

(1999) 12 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No's. 11046-47 of 1991 and others

Principal, St. Sebastian Industrial Training Institute and
Another

APPELLANT

Vs

Principal Labour Court and Another

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2000) 2 LLJ 333 : (2000) 1 MLJ 570

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : S. Mahimai Raj, for the Appellant; Devi Sankar, for T. Fennwalter, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—In both the above writ petitions, the petitioner is one and the same. Since the facts and circumstances and the question of law connected to both being similar, a common order is passed in both the above writ petitions.

2. So far as the W.P. No. 11046 of 1991 is concerned, the petitioner prays to issue a writ of certiorari or any writ or order or direction in the nature of a writ calling for the records relating to the Award dated March 21, 1991 and made in I.D. No. 1075 of 1989 on the file of the first respondent and quash the same.

3. So far as the other Writ Petition No. 11047 of 1991 is concerned, the petitioner has prayed to issue the writ of certiorari or any writ or order or direction in the nature of a writ calling for the records relating to the Award dated March 19, 1991 and made in I.D. No. 880 of 1989 on the file of the first respondent, and quash the same.

4. Regarding the facts of W.P. No. 11046 of 1991 as brought forth in the affidavit filed in support of the writ petition are concerned, the petitioner would state that the petitioner/Industrial Training Institute was established several decades ago

by the Society of Friar's Minor and it has been duly administered by the said Society consisting of dedicated Roman Catholic Priests and Brothers; that it is a minority institution as contemplated under Article 30(1) of the Constitution of India; that the said Society is a well reputed one and it is training the students in various trades recognised by the State of Tamil Nadu and also in certain trades which are affiliated to the National Council for Vocational Training (N.C.V.T.)

5. It would further be contended by the petitioner that the second respondent was appointed on August 3, 1988 as Welding Instructor on a temporary basis on a monthly salary of Rs. 600 and he was enjoined the duty to educate the students in the welding courses and had to take classes in theory as well as in practicals; that the second respondent was not working satisfactorily and was found gambling in the Institute and was issued with warning memos; that on few occasions, he was also found conducting the classes in an intoxicated state; that in spite of warnings, he did not mend his behaviour and as a result, the studies of the students were greatly affected; that thereafter, the Management of the petitioner/Institute resolved to discharge him from service and accordingly he was informed of his services to be terminated after three months as in the month of April, 1989 itself; that he agreed for the same and accordingly on August 9, 1989 he was terminated from the service provided with three months additional salary of Rs. 1800, which he received and acknowledged in the cash voucher dated August 9, 1989, further receiving back all his certificates on the same day.

6. The further case of the petitioner is that the second respondent raised, an industrial dispute u/s 2-A(2) of the Industrial Disputes Act, 1947 claiming reinstatement with continuity of service and back wages and other attendant benefits; that the petitioner defended it stoutly stating that it was not an "Industry" and the second respondent was not a "workman" as contemplated under law and hence the Industrial Disputes Act itself is not applicable to the case; that at the instance of the petitioner, the second respondent got examined as W.W. 1 and the Principal of the petitioner/Institute got examined as M. W. 1 besides marking five documents each on behalf of the second respondent and the petitioner/ Institute, as exhibits.

7. The further case of the petitioner is that the first respondent Labour Court on an erroneous exercise of jurisdiction held that the second respondent was a workman and his termination was not in accordance with law and that he is entitled for reinstatement as prayed for by him, as per its award dated March 21, 1991 and aggrieved against the said order passed by the first respondent/Labour Court, the petitioner has come forward to file this writ petition to issue a writ of certiorari on grounds as set out in the said writ petition.

8. So far as the other Writ Petition No. 11047 of 1991 is concerned, it would be averred in the affidavit filed in support of the writ petition that the second respondent herein was appointed as clerk in the Administrative Cadre in the petitioner Institute; that he was not only negligent in his duty but also failed to carry out important orders of the Management thereby causing material loss and

hardship to the institute, that he committed breach of trust in respect of the funds of the Management and absented himself from the service and thereby abandoned his employment when he was controverted with the misdeeds by the petitioner/Institute and hence the petitioner was constrained to terminate the second respondent from service on June 16, 1989 due to irregularity, irresponsibility and misappropriation of Institute's money.

9. The further case of the petitioner in the writ petition is that the second respondent without sending any reply to the termination order, straightaway filed ID. No. 880 of 1989 on the file of the first respondent herein claiming reinstatement in service with continuity of service and back wages and other attendant benefits; that in spite of the petitioner/Institute having produced vital documents and marked as exhibits in proof of the misdeeds of the second respondent, the first respondent/Labour Court passed an Award holding that the second respondent's termination was not legal and therefore he was entitled to reinstatement in service with all the attendant benefits.

