



W.P. No. 17438 of 2020 and W.P. No. 709 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 12.03.2025

PRONOUNCED ON : 30.04.2025

PRESENT:

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

W.P. No. 17438 of 2020 and W.P. No.709 of 2023

and

W.M.P. No. 21620 of 2020 and W.M.P. No. 644 of 2023

R.Rajkumar

Son of N.Ramachandran,

Door No.9/3C, Perumal Koil Street,

Ernavoor, Chennai.

... Petitioner in W.P.No.17438 of 2020
and Respondent in W.P.No.709 of 2023

The Management of

Ashok Leyland Ltd (Foundry Division)

Rep. by its Senior Manager HR,

Ennore, Chennai – 600 057.

... Petitioner in W.P.No.709 of 2023

Vs.

1. The Management of Hinduja Foundries Limited,

Represented by its Managing Director,

Ennore,

Chennai – 600 057.

... 1st Respondent in W.P.No.17438 of 2020

2. The Management of Ashok Leyland Ltd

(Foundry Division)

Represented by its Managing Director,

Ennore, Chennai – 600 057,

(Impleaded as per Order in ... 2nd Respondent in W.P.No.17438 of 2020
I.A.No. 22 of 2018 dated 16.03.2018)



W.P. No. 17438 of 2020 and W.P. No. 709 of 2023

Prayer in W.P.No.17438 of 2020

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To issue orders, directions or writs in particular a Writ of Certiorarified Mandamus, calling for the records in connection with the award pronounced in I.D.No.455 of 2017 by the file of the I Additional Labour Court, Chennai, on 15.06.2020 and quash the same and further direct the respondent management to reinstate the petitioner with continuity of service, back wages and all other attendant benefits, award cost.

Prayer in W.P.No. 709 of 2023

To issue a Writ of Certiorari calling for the records of the I Additional Labour Court, Chennai in ID No.455 of 2017 and quash its preliminary Award dated 13.02.2019 and final award dated 15.06.2020 and pass such further or other orders which this Hon'ble Court may deem fit and proper in the circumstance of the case.

Prayer in WMP No.21620 of 2020 (in W.P.No.17438 of 2020)

To issue an order of ad interim direction, directing the respondent management to pay a sum of Rs.4 lakhs provisionally to the Petitioner pending disposal of the above writ petition.

Prayer in WMP No. 644 of 2023 (in W.P.No.709 of 2023)

To grant interim stay of operation of the award of the I Addl. Labour Court, Chennai in ID No. 455 of 2017 dated 15.06.2020, pending disposal of the Writ Petition and pass such further or other orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Appearance of Parties:

For Petitioner	:	Mr.V.Prakash, Senior Counsel
In W.P.No.17438 of 2020		For M/s. K.Sudalaikanna, S.Latha and
&		R.Aravithraj, & Advocates
For Respondent in		
W.P.No.709 of 2023		



W.P. No. 17438 of 2020 and W.P. No. 709 of 2023

For Petitioner

In W.P.No.709 of 2023 :

Mr.Anand Gopalan, Advocate

&

For M/s. T.S.Gopalan & Co., Advocates

For Respondent 2

In W.P.No.17438 of 2020

For Respondent 1

: No appearance

JUDGMENT

Heard.

2. Both writ petitions challenge the same award passed by the I Additional Labour Court, Chennai, in I.D. No. 455 of 2017 dated 15.06.2020. By the said award, the Labour Court held that the petitioner worker in the first writ petition (W.P. No. 17438 of 2020) was not entitled to reinstatement but was instead awarded a compensation of Rs.4 lakhs in lieu of dismissal.

3. Aggrieved by the award, the workman filed the present writ petition as early as 05.11.2020, seeking to quash that portion of the award which granted him only compensation, and instead prayed for reinstatement with continuity of service, back wages, and other attendant benefits. When the writ petition was listed for admission on 10.12.2020, while ordering notice to the management, the learned Judge also directed service of papers on M/s. T.S. Gopalan & Co.,



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Advocates, who had represented the management before the Labour Court.

Thereafter, when the matter was taken up on 23.12.2020, the learned Judge passed the following order: —

“3.Considering both the submissions made by the learned counsel respectively appearing for both sides, this Court is inclined to pass the following order:

(i) The respondent Management shall deposit a sum of Rs.4,00,000/- [Rupees four lakhs only], as directed by the Labour Court through the impugned award, in the Labour Court account, within a period of one month from the date of receipt of a copy of this order.

