

**(1997) 09 MAD CK 0047**  
**In the Madras High Court**  
**Case No : W.A. No. 795 of 1997**

Smt. Selvamary

APPELLANT

Vs

Management, Jawahar Higher Secondary School, Neyveli and  
Another

RESPONDENT

---

**Date of Decision :** 29-09-1997

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2, 25F

**Citation :** (1997) 09 MAD CK 0047

**Hon'ble Judges :** M.S. Liberhan, J;A.R. Lakshmanan, J

**Bench :** Division Bench

---

## Judgement

A.R. Lakshmanan, J.—This Writ Appeal is directed against the order of Hon"ble single Judge of this Court in W.P. No. 16777 of 1990

dated October 10, 1996 allowing the Writ Petition filed by the management, by directing payment of Rs. 25,000/- as a monetary compensation to

the appellant herein and also by making an observation that the termination of the services of the appellant shall not come in her way in securing

employment elsewhere.

2. The appellant was employed in the school in question as "ayah" with effect from August 10, 1978. According to the management, the appellant

during the tenure of her employment, was habitually negligent and irregular in her duties, insubordinate to her superiors and her general conduct

was also not satisfactory. She was warned and awarded punishments for the aforesaid misconduct several times. The management having lost

confidence in her, discharged her from service paying two months" salary in lieu of notice.

3. The appellant raised an industrial dispute, which was later referred to the

Labour Court for adjudication. The management contended that the termination of the appellant was by way of simple discharge on account of loss of confidence in her and it did not warrant compliance of Section 25-F of the Industrial Disputes Act. Other contentions were also raised before the Labour Court. Before the Labour Court witnesses were examined and documents were marked. The Labour Court held that the termination of the services of the appellant by way of simple discharge is unjust and not correct.

4. Aggrieved by the award of the Labour Court, the school management filed the above writ petition to call for the records relating to I.D. No.

212/83 on the file of the III Addl. Labour Court, Madras and to quash the award dated May 23, 1990. The management contended that the

award of the Labour Court is vitiated by errors on the face of the record and that the Labour Court ought not to have ordered for reinstatement of

the appellant with back wages.

5. During the pendency of the writ petition, the Hon''ble single Judge of this Court ordered certain interim payments to the appellant. The Writ

Petition was finally disposed of by the Hon''ble single Judge of this Court. The Hon''ble single Judge held that the previous misconduct or the

warnings and punishments given earlier by themselves may not establish the charge that the respondent/appellant herein committed theft and she

admitted the same, and and that the previous warnings and punishments shall definitely have bearing on the formation of the opinion as to the loss

of confidence of the management in the appellant. The Hon''ble single Judge has also expressed his displeasure to the way in which the Labour

Court has decided the case as could be seen by him from the impugned order. Therefore without remitting the matter to the Labour Court to

consider the evidence placed on record and to dispose of the same in accordance with law and having regard to all aspects, the Hon''ble single

Judge held that the management was justified in stating that it had lost confidence in the appellant having regard to the reputation of the school and

the discipline to be maintained in the said school. However, the Hon''ble single Judge held that in the absence of proper and objective assessment

of evidence and confusions, it cannot be said that the misconduct alleged by the management is proved. Faced with this situation, the Hon''ble

Single Judge was of the view that it would be appropriate to give some monetary compensation to the appellant in modification of the impugned

award and accordingly taking into consideration the consolidated wages of Rs. 259/- per month and after giving credit to the amounts already

paid, the Hon"ble single Judge directed the management to pay a sum of Rs. 25,000/- to the appellant as monetary compensation.

6. Aggrieved by the said order, the first respondent in the writ Petition filed the above writ appeal contending that if Labour Court did not

appreciate the evidence placed before it, in the opinion of this Court, the only course open to this court is to remit the matter for a fresh disposal by

the Labour Court and that the Hon"ble Single Judge has failed to see that the order dated August 31, 1982 was of simple stigma and therefore, it

would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and therefore the termination is void ab initio.

7. Arguments of Mr. K. Chandru, learned counsel for the appellant were heard.

8. We have gone through the award of the Labour Court and the impugned order of the Hon"ble single Judge of this Court and the other

connected records. In this case," the Labour Court on a consideration of the evidence adduced both oral and documentary came to the conclusion

that the order of termination was illegal and therefore, the appellant was reinstated in service with back wages, continuity of service and all other

attendant benefits. We are of the view that the compensation awarded by the Hon"ble single Judge of this Court in lieu of the termination order is

not correct. Therefore, the issue that arises for consideration in this writ appeal is,

Whether on the basis of the charges, the order of the Labour Court ordering reinstatement with backwages etc., is justified".

9. In this case, the management raised several contentions and let in oral evidence to establish that they have lost confidence in the appellant. Their

contention that inspite of several warnings and punishments, the appellant did not correct herself, is not correct. She had been in the employment of

the management since 1975 temporarily and from 1978 on a consolidated wages of Rs. 259/- per month. Even though, the order of discharge

dated August 31, 1982 did not mention any reason to discharge the appellant from service, the management unsuccessfully let in oral evidence

before the Labour Court to prove that they had lost confidence in the appellant. The Labour Court considering all the materials on record, by its

order dated May 23, 1990 ordered reinstatement with full back wages. If really the management had lost confidence in the appellant, they might

have initiated disciplinary proceedings and also might have conducted an enquiry. In this case, the services of the appellant were terminated as

early as August 31, 1982; the Labour Court passed award on May 23, 1990; and the writ petition was pending from 1990 till it was disposed of

in the year 1996. Thereafter the present writ Appeal has been filed in the year 1997 and is being disposed of today. In other words the dispute

between the parties is not resolved for the last 15 long years. The Labour Court has already ordered reinstatement of the appellant with continuity

of service, back wages and with all other attendant benefits. But, we are of the view that the order of the Labour Court in ordering reinstatement

with continuity of services, back wages and all other attendant benefits, will amount to granting more relief to the appellant than what she really

deserves. In our opinion, while restoring the award, we modify the same to the extent of ordering reinstatement with continuity of service alone.

The appellant shall not claim any further backwages etc., except the amounts already received by her under orders of the Court. Therefore, the

order of the Hon''ble single Judge of this Court in W.P. No. 16777 of 1990 dated October 10, 1996 is modified and it is hereby ordered as

follows :

1) that the appellant shall be reinstated in service with continuity of service alone;

2) that the award of the Labour Court and the order of Hon''ble Single Judge of this Court are modified to extent indicated above; and

3) that the appellant shall not be entitled to any further claim for backwages except the amounts already received by her.

10. Consequently, the Writ Appeal is allowed to the extent indicated above. However there will be no order as to costs.