10. As in the case of the W.P. No. 11046 of 1991, in this petition also, the petitioner would contend that it cannot be termed as an "Industry" nor the second respondent a "Workman" nor could there be any industrial dispute raised before the Labour Court against the termination of the second respondent. The petitioner would further contend that the Labour Court had no jurisdiction to entertain the petition and decide upon it; that the passing of the impugned Award is unsustainable in law and unless it is set aside, it will cause serious prejudice to the interests of the petitioner/Institute and would pray to issue the writ of certiorari as prayed for.

11. Mr. S. Mahimai Raj, the learned counsel appearing for the petitioner/Institute in both the above writ petitions would sharply contend that so far as the termination of the second respondent in W.P. No. 11046 of 1991 is concerned, it is a termination simpliciter and the Industrial Dispute had been raised on ground that the termination was without any enquiry; that the petitioner is an educational institution and cannot be considered as an "Industry" and hence referring the matter of such institutes to the Labour Court is unsustainable. The learned counsel for the petitioner, at this juncture, would cite a judgment of the Apex Court delivered in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, wherein it is held that:

"Teachers are not "workmen" though educational institution they serve is "industry"."

12. The other judgment cited by the learned counsel for the petitioner is one delivered in *K.V. Krishnamani Vs. Lalit Kala Academy*, wherein it is held P. 662:

"4. The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has power to terminate the services of the employee. Under these circumstances, it cannot but be held that the reasons mentioned constitute motive and not foundation for

termination of service."

13. The learned counsel for the petitioner would cite yet another judgment of the Apex Court delivered in *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, wherein it is held at p. 310:

"4. If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before issuance of order of termination it really amounted to his removal from service on a charge, as such penal in nature."

Citing the above judgments, the learned counsel for the petitioners would exhort that the employment of the second respondent in W.P. No. 11046 of 1991 is purely temporary and so far as the order of termination is concerned, absolutely no stigma is attached and it is a case instituted in the first respondent Court without any basis; that it was rather volunteered and opted by the employee and after a lapse of one year, at the instigations of those, who are ill-disposed of with the petitioner/Institution, the second respondent in W.P. No. 11046 of 1991 initiated the proceedings before the Labour Court.

14. So far as W.P. No. 11047 of 1991 is concerned, the learned counsel for the petitioner/Institution would contend that the second respondent therein was working as a clerk and that he committed misappropriation of the funds for his personal gains besides being non-attentive and negligent; that so far as this respondent also, it has been alleged that there was no enquiry conducted and the Labour Court erroneously concluded that there was no opportunity given for this respondent and has passed this Award; that there are materials to show for the show-cause notice issued, but the second respondent proceeded on leave even without submitting an application and did not co-operate with the enquiry proceedings and hence there is no point in accusing the petitioner/Institution for having not conducted the enquiry affording opportunity for the second respondent. With this, the learned counsel for the petitioner would conclude his argument praying to allow both the writ petitions as prayed for.

15. In reply, generally arguing both the writ petitions, Ms. Devi Sankar, the learned counsel appearing for the second respondent in both the writ petitions would contend that Section 2(s) of the Industrial Disputes Act defines "workman", that before the Labour Court, nowhere the petitioner/Institution took the plea that it is a minority institution and that the provisions of the Industrial

Disputes Act are not applicable to them; that secondly, the other issue that the petitioner/Institution is not an "Industry" was also not raised before the Labour Court, but there is a finding to the effect that it is an "Industry", that so far as the contentions raised against the second respondent in W.P. No. 11046 of 1991 are concerned, that he was terminated since he did not have a good conduct during his tenure of service, that there is evidence for good conduct certificate having been issued by the petitioner/Institute itself; that he got terminated on August 9, 1989 without any notice or enquiry; that there is a stigma attached as it is seen from Para No. 4 of the affidavit in the writ petition; that even before the Labour Court, the petitioner/Institute have attached stigma in the examination and cross examination of witnesses and hence relieving the employee with stigma and without any opportunity for defence, holding a fullfledged enquiry is opposed to law.