(ii) Out of the said sum of Rs.4,00,000/-, the petitioner shall be entitled to withdraw only a sum of Rs.1,00,000/- [Rupees one lakh only] being 25%, by filing a formal petition before the Labour Court and the remaining amount of Rs.3,00,000/- shall be kept in interest fetching Fixed Deposit until further orders.”

4. When the matter was taken up on 21.10.2021, the counsel for the management submitted that the amount had been deposited with the Labour Court as directed. It is also relevant to note that, Apart from the personal notice issued, the notice from this Court was served on both managements as early as 14.12.2020. If the management was aggrieved by the award, they ought to have challenged it either immediately upon receipt of the award from the Government or, at the very least, upon receiving notice from this Court.

5. On the other hand, the management was merely speculating over filing a



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cross writ petition. Ultimately, they filed W.P. No. 709 of 2023, challenging not only the final award dated 15.06.2020 but also the earlier preliminary award dated 13.02.2019. Thus, the management filed the writ petition nearly three years after the date of the award and even after having received notice in the earlier writ petition.

6. The reason for the considerable delay in filing the writ petition is sought to be explained in paragraph 16 of the affidavit filed in support of the writ petition, which reads as follows: —

“The Labour Court though held the Petitioner substantiated the conduct of the Respondent and led to loss of confidence and granted the relief of compensation. In other words, having accepted the circumstances and probability, the relief granted by the Labour Court it totally unsustainable. After the award though the Petitioner was aggrieved over the relief granted by the Labour Court, in order to give a quietus to the issue, it sent a communication to the Respondent stating that in the event of Respondent receiving the amount ordered by the Labour Court, it could also accept the award and conclude the issue. However, the Respondent did not respond to the communication of the Petitioner whereas challenged the award before this Hon’ble Court by way of Writ Petition No.17438 of 2020. In the circumstances the Petition is also advised to challenge the award.”

7. Although the management claimed that a communication had been sent



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to the workman, neither a copy of the communication was enclosed in the typed

set nor was the date of the communication mentioned in the affidavit referred to

above. On the other hand, as already noted, this Court had directed private

notice to the management in the first writ petition filed by the workman. While

passing an interim order on 23.12.2020, the Court recorded the submission

made on behalf of the management that they had filed another writ petition,

which was yet to be numbered and was likely to be listed for admission shortly.

In the interim order dated 23.12.2020, this Court recorded the said submission

as follows: —

“Mr.Anand Gopalan, learned counsel for the respondent Management has submitted that, as against the impugned award of directing Rs.4,00,000/- compensation to the petitioner employee, the Management also filed a writ petition and it is yet to be numbered, therefore, he wants to hear this writ petition along with the writ petition filed by the Management, which would shortly come up for admission.”

8. On the contrary, no writ petition had been filed by the management on the date when the above statement was made before this Court. As per the court records, W.P. No. 709 of 2023 was filed by the management only on 09.01.2023, as reflected in WPSR No. 3379 of 2023. The affidavit in support of the writ petition was sworn by one A.S. Syed Fasullah, Senior Manager–HR, only on 31.12.2022, and the writ petition was signed by the counsel on



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02.01.2023. When the writ petition was listed for admission on 11.01.2023, it

was not admitted and only notice was ordered. There was also no request made to post their writ petition along with the earlier writ petition filed by the workman. Subsequently, when the matter was taken up on 15.11.2024, only the management's case was referred for mediation, and upon failure of settlement, the matter was placed for final disposal.

9. It was only on 06.02.2025 that this Court directed the second writ petition to be tagged along with the earlier writ petition. This Court is not inclined to accept the explanation for the enormous delay in filing the second writ petition, even though it pertains to the same award. The reasons offered suggest that the management was merely speculating without any clear or definite intention to pursue a challenge to the award. The decision to file a writ petition on their own appears to have dawned only after a lapse of more than two years, and not immediately upon receipt of notice in the first writ petition or when the interim order was passed. Even at the time of the interim order, although the counsel for the management was aware, no writ petition had been filed, nor was one pending numbering before the Registry. The conduct of the management is wholly unsatisfactory, and they are clearly guilty of delay and laches in filing the second writ petition.



