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WP No. 34266 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-04-2025

CORAM

THE HONOURABLE MR JUSTICE M.DHANDAPANI

**WP No. 34266 of 2018
AND WMP NO. 39822 OF 2018**

1. The Management
Bethel Welfare Centre, Bethel,
Danishpet, Salem District - 636354
Salem

Petitioner(s)

Vs

1. M.Johnson,
Marcosis Cottage, D-3, Ponmani
Apartments, SBI Colony, Salem -
4Salem

Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records leading to the issue of the impugned award dated 05.02.2018 passed in I.D.No. 90 of 2013 by the Labour Cour, Salem and quash the same as illegal and void.



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For Petitioner(s): MR. D. MUTHUKUMAR FOR
M/S.PAUL AND PAUL
J.HUDSON SAMUEL AND
PARTNERS

For Respondent(s): R1-no Appearance

ORDER

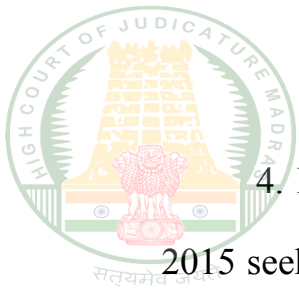
The writ petition has been filed seeking to quash the impugned award dated 05.02.2018 passed in I.D.No. 90 of 2013 by the Labour Cour, Salem.

2. It is the case of the petitioner that The petitioner centre is a registered charitable organization involved in the social activities espouse the need of the poor, children and the communities. The 1st respondent was appointed as Project Manager by the petitioner Management for implementation of the called "*Hope Amidst Despair*" since July 1998. The 1st respondent was transferred to Vellore as programmer Manager in the year 2008. The 1st respondent refused to obey the said transfer order. Later it was found that 1st respondent had his own trust and managing it and had been receiving funds from government without informing the petitioner. The said action of the 1st respondent is against the petitioner center service rules. Hence, when the executive committee meeting of the petitioner management was held on 13.04.2009, the charges against the 1st respondent and ordered enquiry to the same. The 1st respondent was directed to give his explanation in response to the charges vide show cause notice dated 07.05.2009. The respondent workman gave a brief and vague explanation on 18.05.2009. Thereafter an independent enquiry officer was appointed and 1st



respondent was directed to participate in the enquiry to defend himself. After examination of witnesses and documents, the enquiry officer submitted his report dated 30.09.2009 holding that all the three charges against the 1st respondent were proved. Based on the enquiry report dated 30.09.2009, the management had issued a show cause notice dated 15.12.2009 seeking as to why his services should not be terminated. The 1st respondent did not reply to the show cause notice. Hence the management was constrained to terminate the service of 1st respondent from the centre with immediate effect.

3. After remaining silent for an year, the 1st respondent approached the conciliation officer on 13.06.2011 under the provisions of the Industrial Dispute Act. The management submitted a detailed counter on 28.07.2011 stating that the industrial dispute was not at all maintainable. Since 1st respondent is not a workman since he was executing the managerial functions and the petitioner organization is a charitable organization run by The donations received. However the conciliation officer submitted his failure report by proceedings dated 26.12.2011. Thereafter, the matter was referred to the 2nd respondent Labour Court, though the counter was made, due to transfer and shuffling of the staff members of the center, no representatives was deputed to attend the hearing. The management was set exparte and eventually passed an exparte award dated 10.04.2014 directing the reinstatement of the 1st respondent with continuity of service and 50% back wages for the period of non-employment.



4. In the said circumstance, the petitioner here filed a WP. No. 15768 of 2015 seeking to quash the impugned award passed by the 2nd respondent labour court. In compliance of the direction of the Hon'ble High Court, the petitioner deposited Rs. 3,39,750/- in the 2nd respondent Labour Court and pursued the matter by filing the counter affidavit along with the documents and lead in 3 witnesses and marked 28 documents and the 1st respondent had marked four documents without subjecting himself to the examination. The Labour Court without proper appreciation of the facts and evidences, passed an award on 05.02.2018 setting aside the termination order and holding that the 1st respondent is a workman and the petitioner organization is an industry and went further and set aside the order of termination. Hence this writ petition challenging the award of the Hon'ble Labour Court dated 05.02.2018.

5. The learned counsel for the petitioner submitted that admittedly, the Labour court arrived at a conclusion that the enquiry officer was not conducted in a fair and proper manner and the workmen has marked only four documents. However, the enquiry report has not been filed before the Labour Court Further, MW1 and MW2 were examined before the Labour Court to prove the charges as against the first respondent. Without considering the documentary and oral evidence, the Labour Court arrived at a conclusion that the enquiry was not conducted in a fair and proper manner and ordered for reinstate the respondent with 100% backwages, which is unsustainable. After termination, the respondent was gainfully employed somewhere and the same was not properly



adjudicated by the Labour Court. Therefore, the award passed by the Labour Court is without jurisdiction and liable to be set aside.

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6. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and perused the materials available on record. Though notice has been sent to the respondent and there is no appearance on his behalf. Considering the pendency of the case, this Court is inclined to dispose the case based on the available records.

7. The facts of the case are not in dispute. Admittedly, the respondent entered into service as project manager in the year 1988 and he was retired from service in the year 2010 on the ground that he has quarreled with the then Director of the petitioner Company and was found threatening and abusing him. It is also an undisputed fact that the Labour Court has directed the petitioner to pay a sum of Rs.3,90,000/- to the respondent towards terminal benefits. Out of the said amount, the petitioner has already paid a sum of Rs.2,00,000/-

8. Considering the fact that the respondent was gainfully employed in somewhere, however, the Labour Court has ordered for reinstatement and the same is not possible at this stage. In order to strike out the balance between the petitioner and the respondent, this Court directs the petitioner to deposit another sum of Rs.3,00,000/- before the Labour Court in the case of the credit within a period of four weeks from the date of receipt of a copy of this order. Upon



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receipt of the said amount, the Labour Court shall disburse the amount to the bank account of the respondent within a period of two weeks thereafter.

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9. With the above direction, the writ petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The Labour Court, Salem.



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M.DHANDAPANI J.

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