16. So far as the second respondent in W.P. No. 11047 of 1991 is concerned, the learned counsel would contend that he had put in ten years of service and his job was permanent in nature; that no notice of enquiry or anything of that sort was served on him, which is nothing short of a clear-cut violation of Section 25-F of the Industrial Disputes Act, that there is a definite stigma attached to his removal; that the petitioner/Institution has no right to sack the employee in such a manner; that the Industrial Disputes Act is applicable even for minority institution as held in the judgment of the Apex Court delivered in *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, , wherein it is held at p. 271:

"12. The I.D. Act generally applies to all industries irrespective of the religion or caste to which the parties belong. It applies to industries owned by the Central and the State Governments too. Any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution and an appeal to Supreme Court under Article 136 of the Constitution. The Labour Court, the Industrial Tribunal, the High Court and the Supreme Court while dealing with, matters arising out the Act have to deal with them objectively. The smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workman in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as "hiring and, firing", termination of retrenchment of the service of a workman on irrational grounds will have to be checked. The Industrial Disputes Act makes provisions in respect of these matters. The Act being a general law for prevention and settlement of industrial disputes cannot be construed as a law which directly interferes with the right of administration of a minority educational institution guaranteed under Article 30(1) of the Constitution. The law is not enacted with the object of interfering with any such right. It clearly falls within the observation of MATHEW, J. in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, that "regular tax measures, economic regulations,

social welfare legislation, wage and hour legislation and similar measures may, of course, have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgement." Sections 9-A, 10, 11-A 12, 33 of Industrial Disputes Act are applicable to, minority institutions."

17. The learned counsel for the second respondent in both the above writ petitions cite two judgments in (1) D.K. Yadav Vs. J.M.A. Industries Ltd., and (2) P.R. Ramachandran and Others Vs. Tamil Nadu Water Supply and Drainage Board and Another, for the proposition that even in the case of retrenchment of a casual employee, enquiry is necessary and that non-compliance with provisions of Section 25-F(a) and (b) renders order of termination void ab initio. The learned counsel for the second respondent would further cite yet another judgment of the Punjab and Haryana High Court delivered in Patiala Central Co-operative Bank Ltd. Vs. Mehar Chand and Another, wherein it is held at p. 1143:

" 3. Once termination is held to be unjustified, necessary corollary is that workman is entitled to be reinstated with full back wages."

18. In consideration of the facts and circumstances of the case covering both the above writ petitions as pleaded on the part of the contesting parties, the position of law covering the subject and in the light of the judgments cited on both sides and upon hearing the learned counsel for both in both the above writ petitions, what comes to be known is that so far as the W.P. No. 11046 of 1991 is concerned, the second respondent therein had been employed in the petitioner/ Institute as a Welding Instructor from August 3, 1988 on a monthly salary of Rs. 600 and he got terminated from service and the Labour Court accepting the contentions of the second respondent that his termination was unreasonable and arbitrary, ordered reinstatement, continuance of service, back wages and all attendant benefits.

19. A perusal of the connected records would show that though there had been some memos issued against the second respondent, his post was temporary and no such permanent status is being claimed by the second respondent herein at all. On the part of the petitioner/Institution, it would be contended that since being purely temporary employment, for better reasons, he got terminated in his own interest and he readily agreed and gave his consent for being terminated. It further comes to be seen that he was given some ex-gratia payments i.e., three months salary at a time amounting to Rs. 1800 and the said amount also he had received under acknowledgment. Though there is no denying of fact that time and again certain memos have been issued questioning the conduct and behaviour of the second respondent in the interest of the Institute, so far as his termination order is concerned, no such stigma has been attached and it was smooth transition in which the second respondent got relieved without any objection. Hence, it could be stated that as desired by the petitioner/ Institute, the second respondent volunteered to opt for termination for his better

prospects. Further, there is evidence to show that he had also been issued with good conduct certificate and the same had been received by the second respondent. Hence, so far as the termination of this second respondent is concerned, it had been done on a fair and legal manner and not in any arbitrary and unreasonable manner as alleged on the part of the second respondent.

20. Regarding the further argument advanced on the part of the learned counsel for the petitioner to the effect that a stigma is attached, I am able to see such instance only in the later proceedings before the Labour Court in the pleadings of the writ petition in hand and the same cannot be attributed for the termination which does not attach any stigma to the second respondent. It is not the later enquiry proceeding or any other later correspondence, which is relevant but it is relevant whether such stigma has been attached to the termination order, which would only go into his future records and further prospects in other service that he may opt. Since the second respondent also co-operated with the petitioner/Institute in his being relieved from the institute, absolutely without any resistance or objection, no unfairness or arbitrary attitude could be attributed to the order of termination passed by the petitioner.

21. Hence, in the above circumstances, I have to accept the case of the petitioner as put forth so far as the factual position is concerned, regarding the second respondent in W.P. No. 11046 of 1991. But, the Labour Court, though arrived at the correct conclusion in holding the petitioner/Institute as "Industry" and the second respondent "workman" under the Industrial Disputes Act, thus showing that it got jurisdiction to decide the issue, the manner in which it arrived at the conclusion that no enquiry was held nor the petitioner given any opportunity of being heard, as the procedures established by law is wrong since the decision of the petitioner conceding to the demand of the second respondent to be relieved was almost voluntary and as a result of after thought, with mala fide intentions, the second respondent had of late decided to raise the dispute as it comes to be known from the over all study of the case and hence the same is not approved herein.