WEB 10. In this context, it is necessary to refer to the decision of the Supreme Court in **P.S. Sadasivaswamy v. State of Tamil Nadu, reported in (1975) 1 SCC 152**, wherein it was held that petitions under Article 226 of the Constitution are liable to be rejected on the ground of delay and laches. The relevant observation reads as follows: —

“It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”

11. Similarly, in **State of Madhya Pradesh v. Nandlal Jaiswal and Others, reported in (1986) 4 SCC 566**, the Supreme Court held as follows: —

“...it is well settled that the power of the High Court to issue an appropriate writ under article 226 of the Constitution is



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discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled With the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

12. Further, in **Karnataka Power Corporation Ltd. through its Chairman & Managing Director and Another v. K. Thangappan, reported in (2006) 4 SCC 322**, the Supreme Court held as follows: —

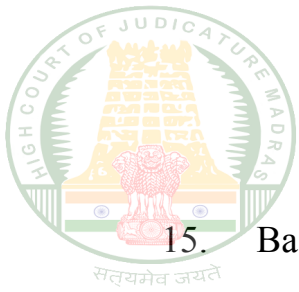
“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.”



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WEB 13.01 Therefore, even without entering into the merits of the case set up in W.P. No. 709 of 2023, the writ petition is liable to be dismissed on the ground of delay and laches. Consequently, the connected WMP shall also stand dismissed. Further, for engaging in speculative conduct and for making a misleading statement before this Court, a cost of Rs.10,000/- is imposed on the petitioner, payable to the counsel for the respondent workman.

14. In W.P. No. 17438 of 2020, the case of the petitioner is that he joined the services of the respondent management on 14.10.1992 as a trainee in the Core Shop Department. Thereafter, he was designated as a probationer from 14.10.1994 to 08.04.1995, and was subsequently confirmed in service as a monthly-rated Grade I worker on 09.04.1996. A charge sheet dated 18.10.2015 was issued to the workman, alleging certain acts of misconduct. He submitted his explanation on 23.10.2015. Thereafter, a domestic enquiry was conducted. By a detailed report dated 05.05.2016, the Enquiry Officer found the workman guilty of misconduct, which included altering the attendance register, attempting to claim salary for days on which he was absent, and receiving salary even for days when he had not reported for duty.



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15. Based on the enquiry report, a second show cause notice dated

WEB 25.05.2016 was issued to the workman, calling upon him to submit his comments on the findings. The workman submitted his reply on 06.06.2016. After considering the reply, the management dismissed him from service by order dated 16.06.2016. Aggrieved by his dismissal, the workman raised an industrial dispute before the Assistant Commissioner of Labour (Conciliation) through a petition dated 09.12.2016. The management appeared before the Conciliation Officer and filed their written remarks on 05.04.2017. As the Conciliation Officer was unable to bring about a settlement, he issued a failure report dated 19.04.2017.

16. Based on the failure report, the workman filed a claim statement before the Labour Court on 09.04.2018. The I Additional Labour Court, Chennai, took up the dispute as I.D. No. 455 of 2017 and issued notice to the management. The management filed a counter statement dated 18.05.2018. Before the Labour Court, a preliminary issue was framed regarding the validity of the domestic enquiry. By a preliminary award dated 13.02.2019, the Labour Court held that the domestic enquiry had not been conducted in a fair and proper manner.

17. Thereafter, fresh evidence was adduced before the Labour Court. The



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workman examined himself as WW1, while on the side of the management,

three witnesses were examined as MW1 to MW3. The workman filed 19

documents, which were marked as Exhibits W1 to W19. On behalf of the

management, 14 documents were filed and marked as Exhibits M1 to M14.

Upon an analysis of the evidence, the Labour Court concluded that the

testimonies of MW1 and MW2 did not establish that Gajendran had entered the

cabin room along with his co-officer and found the workman inside. The

Labour Court further held that the charge of manipulation of the attendance

register was not proved by any direct evidence, nor was there reliable material

to establish that the petitioner had gained entry into the administrative area and

altered the attendance register. At the same time, the Labour Court also found

that the workman's allegation of victimization, purportedly to coerce him into

accepting the VRS Scheme, was not substantiated.

