

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.40463 of 2002

The Management of

Bharat Heavy Electricals Limited,
Boiler Auxiliary Plant,
Ranipet - 632 406.
Vellore District.

...Petitioner

Vs.

1.D.Aruldoss (deceased)

2.The Presiding Officer,
Labour Court,
Vellore.

3.Rathnagaram

4.A.Devananbu

5.A.Amutha Rani

6.Shaline

7.Jackulin

8.John Peter

9.Parveen Doss

...Respondents

R3 to R9 substituted vide order
dated 18.08.2006 by this court in
WPMP.16918/2006 in W.P.40463/2002

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the records relating to the proceedings in I.D.No.107 of 1997 on the file of the Principal Labour Court, Vellore and quash the award dated 02.01.2002 made therein.

For Petitioner : Mr.A.V.Arun
Mr.R.Vinothkumar

For R3 to R9 : Mr.S.T.Varadarajulu

ORDER

This writ petition has been filed by the petitioner management challenging the award passed by the Labour Court, Vellore, in I.D.No.107 of 1997, dated 02.01.2002.

2. Assailing the impugned award, learned counsel appearing for the petitioner management submitted that the first respondent was appointed as a regular employee in the petitioner's establishment with effect from 26.06.1984 and prior to his appointment, he was working as a casual worker from 1983. At the time of his appointment, he declared his age as 40 years and further declared that he was not aware of his date of birth. However, when he was later appointed as a regular employee in June, 1984, he had stated his date of birth as 27.06.1945, but, did not produce any documentary evidence to that effect. Subsequently, on investigation, it was found that the first respondent had studied at the Panchayat Union Elementary School, Lalapet, from 04.12.1947 to 09.02.1949 and as per the school records, the date of birth of the first respondent is 01.06.1938 and that was also confirmed by the school authorities. Therefore, since the first respondent suppressed the above said facts, the petitioner issued a charge memo dated 13.05.1996 on the ground that he declared his date of birth/age inconsistently at different stages and that he had deliberately made a false declaration and cheated the management and that he had suppressed information regarding his school education with a motive to gain extra years of service. On receipt of the charge memo, the first respondent had submitted his explanation on 01.06.1996 refuting the charges levelled against him and also sought for a copy of the school certificates. On receipt of such explanation, the petitioner management appointed the Enquiry Officer to proceed with the enquiry. However, in the meanwhile, the first respondent, by challenging the charge sheet issued against him, filed O.S.No.292 of 1996 on the file of the District Munsif Court, Ranipet, seeking for a declaration to declare the charge sheet issued against him as null and void. Therefore, though the first respondent sought for 15 days time to attend the enquiry and to engage a lawyer to defend his claim, the

same was refused by the disciplinary authority on the ground that there was no such provisions in the Standing Orders.

3. By narrating the above facts, learned counsel further contended that, despite several opportunities given to the first respondent to attend the enquiry, he never turned up to attend the enquiry and thus, by setting him *ex parte*, the Enquiry Officer proceeded with the enquiry, upon perusing the documents placed before him and submitted his report dated 25.10.1996 holding that the charges levelled against the first respondent as proved. Accordingly, the disciplinary authority, by determining the date of superannuation of the first respondent as 24.06.1996, removed him from service with effect from 16.11.1996 with a fine of Rs.5,000/- as penalty. Aggrieved against the same, the first respondent preferred an appeal before the Appellate Authority and when the same was pending, he preferred industrial dispute before the labour Court.

4. It is further contended that although the petitioner management filed a detailed counter affidavit, without considering the same, the learned Labour Court, by holding that the petitioner management has not satisfactorily explained that the School Record relied on belongs to the first respondent, set aside the order of removal passed by the petitioner management. Therefore, he contended that the first respondent, even after receiving the school certificate on 08.10.1996, has not even bothered to submit his explanation as to why the first respondent's school certificate should not be accepted by the petitioner management, therefore, it is not open to the learned Labour Court to reach a conclusion that he was not afforded with fair and reasonable opportunity, thus, he contended, the entire findings of the learned Labour Court are liable to be set aside.

