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W.P.Nos.31840 of 2018 & 13004 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2025

CORAM :

THE HONOURABLE **MR. JUSTICE M. DHANDAPANI**

W.P.Nos.31840 of 2018 & 13004 of 2020

and

WMP.No.16096 of 2020

Amala

...Petitioner in both Writ petitions

Vs.

The Management of Vidya Mandir
Senior Secondary School,
No.124, Royapettah High Road,
Mylapore, Chennai – 600 004.

...Respondent in both Writ petitions

Prayer in W.P.No.31840 of 2018: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in connection with the award passed by the I Additional Labour court, Chennai, in I.D.No.249 of 2013 dated 06.12.2017 and quash the same award denying continuity of service from the date of termination, i.e., 30.11.2012 till the date of Award, i.e., 06.12.2017 and all other attendant benefits including backwages and further direct the respondent Management to pay backwages and all other attendant benefits, continuity of service from the date of oral termination.



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Prayer in W.P.No.13004 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in connection with the order passed in C.P.No.177 of 2018 on 10.06.2020 by the I Additional Labour Court, Chennai, and quash the same and allow the claim petition.

In both W.P's.:

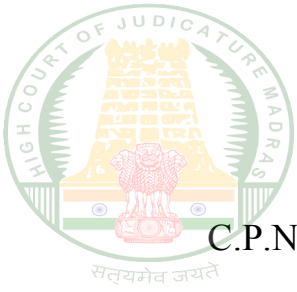
For Petitioner : Mr.K.Sudalai Kannu

For Respondent : Ms.D.Veda

COMMON ORDER

Since the issue involved in both the Writ petitions are interconnected, they are disposed of by way of this common order.

2. Writ petition in W.P.No.31840 of 2018 has been filed seeking to quash the Award of the I Additional Labour Court, Chennai, in I.D.No.249 of 2013, dated 06.12.2017, denying continuity of service from the date of termination, i.e., 30.11.2012 till the date of Award, i.e., 06.12.2017 and all other attendant benefits including backwages. Writ petition in W.P.No.13004 of 2020 has been filed to quash the order passed in



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C.P.No.177 of 2018 on 10.06.2020 by the I Additional Labour Court,

Chennai, dismissing the Claim Petition filed by the petitioner to compute the money value of Rs.1,02,882/- being the wages payable from January, 2018 to July, 2018.

3. It is the case of the petitioner that she joined the service of the respondent as “Ayah” on 10.07.2007, as per the appointment order dated 10.07.2007. Initially, the petitioner was paid on daily wages basis and she was paid Rs.300/- per day in the year 2012 and the petitioner was paid regular wages from December, 2011 till her termination from service. The petitioner has to work from 07.30 a.m. to 05.30 p.m. on regular basis and she did all the work assigned to her without any blemish. However, she was denied all the labour welfare benefits including leave, equal wages, bonus, festival advance, etc. It is the further case of the petitioner that despite the request made by the petitioner to the management on several occasions to confirm her service, the same was not considered by the management and the employees who joined after the petitioner were made permanent in service and are receiving higher wages. While so, the petitioner was not



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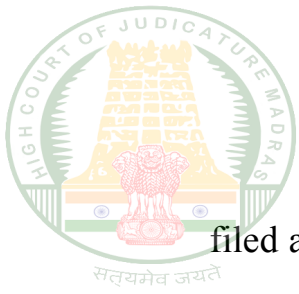
allowed to work from 30.11.2012 for the reason that she requested the management to pay fair wages. Therefore, the petitioner raised a dispute before the Conciliation Officer on 08.03.2013 and after failure of conciliation, the petitioner raised an Industrial Dispute in I.D.No.249 of 2013 before the I Additional Labour Court, Chennai. The Labour Court, on examination of oral and documentary evidence, came to the conclusion that the respondent management is not justified in depriving the petitioner of her service for about five years, the grievance of the petitioner for confirmation having not been met out of by the respondent thereby compelling her to quit the job. Therefore, the Labour Court, by award dated 06.12.2017, directed the respondent Management to reinstate the petitioner with continuity of service for five years which she had already completed as “Ayah”. However, the Labour Court declined the claim of the petitioner for backwages and other attendant benefits, on the ground that the petitioner was gainfully employed in other service during the interregnum period and was not in employment of the respondent. Aggrieved by the award of the Labour Court insofar as the rejection of backwages and other attendant benefits, the petitioner has filed W.P.No.31840 of 2018.