18. On a consideration of the preponderance of probabilities, the Labour

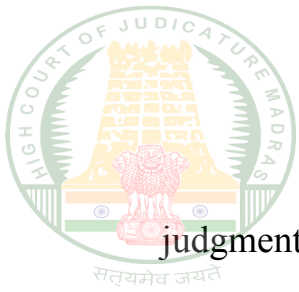
Court declined to accept the charge of misconduct levelled against the

workman. However, while granting the relief of reinstatement with back wages,

the Labour Court relied on the judgment of the Supreme Court in **A.K. Dass v.**

National Federation of Cooperative Sugar Factories Ltd., reported in 1994

Supp (1) SCC 520, and referred to the following passage from the said



judgment: —

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“We need not go into the case-law on this subject because it is well settled that if it is a case of loss of confidence the discretion is vested in the Court to refuse reinstatement. This is based on the doctrine of confidence”

19. Applying the above principle, the Labour Court, invoking the theory of loss of confidence, moulded the relief accordingly in paragraph 17 of the impugned award, which reads as follows: —

“The circumstances under which the respondent management lost confidence is also clearly established and the petitioner is challenging the proof of misconduct by the respondent meticulously and minutely pointing out the discrepancies in the evidence of the management has not come forward to show his bonafide conducts in these facts and circumstances. It is not the mere claim of right to silence as could be made in a criminal case is expected in the Labour Court for the adjudication of the Industrial dispute. A positive evidence or positive plea to substantiate the petitioner’s innocence and bonafide conduct are also required to be shown to believe that he could not have been involved in such conduct of manipulating the attendance. On the other hand, the available evidences substantiated the misconduct of the petitioner and also which would substantiate the surrounding circumstances to have loss of confidence reasonably by the management on the conduct of the petitioner in these circumstances. Therefore also this court holds that the contention of the respondent that the petitioner cannot be directed to be reinstated in the same place is acceptable by this court. But at the same time this court upon considering the length of service of the petitioner for nearly 23 years, his last drawn wages being Rs.40,812/- and the absence of proof of any other misconduct as against the petitioner, is inclined to award a sum of Rs.4,00,000/-



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as compensation in lieu of the relief of reinstatement with back wages and other benefits sought for by the petitioner in the petition.”

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20. Although the counsel for the management contended that strict rules of evidence are not applicable and relied upon the judgment of the Supreme Court in **State of Haryana v. Rattan Singh, reported in (1977) 2 SCC 491**, such a contention does not arise in the present case, as fresh evidence was let in before the Labour Court. Consequently, the standard of proof required is not that applicable to a domestic enquiry. This position has been clearly laid down by the Supreme Court in **Workmen of M/s. Firestone Tyre & Rubber Company of India v. Management, reported in (1973) 1 SCC 813**. Following that judgment, it is now settled that the satisfaction as to the evidence must be that of the Labour Court and not of the employer.

21. Having held that the charges levelled against the workman were not proved, the question arises whether it was open to the Labour Court to deny the normal relief on the ground of loss of confidence by the employer. In the dismissal order dated 16.06.2016 (Ex.W8) passed against the workman, there is no reference to any loss of confidence as the basis for the dismissal. On the contrary, the plea of loss of confidence was raised for the first time in the



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counter statement filed by the management on 18.08.2018, wherein it was stated that the management could no longer rely on the petitioner. However, no details were provided regarding the status of the petitioner or the nature of the post held by him. It is admitted that the petitioner was employed as a Grade-I worker, functioning as a Production Assistant, and was responsible for quality checking of the casting moulds prepared by the operator.

22. MW1, the Senior Officer examined in support of the charges, did not, even in his proof affidavit, state anything about the confidential nature of the post held by the workman. The same is true of MW2 and MW3. In the absence of any such evidence, and apart from a bare pleading without supporting particulars, it is unclear how the Labour Court concluded that the management had lost confidence in the workman and, on that basis, held him ineligible for reinstatement.

23. The learned senior counsel for the workman placed reliance on the judgment of the Supreme Court in **Kanhaiyalal Agrawal v. Factory Manager, Gwalior Sugar Company Ltd., reported in (2001) 9 SCC 609**. Attention was drawn to the following passage found in paragraph 9, which reads as follows:—



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“Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the labour court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.”

24. The learned senior counsel further referred to the decision of the Supreme Court in **L. Michael v. M/s. Johnson Pumps Ltd., reported in (1975) 1 SCC 574**, wherein the Court held as follows: —

“The above study of the chain of rulings brings out the futility of the contention that subsequent to Murugan Mill's Case (supra) colourable exercise of power has lost validity and loss of confidence has gained ground. The law is simply this : The Tribunal has the power and, indeed, the duty to X-ray the order and discover its true nature, if „he object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new Armour for the management;



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otherwise security of tenure, ensured by the new industrial Jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neo- formula. Loss of confidence in the Law will be the consequence of the Loss of Confidence doctrine.”

