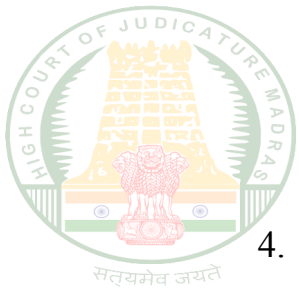
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JUDGMENT

Heard.

2. The writ petitioner, an educational agency managing multiple educational institutions and registered as a society under the Tamil Nadu Societies Registration Act, with its headquarters in Chennai, has filed the present writ petition challenging the Award passed by the II Additional Labour Court, Chennai, in I.D. No. 101/2011 dated 06.11.2019. By the said Award, the Labour Court held that the non-employment of the Respondent was not valid. However, instead of ordering reinstatement, it directed the payment of compensation in lieu of reinstatement, quantified at Rs. 5 lakhs, to be paid within three months.

3. The writ petition was admitted on 06.01.2021, and an interim stay on the operation of the Award was granted. Upon notice, the Respondent entered an appearance through their counsel.



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4. It is seen from the records that the Respondent workman was appointed as a Data Entry Operator on probation with effect from 31.01.2005. Upon successfully completing his probation, he was designated as a Junior Assistant with a salary of Rs. 4,500 per month. However, by an order dated 16.04.2009, after completing four years of service, he was relieved from his position. It is further noted that another individual, reportedly a close relative of the Administrative Manager of the Petitioner Society, was appointed in his place.

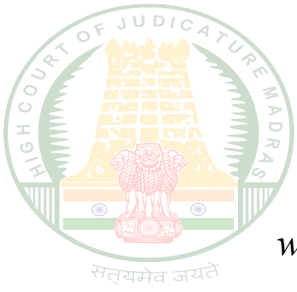
5. The workman issued a legal notice on 22.01.2010, requesting that his termination order be set aside and that he be reinstated in service. As no response was received, he raised an industrial dispute before the Labour Officer-III under Section 2A(2) of the Industrial Disputes Act through his letter dated 09.04.2010. It was contended on his behalf that the termination was invalid, as it violated Section 25-F of the Industrial Disputes Act, given that he was neither provided with prior notice nor compensated for the services rendered.



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6. The management appeared before the Conciliation Officer and filed an objection statement dated 16.08.2010. As this represents the petitioner management's initial stance on the matter, it is necessary to extract the relevant portion from their objection statement detailing the reasons for the workman's termination:

“TNPPCA-HS is functioning for the admission purpose of the management seats in Self-Financing colleges. Our work nature includes time bound duties. Mr.Ganesh who was working as Data Entry Operator from 31.01.2005 till 15.04.2009. He was warned earlier on many occasions with many allegations as such 1. Dereliction in duty 2. Showing Disrespect to superiors 3. Talking obscene to fellow staffs 4. Frequently attends office late. On 16.04.2009, when the same allegations were reported to our Administrative Officer and when he was questioned, he threw the office key on the Administrative Officer's table and left the office abusing in filthy language. He didn't turn up to office for 2 days without any sanctioned leave or prior permission, after that



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we intimated him through our staffs to come to office to meet the Secretary. But he had neither met him nor sent any apology letter to our office. Hence, we had issued Charge memo to him on 20.04.2009 from our office, and a reminder were also sent on 27.04.2009. But no reply has been received from him.

Our season work has started and his unauthorized absence made us to relieve him from his duties on 16.04.2009 ie. from the date he left the office illegally by an order dated 05.05.2009. His duty salary has also been paid without any pending.

Our's is a time bound work and after one month we have selected a candidate for his place with proper recruiting procedure.”

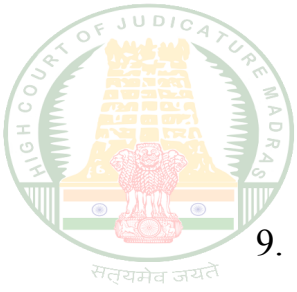
7. As the Conciliation Officer was unable to mediate a settlement, he recorded the failure of conciliation and issued a report dated 23.09.2010. Based on this failure report, the workman filed a claim statement before the Labour Court. The dispute was registered as I.D.No.101/2011, and notice was issued to the



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petitioner management. In response, the petitioner management filed a counter statement dated 21.02.2012.

8. The management stated that the workman was employed until 15.04.2009. While he initially performed his duties diligently, his conduct later became irregular, and from the beginning of 2009, his performance declined significantly. He used abusive and inappropriate language toward his colleagues. Despite multiple warnings and advice from the Administrative Officer, his behavior did not improve. On 16.04.2009, he was called for an inquiry regarding his conduct. Instead of responding appropriately, he asserted that no one could question him, threw his key on the table during working hours, and left the office without permission. Furthermore, he was accused of verbally abusing the Administrative Officer in offensive language. Following this incident, he did not report back to work.