22. In the above circumstances, I am left with no option excepting to arrive at the irresistible conclusion that the Labour Court has erroneously decided to grant the relief as sought for by the second respondent on ground that no fair enquiry was held nor any opportunity afforded for the second respondent to be heard. Hence, the conclusions arrived at by the Labour Court are perverse and have to be quashed. Hence, it is hereby concluded that the second respondent is not entitled to any relief as sought for before the Labour Court nor as granted by the first respondent/Labour Court and the relief granted by the Labour Court becomes liable to be quashed.

23. So far as the second writ petition above W.P. No. 11047 of 1991 is concerned, a strong case has been put up to the effect that the second respondent therein viz., M. Arul Michael had been in service of the petitioner/Institute for ten years and after a leave period, when he joined duty, the

petitioner/Institute did not allow him to join. At this juncture, it is to be cleared that even if the second respondent had not applied for leave prior to entering on leave, only for that purpose, the establishment of the petitioner/Institute could have proceeded against him and should not have gone upto the extent of dismissing him for out of service. It is an admitted case of the petitioner that the second respondent in this writ petition is a permanent employee and his long service is also not specifically denied. The case of the petitioner/Institute so far as this second respondent is concerned is that he misappropriated the funds as clerical staff and that his character was also not upto the mark.

24. Under such circumstances, a full-fledged enquiry into such specific allegations framing the charges, appointing an Enquiry Officer and conducting the enquiry affording sufficient opportunities for the employee to put up his defence and to be heard in full and ultimately according to the finding arrived at by the Enquiry Officer, the disciplinary authority should have properly taken the decision in terms of the findings of the Enquiry Officer. But, none of these procedures were followed in this case. This is the best case wherein it could be stated that no opportunity was afforded for the delinquent putting him on notice calling for his explanation thereby and on receipt of any such explanation offered on his part considering the same and if they are not satisfactory rejecting the same for reasons assigned and then the disciplinary authority framing the charges specifying the delinquencies committed by the second respondent and serving the same on him and then appointing an impartial officer as the enquiry officer to hold a full-fledged enquiry affording the delinquent with sufficient and reasonable opportunity to be heard in full and on the basis of the enquiry finding if any of the charges or all or some of them come to be proved, again specifying the proved charges issuing further show cause notice thereby specifying the proposed punishment and if the explanations are not satisfactory, according to the rules, proportionately awarding the punishment. But, none of these warranting procedures have been followed in this case and simply the workman is dismissed, which is nothing but arbitrary exercise of power and the same is illegal. So far as this case is concerned, the Labour Court has arrived at a right decision to order reinstatement with back wages, continuance of service and attendant benefits. Since this is a definite case wherein no opportunity was afforded, the decision of the petitioner/Institute is totally in violation of the principles of natural justice.

25. Moreover, in attributing stigma to the employee in the dismissal order itself, which is quite apparent, it is incumbent on the part of the petitioner/Institute to have conducted the full enquiry and a decision arrived at in a valid and tangible manner. But, the petitioner/ Institute does not seem to have taken the least step towards such conduct of enquiry after necessary show-cause notice, opportunity, supply of documents relied upon etc. Hence, as well concluded by the first respondent/Labour Court, in this case, it is not only the manner in which the decision is arrived at but also the very decision of the first respondent/Labour Court deserves to be upheld.

26. In the above circumstances, there is no patent error of law nor perversity in approach so far as the decision arrived at by the first respondent/Labour Court so far as W.P. No. 11047 of 1991 is concerned. Hence, I see no valid or tangible reason to interfere with the well considered and well merited order of the first respondent made in W.P. No. 11047 of 1991. Consequently, the writ petition filed by the petitioner Institute deserves only to be dismissed.

27. W.P. No. 11046 of 1991; In result, this writ petition is allowed. The award of the first respondent/Principal Labour Court, Madras, dated March 21, 1991 made in I.S. No. 1075 of 1989 is hereby quashed.

28. Consequently, W.M.P.No. 18367 of 1997 is closed.

29. W.P. No. 11047 of 1991: In the result, this writ petition fails and the same is hereby dismissed.

30. Consequently, W.M.P.No. 18364 of 1997 is closed.

31. However, in the circumstances of the case, there shall be no order as to costs in both the above writ petitions.