5. In reply, learned counsel appearing for respondents 3 to 9 submitted that the first respondent was appointed as a regular employee with effect from 26.06.1984 by the petitioner management and at that time of his appointment, he declared his age as 40 years as on 20.06.1983. This is also admitted and accepted by the petitioner management, since the Medical Officer of the petitioner management had recorded his age as 40 years as on 20.06.1983. Subsequently, after 13 years, without there-being any complaint whatsoever, the petitioner management initiated departmental proceedings against the first respondent by alleging that he had suppressed his date of birth, as the certificates received from the School, where he studied, show that he studied from 04.12.1947 to 09.02.1949 and his date of birth mentioned as 01.06.1938. It is further contended that

the name of the first respondent's father was mentioned as Devapuram in the above said certificates received by the petitioner management, whereas his father name is Kailasam @ Devapuram, thus, it is further contended that, by taking note of somebody else certificate, the petitioner management wrongly came to the conclusion and thereby removed the first respondent from service. Therefore, the learned Labour Court set aside the order of removal, by holding that the petitioner management cannot reopen the case after keeping the matter in cold storage for 13 years, especially, when the Medical Officer of the petitioner management has accepted his age as 40 years as on 20.06.1983. On that basis, he prayed for dismissal of the writ petition.

6. This Court finds some force in the above said submissions of the learned counsel appearing for the respondents. It is an admitted fact that the first respondent was appointed as a regular employee with effect from 26.06.1984 on the premise that his land was acquired by the petitioner management. It is also further admitted that, on the date of his appointment, he declared his age as 40 years as on 20.06.1983. The Medical Officer of the petitioner management, after examining him, recorded his age as 40 years as on 20.06.1983. In this scenario, after keeping quite for about 13 years, the petitioner management, on the basis of some doubt with regard to his age, initiated departmental proceedings by issuing a charge memo dated 13.05.1996 with an allegation that he had suppressed his original date of birth at the time of his appointment with a motive to gain extra years of service. The only sole ground of the petitioner management, right from issuance of a charge memo, shows that, as per the School Certificate obtained from the Panchayat Union Elementary School, Lalapet, where he studied from 04.12.1947 to 09.02.1949, the date of birth of the first respondent is 01.06.1938, however, the first respondent suppressed such facts. The case of the first respondent consistently shows that his father name is Kailasam @ Devapuram, whereas it is stated in the School Certificate as Devapuram, and that the said school certificate was not furnished to the first respondent to defend his case, thus, the Labour Court rightly came to the conclusion that, without providing a copy of the said certificate and without giving him an opportunity to defend his case and his further request to engage an advocate to conduct the case, the enquiry officer ought not to have proceeded with the enquiry. Therefore, this Court is unable to appreciate the challenge made by the petitioner management on the correctness of the findings reached by the labour Court.

7. That apart, it is stated by the learned counsel for the respondents that the first respondent also died on 11.10.2005 and thereafter, legal heirs of the deceased first respondent was impleaded. Further, it is stated that, as per the order dated 07.01.2003 of this Court, the petitioner management deposited a sum of Rs.6,90,000/- and out of the said amount, the deceased first respondent withdrew 50% of the said amount. Therefore, legal heirs of the deceased first respondent may be permitted to withdraw the balance amount. Accepting the said submission, this Court permits the legal heirs of the deceased first respondent to withdraw the remaining amount lying on the file of the learned Labour Court, Vellore, by moving appropriate application.

8. In fine, for the aforesaid reasons, the writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rkm

To

The Presiding Officer,
Labour Court,
Vellore.

1 CC to Mr.A.V.Arun, Advocate SR.No. 7010

1 CC to Mr.S.T.Varadarajulu, Advocate SR.No. 7013

W.P.No.40463 of 2002

MP (CO)
PSI (01.04.2015)

WEB COPY