25. In the same judgment, the Supreme Court, in paragraph 8, cautioned against the uncritical application of the said principle in the context of industrial law, observing as follows: —

“Two socially vital factors must inform the understanding and application of Industrial jurisprudence. The first is the constitutional mandate of Part IV obligating the State to make 'provision for securing just and humane conditions of work'. Security of employment is the first requisite of a worker's life. The second equally axiomatic consideration is that a worker who willfully or anti-socially holds up the wheels of production or undermines the success of the business is a high risk and deserves, in industrial interest, to be removed-without tears. Legislation and judicial interpretation have woven the legal fabric. We have to see whether on the facts of the present case what the relevant law is, whether it has been applied by the Labour Court rightly and whether the appellant has merit on his side, judged by the social conscience and judicial construction of the law in this branch of discharge simpliciter versus disguised' dismissal.”

26. The learned senior counsel further submitted that, notwithstanding a stray statement made in the counter statement, the management made no attempt to adduce evidence regarding the nature of the post held by the workman or the degree of confidence allegedly reposed in him, which would warrant the application of the theory of loss of confidence due to the alleged misconduct.

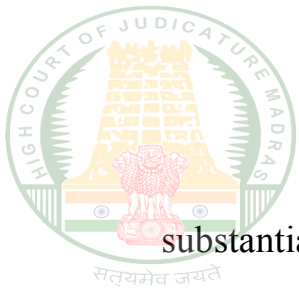


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He contended that, having raised such a defence, it was incumbent upon the management to lead appropriate evidence before the Labour Court, which they miserably failed to do. In support of this submission, he relied on the judgment of the Supreme Court in **Amar Chakravarty v. Maruti Suzuki India Ltd., reported in (2010) 14 SCC 471**, and referred to the following passage from paragraph 13, which reads as follows: —

“Whilst it is true that the provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication, it is trite that its general principles do apply in proceedings before the Industrial Tribunal or the Labour Court, as the case may be. (See: Municipal Corporation, Faridabad Vs. Siri Niwas⁵). In any proceeding, the burden of proving a fact lies on the party that substantially asserts the affirmative of the issue, and not on the party who denies it. (See: Anil Rishi Vs. Gurbaksh Singh⁶) Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove (2005) 5 SCC 100 (2008) 9 SCC 486 (2004) 8 SCC 195 (2006) 5 SCC 558 misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.”

27. In the present case, the management failed to prove that the workman occupied a position of trust and confidence, or that his reinstatement would result in a loss to the management due to a lack of confidence. Although a senior officer was examined as MW1, no evidence was led on this aspect. Having raised such a defence, it was incumbent upon the management to



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substantiate it, which they failed to do. It was not open to the Labour Court to

take up a special plea and decide the matter against the workman in the absence of supporting evidence. The finding recorded in paragraph 17 of the impugned award is not based on any legal evidence and cannot be sustained. Accordingly, the award, insofar as it relates to the relief portion, is liable to be modified.

28. For the reasons stated above, the impugned award in I.D. No. 455 of 2017 dated 15.06.2020, insofar as it denies the normal relief of reinstatement, continuity of service, back wages, and other attendant benefits, is found to be erroneous. It is hereby directed that the petitioner in W.P. No. 17438 of 2020 shall be entitled to reinstatement, continuity of service, back wages, and all other attendant benefits. The award shall stand modified to the extent indicated above. Accordingly, W.P. No. 17438 of 2020 is allowed to the extent stated. W.P. No. 709 of 2023 is dismissed with costs of Rs.10,000/-, as directed earlier. Consequently, all connected WMPs shall stand dismissed.

29. In view of the interim order directing the management to deposit a sum of Rs.4 lakhs, with liberty granted to the petitioner to withdraw Rs.1 lakh and



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the balance amount of Rs.3 lakhs to be invested in a fixed deposit, and in light

of the dismissal of W.P. No. 709 of 2023, the petitioner in W.P. No. 17438 of 2020 is entitled to withdraw the balance amount. The petitioner is also granted liberty to execute the award, as modified by this Court, for the full reliefs granted.

30.04.2025

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Copy to:

The Presiding Labour,
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Chennai 600104
(with records)



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DR. A.D. MARIA CLETE, J

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