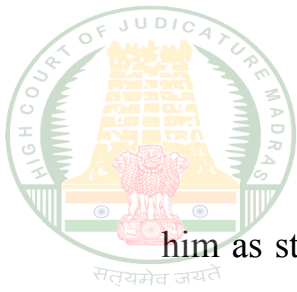
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9. The management stated that they attempted to communicate with the

workman through other employees, requesting him to meet the Secretary.

However, he neither met the Secretary nor submitted an apology letter and instead remained absent without justification. Consequently, a charge memo was issued to him on 20.04.2009, followed by a reminder, to which he failed to respond. Given that it was the admission season and his absence was affecting the institution's operations, the management relieved him from service by an order dated 05.05.2009. It was also stated that all wages due to him up to his last working day had been duly paid.

10. Before the Labour Court, the workman deposed as WW1 and submitted six documents, which were marked as Ex.W1 to Ex.W6. On behalf of the petitioner management, two documents were filed and marked as Ex.M1 and Ex.M2. However, no witnesses were examined on the management's side. During his cross-examination as WW1, the workman denied the allegations made against

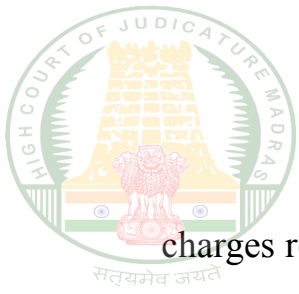


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him as stated in the counter statement. He also refuted the claim that he had been absent from work without authorization.

11. The Labour Court, after analyzing the evidence presented, concluded that the management had taken inconsistent positions at different stages of the proceedings. It observed that the stance adopted before the Labour Officer differed from the one presented before the Court. Moreover, the management failed to provide any evidence to establish that a proper enquiry had been conducted. Referring to the appointment order marked as Ex.M1, the Court noted that it prescribed a one-year probation period and assured that the workman would be confirmed as a permanent employee upon its completion. Nowhere in the document was it mentioned that the appointment was contractual in nature.

12. With regard to the allegations of misconduct, the Labour Court found that no evidence was presented to substantiate the claims, and therefore, the



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charges remained unproven. However, despite this finding, the Court observed that

the relationship between the workman and the management had been strained.

As a result, it refrained from ordering reinstatement with back wages and continuity of service and instead deemed it appropriate to award compensation.

Accordingly, the Labour Court directed the payment of Rs.5 lakhs as compensation, to be disbursed within three months.

13. Since the workman has not filed a writ petition challenging the denial of reinstatement with back wages and continuity of service, this Court is unable to examine that aspect of the impugned Award. However, from the case presented by the management, it is evident that the termination was a case of *termination simpliciter*. Although the management attempted to attribute misconduct to the workman, it failed to substantiate its claims with any evidence. The termination, having been effected without notice or compensation, clearly falls within the definition of *retrenchment* under Section 2(oo) of the Industrial Disputes Act. As it



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was carried out in violation of Section 25-F of the Act, the termination is rendered

void *ab initio*.

14. An employer's action that contravenes Section 25-F of the Industrial Disputes Act, without adhering to the mandatory conditions prescribed therein, renders the termination void *ab initio*, as affirmed by the Supreme Court in *State Bank of India v. N. Sundara Money*, reported in 1976 (1) SCC 822. However, in the present case, the Labour Court, in the exercise of its discretion, awarded a compensation of Rs.5 lakhs in lieu of reinstatement. As there is no legal infirmity in such an Award, no interference is warranted. Accordingly, the writ petition, W.P. No. 20472 of 2020, is liable to be dismissed and is hereby dismissed.

15. The management, being a well-resourced entity, obtained an absolute stay on the impugned Award from this Court without sufficient justification, thereby depriving the workman of the benefits of the Award for over six years.



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In light of this, the management is directed to pay interest at the rate of 6% per annum on the awarded amount from the date of the Award until the date of this judgment. Additionally, a cost of Rs.5,000/- is imposed as legal fees payable to the counsel for the workman. Accordingly, W.M.P. No. 25247 of 2020 stands dismissed.

16. To avoid compelling the workman to initiate execution proceedings, the management is directed to comply with the Award within eight weeks from today.

25.02.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Copy to:

The Presiding Officer,
II Additional Labour Court,
High Court Campus,
Chennai – 600104.



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DR.A.D.MARIA CLETE, J.

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Pre-delivery Judgment in
W.P.No. 20472 of 2020
and
W.M.P.No. 25247 of 2020

25.02.2025