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W.P. Nos.15467 & 18188 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>24.10.2024</i>
<i>Pronounced on</i>	<i>20.01.2025</i>

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.15467 & 18188 of 2023
and W.M.P.No.17388 of 2023

W.P.No.15467/2023

S.Anandbabu

/vs/

Petitioner

1. The Special Joint Commissioner,
 The Appellate Authority / Labour,
 Chennai – 600 006.

2. M/s.Basis Fund Service Pvt. Ltd.,
 No.26/32, Ramaswamy Street,
 North Usman Road, T.Nagar,
 Chennai – 600 017.
 Previous Office at:
 No.95, G.K.N.Towers,
 4th Floor, E.V.R.Periyar Salai,
 P.H.Road, Chennai – 600 084.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the first respondent to consider the petitioner representation dated 03.04.2023 consequently direct the second



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respondent to comply the order in Case No.TNSE/I/14/2018 dated 30.12.2022.

For Petitioner : Mr.T.V.G.Kartheeban
For R2 : Mr.Sai Prasad for
Sai Raj Associates
For R1 : Mrs.M.Jayanthi
Additional Govt. Pleader

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M/s.Basis Fund Service Pvt. Ltd.,
95, GKN Towers, 4th Floor,
PH Road, Chennai – 600 084
Rep. by Thiru.Samuel Sebastian
Presently at 26/32, Ramaswamy Street,
T.Nagar, Chennai – 600 017.

...
/vs/

Petitioner

1. The Spl. Jt. Commissioner of Labour (Appeals)
DMS Compound, Teynampet,
Chennai – 600 006.

2. S.Anandbabu

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records connected with the order dated 30.12.2022 made in TNSE 1/14/2018 on the file of the first respondent, the Appellate Authority under the TN Shops and Establishments Act, 1947 and quash the same.



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For Petitioner : Mr.S.Saiprasad
for Sai Raaj Associates

For R2 : Mr.T.V.G.Kartheeban
for M/s.C.Srinivasan

For R1 : Mrs.M.Jayanthi
Additional Govt. Pleader

COMMON ORDER

W.P.No.15467/2023 has been filed by the Workman to issue direction to the first respondent to consider his representation dated 30.04.2023 and direct the second respondent to comply the order of the first respondent.

W.P.No.18188/2023 has been filed by the Management challenging the orders of the first respondent / appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 dated 30.12.2022 made in TNSE 1/14/2018.

2. For the sake of convenient discussion the petitioners in both the petitions are referred as workman and Management, respectively.

3. The workman who suffered the order of dismissal at the hand of



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the Management has filed an appeal challenging the same before the Joint Commissioner of Labour, by claiming that his termination is illegal. The said appeal has been allowed in favour of the workman and that is being challenged by the Management in W.P.No.18188 of 2023 and the workman seeks direction in W.P.No.15467/2023 to comply the order.

4. The workman has been charged for the misconduct of deletion of datas. As per the allegation of the Management, the workman was appointed as Trainee Accounts Executive on 10.03.2007 at the second respondent company. He was later regularized as Accounts Executive and he was in-charge of overseeing the team under him. He had access to various confidential and critical data belonging to various clients of the company. It is alleged that the workman has deleted certain important datas of the clients from the server. It is alleged that it is a severe violation of conduct rules and it disrupted the work and caused loss and also damaged the reputation of the company.

5. The workman has been served with a letter dated 11.07.2016 by



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alleging misconduct that he had conducted himself in a gross unprofessional manner. However, the workman did not chose to send any reply and he has sent a simple letter stating that he had been affected from viral fever and that he would report once he got cured. On 16.07.2016 the Management has sent an another letter reiterating the very same allegations wherein it is stated that the letter dated 11.07.2016 calling for explanation from the workman, has been returned as “Refused”. It is further stated that the workman had violated the warnings given to him and also refused to receive the letter dated 11.07.2016. Even subsequent to the above letter, the workman has sent an another communication dated 21.07.2016 to the Management alleging that he has not been paid with the salary and he was informed that he was terminated from the job. On a perusal of the letter dated 11.07.2016, it is seen to have been sent to the workman's seat itself in the office. But there is no endorsement to confirm whether the above letter has been received by the employee.