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3.1. In pursuant to the award of the Labour Court, the petitioner had reported for duty and the respondent, by an order dated 09.01.2018, informed that the petitioner was appointed in the permanent post of Ayah and she will be paid Rs.9,000/- per month on consolidated basis. The petitioner joined the service without prejudice to her rights on 23.01.2018. Further, the workers who have joined along with her in the year 2007 are receiving Rs.28,000/- per month when she was reinstated in service, however, the petitioner was paid only Rs.9,000/- per month for January and February, 2018 and from March, 2018, she was paid Rs.13,270/- per month. The petitioner states that she was paid Rs.9,000/- which was the salary she received before her termination. Therefore, the petitioner sent a representation on 12.01.2018 to the respondent seeking for payment of wages on par with other similarly placed employees. Parallely, the petitioner also filed an application before the Assistant Commissioner of Labour, Chennai, on 12.06.2018 under Sections 25 T, 25U and 29 of the Industrial Disputes Act. However, the Assistant Commissioner had closed the application by observing that the petitioner can file a petition before the Labour Court for computation of money value. Accordingly, the petitioner



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filed a Claim Petition in C.P.No.177 of 2018 before the I Additional Labour Court, Chennai and the Labour Court, on examination of oral and documentary evidence on record, by order dated 10.06.2020, dismissed the claim petition. Aggrieved by the dismissal of the claim petition, the petitioner has filed W.P.No.13004 of 2020.

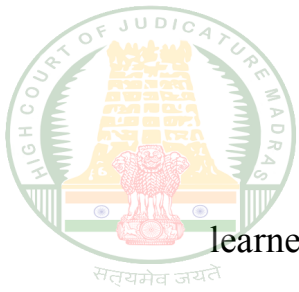
4. Learned counsel for the petitioner contended that the impugned award was passed only on the presumption that the petitioner had secured an employment as “Van Conductor” within three days after the termination and therefore, took adverse inference that the petitioner voluntarily renounced her post as "Ayah" and joined the service of M.S.Mani Travels, due to frustration that her service has not been confirmed on par with other employees. The learned counsel further contended that the presumption of the Labour Court is not correct and the petitioner was continuously employed in the respondent management from the year 2007 without any break and she was terminated from service only because she claimed fair wages on par with her co-employees, however, the Labour Court, without appreciating the evidence let in by the parties, has rejected the claim for



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backwages based on presumption. Learned counsel further submitted that the Labour Court has passed the Award on the basis of the memo filed by the respondent dated 29.10.2014 offering employment to the petitioner to appoint afresh without any continuity of service and back wages, however, that memo was not accepted by the petitioner even before the Labour Court. Learned counsel for the petitioner also contended that the petitioner was employed as Van Conductor only for a period of five months, i.e., from December, 2012 to April, 2013 for a sum of Rs.4,000/- per month, in order to eke out her livelihood and the same cannot be put against the petitioner and thereby, the Award of the Tribunal presuming gainful employment is incorrect and therefore, prayed that the petitioner may be paid backwages and all other attendant benefits. Further, the learned counsel for the petitioner, by comparing the wages of the petitioner with the wages of the persons who joined with the petitioner in 2007, contended that the petitioner has to be paid the present wages while reinstating in service which is an existing right annexed to the Award of reinstatement, which need not be stated specifically, since one Gandhimadhi, who was appointed as Ayah in the petitioner management is earning Rs.28,000/- per month. Therefore, the



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learned counsel for the petitioner contended that the Labour Court ought not to have rejected the claim petition by sustaining the respondent counsel's contention that, in the absence of proof either with regard to the pre-existing right of the petitioner or the right flowing through the award, the Claim Petition itself is not maintainable. Hence, he also prayed for setting aside the order of the Labour Court made in the claim petition.

5. Per contra, the learned counsel appearing on behalf of the respondent Management submitted that the petitioner was appointed temporarily on a daily wage of Rs.50/- per day and the work of the petitioner, as a part time “Ayah”, was to come to School to look after the children from 07.30 a.m. to 11.30 a.m. Every academic year, the daily wage of the petitioner was raised and in the year 2012, the petitioner was paid Rs.175/- per day. Learned counsel submitted that it is not the respondent who denied employment to the petitioner, but it is the petitioner who stopped coming for work from the end of November, 2013. Learned counsel further submitted that the petitioner had suppressed the fact that she had been gainfully employed from 03.12.2012 as a Van Conductor in M.S. Mani



