

**(1995) 04 MAD CK 0069**

**In the Madras High Court**

**Case No : Writ Petition No. 2568 of 1994**

Thonimudi Estate, Mudis

APPELLANT

Vs

Labour Court, Coimbatore and ors

RESPONDENT

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**Date of Decision :** 05-04-1995

**Acts Referred:**

**Citation :** (1996) 1 LLJ 432

**Hon'ble Judges :** R. Jayasimha Babu, J

**Bench :** Single Bench

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## **Judgement**

R. Jayasimha Babu, J.—The petitioner is aggrieved by the award of the presiding Officer, Labour Court Coimbatore, first respondent herein directing the petitioner to reinstate the second respondent in the services of the petitioner-company.

2. The petitioner had appointed the second respondent from 1 December 1988 by order dated 16 November 1988. His appointment was subject to probation. The appointment was in the general on a salary of Rs. 599 per month. It is not in dispute that the appointment was to the post of junior assistant although that post is not mentioned in the appointment order.

3. The order of appointment provides that the services of the second respondent could be terminated at anytime prior to 30 November 1989 by giving one month's notice. It also provides for confirmation and other relevant terms.

4. It has been stated by the petitioner in evidence before the Labour Court that the second respondent was appointed as probationer and in terms of that order he was on probation for a period of one year. The second respondent has passed S.S.L.C. in the year 1972. It is also not in dispute that the second respondent had subsequently passed typewriting English and Tamil test which he was required to pass.

5. The petitioner, however, issued a letter, dated 6 June 1989, to second respondent in which it was stated that the petitioner had been informed by the

manager that his work is not satisfactory that the second respondent had failed to show improvement in his performance despite the warning given and that he had not shown any improvement in his work. In view of that notice, the second respondent was informed that the petitioner had, decided to terminate the petitioner's appointment from 7 June 1989, by paying one month's salary.

6. The second respondent examined himself before the Labour Court as WM 1 for the petitioner management, the manager of the petitioner-company was examined as WM 1. The immediate superior under whom the second respondent was employed was not examined as a witness.

7. The case put forward by the petitioner company was that the second respondent had been given test and his performance was not good. He scored very low marks. It is, however, admitted that no adverse report was communicated to the second respondent before the termination. According to petitioner, failure to pass the test would go to show lack of capacity for improvement on the part of the second respondent. The test paper that was given to the second respondent was produced before the Labour Court. The Presiding Officer examined the test papers and came to the conclusion that the standard expected therein was not reasonably related to the requirements of the post to which the second respondent has been appointed. The Presiding officer Labour Court, after considering the materials placed before it came to the conclusion that the reason given by the management for terminating the second respondent from service could not be accepted as valid grounds for termination of the second respondent from service, even though such termination took place during the period of his probation.

8. The Labour Court referred to and relied upon the judgment of the Supreme Court in the case of Brooke Bond India (Private) Ltd. v. Y. K. Gautam 1973 II LLN 349, where in the Supreme Court observed, in Paras 8 and 9, at page 353 :

"... It makes no difference to the principle that the employer cannot terminate the services even of a probationer on any grounds which have not been recognised as a justification for such termination... There can, therefore, be no doubt that the Tribunal can, in a case where industrial dispute is raised, go into the question of the validity of the order of termination, even in the case of a probationer whose services have been dispensed with before the probation expired without assigning any reason ..."

9. The validity of the termination being a matter which was well within the jurisdiction of the Labour Court, the Labour Court examined the reasons put forth by the petitioner. After examining the nature of the job which the petitioner was required to do, the kind of test that was given to him; and in view of the absence of any material showing the assessment of the second respondent's performance as also the petitioner's failure to examine the immediate superior of the second respondent before the Labour Court, the Labour Court has recorded its finding. The finding so recorded is on question of fact and cannot be interfered with in

this proceeding.

10. Learned counsel for the petitioner submitted that the Labour Court even while granting liberty to the second respondent (sic) to make its own assessment as to the second respondent's performance during the period of probation, has proceeded further to award back wages in a continuity of service and granting of such reliefs, in the context of the fact of this case, was not within the jurisdiction of the Labour Court.

11. Counsel referred to the decision of the Supreme Court in the case of Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, , wherein the Supreme Court held that the grant of one year's wages to a probationer who had served for four months would constitute adequate compensation. The second respondent in this case had put in service of about 7 months before his termination. The second respondent in this case had put in service of about 7 months before his termination. The second respondent's services were terminated in the year 1989. The matter was pending before the Labour Court for period of over three years and the award came to be made in the year 1993.

12. Having regard to these facts and also having regard to the findings of the Labour Court, regarding the lack of justification for the termination of the second respondent's service during the period of probation, the quantum of back-wages awarded by the Labour Court must be held to be excessive. The interests of justice would be adequately served by directing the payment of back-wages for a period of two years to the second respondent at the rate of wages payable to the incumbents of the post to which he had been appointed on probation.

13. The question of continuity of service would arise only if the second respondent is confirmed in service after his reinstatement. It is common ground that the second respondent was reinstated and thereafter the employer having found that his services were not satisfactory at the end of the probation period, his services were terminated. Learned Counsel for the second respondent states that a dispute has been raised regarding that termination and is pending and the second respondent's right to continuity of service will be affected by the outcome of this proceedings.

14. The writ petition is, therefore, partly allowed, the petitioner is directed to pay back wages to the second respondent for a period of two years, payment to be made within two months from the date of receipt of a copy of this order. The statement of the learned counsel that the last drawn pay of the second respondent was Rs. 826.70 per month is placed on record.