6. As the workman has sent the leave letter on 12.07.2016 it can be presumed that he was available on 11.07.2016 at his office. However, in



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the letter dated 16.07.2016 it has been stated that the letter dated 11.07.2016 has been couriered to his address seen in the record and that got returned as “Refused”. The return cover has not been produced to show the same. When the “To address” has been mentioned as office address, it is difficult to expect that the letter could have been served on him. But the other letter dated 16.07.2016 is seen to be containing the residential address of the workman and it is possible that the said letter could have served on him. In the mail sent by the workman on 21.07.2016 he has stated that he did not know why he has been terminated from service. That also would show that he did not receive the letter dated 16.07.2016 as well. No acknowledgment has been produced to show whether the petitioner has been served upon the termination letter dated 16.07.2016.

7. In the letter dated 27.10.2016, the workman had demanded his salary. He has further stated that he is also ready to serve his 90 days notice period and if the notice period is not accepted by the Management he should be given with three months settlement without any delay. A reply has been sent on 03.08.2016 which has been marked as Ex.M3 in which it



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has been stated that various allegations against the workman including the date of deletion have been stated. It is further stated that the issues have already been pointed out to the workman but he did not come to office from 12.07.2016. Hence the workman is seemed to be aware of the confusion. But he did not prefer to send any reply and he straight away filed an appeal by claiming that his termination is illegal.

8. The main reason for which the appellate authority has found the termination is illegal is due to the violation of principles of natural justice. In fact the address as seen in the workman's writ petition and the appeal filed before the appropriate authority contains the same address for which the letter dated 16.07.2016 and 03.08.2016 were sent. However, at some point the workman himself has stated that he was ready to serve three months notice as he found it very difficult to accommodate in the office without getting the salary paid. In fact in the letter submitted to settle his dues, the workman has listed out all the dues ranging from notice period salary, PF settlement, gratuity, property delivery letter and leave encashment. But, thereafter he had chosen to file an appeal challenging the



termination.

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9. Even after knowing that he had been terminated only for deleting the data, the petitioner had not chosen to send any explanation except the request to settle his dues. In one of his letter dated 12.08.2016, the workman has even sought apology for having caused a political person to talk on behalf of him to the Management for settling his dues. It is also claimed by the workman that he has not been terminated by the appointing authority and the authority who had sent the termination order dated 16.07.2016 did not have the jurisdiction to terminate him and hence the termination is illegal and “non-est” in law. However, the appellate authority did not deal with the above point but it is only stated that the order of termination has been passed without observing the due principles of natural justice.

10. As stated already the workman, at no point of time, had chosen to offer any explanation as to the allegation that he had deleted the essential datas affecting the business of the Government. In fact he has assured that after he gets the settlement, he will not come back and raise any issue



against the Management. Though no serious significance can be attached to such an undertaking given to the workman, the fact remains that the workman himself has given up his desire to stick with the company at some point of time. If important informations like datas are deleted that would no doubt affect the interest of the company. Under such circumstances, the company cannot be expected to retain an employee like the petitioner and risk its own safety. But the loss of confidence of the employer should be based upon the proved violations of code of conduct and not out of mere presumption. Even though the Management has claimed to have sent several letters to the workman, no acknowledgment has been produced to show that the letters have been served upon the workman.

11. The appellate authority has rightly appreciated the merits of the matter and set aside the order of termination and directed the Management to reinstate the workman into service. But once the confidence is lost against the employee for any right or wrong reasons for the Management, that will not serve the best interest of both of them. In fact the order of reinstatement has not been carried out till now. So the petitioner might have



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employed elsewhere by this time and he had not denied the same in any unequivocal terms. In such circumstances, I feel the awarding of compensation would have better served in the interest of both the workman and Management than the order directing reinstatement. In view of the same, I feel that the order of the Labour Court shall be modified for awarding compensation.

12. Accordingly these Writ Petitions are disposed and the order of the first respondent appellate authority is modified to the extent that the Management has to pay the compensation for a sum of Rs.1,00,000/- (Rupees One Lakh only) to the workman along with the back wages from the date of termination to the date of the order along with any other dues payable to the petitioner, within a period of three weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

20.01.2025

Index: Yes
Speaking order
Netural Citation Case : Yes
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To:

1. The Special Joint Commissioner,
The Appellate Authority / Labour,
Chennai – 600 006.



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R.N.MANJULA ,J.

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Pre-delivery order in
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20.01.2025