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Travels for a monthly salary of Rs.4,000/-. Learned counsel also pointed out that the petitioner herself has admitted in the cross examination that she has not sought for any permanency of service from the management and further, the persons referred to by the petitioner were all working in different categories and possessed higher educational qualification than the petitioner. The learned counsel for the respondent further submitted that there are two sets of employees available with the respondent management, one set of employees were appointed by the school management and the other by the society and as per the Peace Committee Regulations, the petitioner was deputed to Society only based on the orders of the Government and whatever amount is paid to the employees appointed by the society, the same will be paid to the petitioner. The learned counsel further submitted that the petitioner was initially working as part time Ayah and pursuant to the Award of the Labour Court, the petitioner has been reinstated as a full time Ayah on the rolls of the respondent School in regular pay scale and as on date, the petitioner is receiving about Rs.23,000/- and odd per month. Learned counsel also submitted that the computation petition can be entertained only when there is a pre-existing

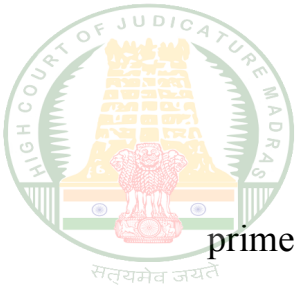


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right and not to compare with the co-employee as done by the petitioner in the present case, that too with the employee whose appointment was different from that of the petitioner's appointment and the petitioner had miserably failed to produce any appointment order, if any issued by the respondent management in favour of the petitioner before the labour court to show that her appointment was made by the respondent school in order to compare herself with the said Gandhimadhi. Hence, the learned counsel submitted that the Labour Court was right in declining the claim of the petitioner for backwages as well as for computation of wages, since there is no pre-existing right nor any right flows from the award of the Labour Court for payment of wages on par with the other employees. Accordingly, he prayed for dismissal of these writ petitions.

6. Heard the learned counsel on either side and perused the materials available on record.

7. Admittedly, the petitioner was initially appointed as casual labour under the respondent management for a sum of Rs.50/- per day. It is the



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prime contention of the respondent management that there is no oral termination and it is the petitioner who voluntarily abandoned the duty and subsequently she was employed with one M.S Mani travels as a Van conductor and the same was proved by the respondent management before the Labour court. If at all the petitioner was really terminated from service by the respondent Management against her will and wish, she would not have kept quiet and she would have approached the authorities immediately.

8. Further, Ex.M4 – certificate issued by the proprietor of M.S.Mani travels produced before the Labour Court amply proved that the petitioner has been gainfully employed as Van Conductor from 03.12.2012 to 30.04.2013 and received a salary of Rs.4,000/- per month. In the light of the fact that the petitioner has never questioned the truth and veracity of Ex.M4 before the Labour Court and in the absence of proving the initial burden before the Labour Court that the petitioner has not been employed gainfully immediately after her termination, the Labour Court has rightly come to the conclusion that once the petitioner opted to join M.S.Mani travels, the employer-employee relationship in between the respondent and the



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petitioner ceased to exist and that when the petitioner was not in the employment of the respondent, the same cannot be considered for reckoning the service of the petitioner. The Labour Court, after considering the above said facts, has ordered for reinstatement alone with continuity of service for 5 years which she already completed and denied back wages and continuity of service for the period when the petitioner was not in employment of the respondent.

9. In respect of the computation petition filed by the petitioner is concerned, the petitioner compared herself with one Gandhimadhi who was appointed by the respondent management, whereas the petitioner was appointed by the society and in order to disprove the same, no document was produced by the petitioner, such as appointment order, if any, issued by the respondent in favour of the petitioner to compare herself with the other Co-employee particularly, the said Gandhimadhi in order to substantiate that comparison is correct in terms of Co-employee who received a higher amount, which was denied to the petitioner. As rightly contended by the respondent, there must be a pre-existing right which is a precondition for



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entertaining a petition under Section 33C(2) of the ID Act and in the absence of any such right or entitlement, no petition can be entertained for the purpose of computing the monetary value or benefits.

10. Insofar as the decision of the Division Bench of this Court in W.A.No.292 of 2005 dated 18.07.2005 relied upon by the petitioner is concerned, it pertains to the issue relating to payment of full wages on reinstatement of a workman, instead of paying wages as contemplated under Section 17-B of the ID Act. However, in the present case, the petitioner was given regular wages on reinstatement and there is no dispute with regard to payment of 17-B wages, as the petitioner was gainfully employed immediately in some other service as Van Conductor, thereby, the said decision is not applicable to the present case on hand.



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11. For the reasons aforesaid, these writ petitions stand dismissed, confirming the respective impugned orders. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

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skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

The Presiding Officer,
I Additional Labour Court,
Chennai.



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M.DHANDAPANI, J.

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