

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.SIVAGNANAM

W.P.No.22204 of 2002

A. Jaganathan ... Petitioner

Vs

1. The Presiding Officer  
Labour Court  
Salem.
  2. The Superintending Engineer  
Tamil nadu Electricity Board  
(Generation)  
Hydro Areas  
Erode 9.
  3. The Chief Engineer/Hydro Generation  
Tamil Nadu Electricity Board  
800 Anna Salai  
Chennai 2.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent passed in and by his order dated 16/3/1995 made in I.D.No.141 of 1992, quash the same and consequently directing the respondents 2 and 3 to restore all benefits withheld by them in pursuant to the order passed by the second respondent in Memo No.SFG/ED/PA/Administration/A1/F36/CO-D/1369/87 dated 20/1/1987.

For petitioner .... Mr.A.Sundaravathanam  
For respondents .... Mr.P.R.Dhilip Kumar

O R D E R

This writ petition has been filed praying to quash order passed by the first respondent in I.D.No.141 of 1992 dated 16/3/1995 and consequently direct the respondents 2 and 3 to restore all benefits withheld by them in pursuant to the order

passed by the second respondent in Memo No.SFG/ED/PA/Administration/A1/F36/CO-D/1369/87 dated 20/1/1987.

2. Heard Mr.A.Sundaravathanam for the petitioner and Mr.P.R.Dhilip Kumar for the respondents.

3. The petitioner is an employee of the Electricity Board has challenged to the award passed by the Labour Court, Salem in I.D.No.141 of 1992 dated 16/3/1995. The petitioner, while working as Assistant in the Office of the Divisional Engineer/P.Hs/Mettur was transferred to the Central Office/Generation at Erode, vide memo dated 23/12/1985. The petitioner, while functioning as an Assistant (Head Clerk) in the Division Office was dealing with the establishment matters including confidential references and all other important works and documents and this aspect is not disputed by the respondent Board. The order of transfer was received by the Division office on 3/1/1996 with instructions to relieve the petitioner at an earliest point of time.

4. The petitioner, applied for Earned Leave for four days i.e., from 20/1/1986 to 23/1/1986 and permission to avail Sunday i.e., on 19/1/1986. The allegation is that the petitioner absented himself from duty on 20/1/1986 without getting prior approval or sanction and therefore, he was deemed to have relieved from 24/1/1986 afternoon by the Divisional Engineer/Power Houses/Mettur, with a direction to join duty at Erode Central Office. Alleging that he did not obey this order, applied for Earned leave from 24/1/1986, the leave was refused and he was directed to immediately join at Erode Central Office vide memo dated 15/2/1986. The petitioner appeared to have applied for E.L for 56 days from 13/2/1986 which was issued by Dr.V.Annamalai, M.D/Civil Surgeon, Government Head Quarters Hospital, Erode. Thereafter, he has again applied for another spell of unearned leave supported by medical certificate for 56 days. This was followed by another application, extending the medical leave for a further period duly supported by medical certificate. On receipt of these applications, the petitioner was directed to appear before the Medical Board and it is stated by the respondents that he did not obey the said orders and he also continued to occupy the Boards quarters at Mettur. This resulted in a charge memo being issued to the petitioner by the Divisional Engineer/P.Hs/Mettur dated 11/9/1986.

5. The petitioner was placed under suspension, pending enquiry into the charges, submitted his explanation and the explanation having found satisfactory, an Enquiry Officer was appointed and the Enquiry Officer stated to have been held that the charges to be proved and based on the report submitted by the Enquiry Officer, a provisional conclusion was arrived to the

effect that the petitioner may be demoted to the lower post i.e., Junior Assistant for a period of two years.

6. As against which, a show cause notice was issued as to why the above punishment should not be imposed on him. He submitted his reply on 17/2/1986 and Disciplinary Authority, considered the reply instead of imposing the punishment, reduced the punishment to stoppage of next increment for a period of three years with cumulative effect which undoubtedly a major punishment.

7. Aggrieved by the said order, the petitioner raised a dispute before the labour Court, Salem in I.D.No.141 of 1992. Before the labour Court, both the petitioner as well as the respondent Board would lead in oral evidence. The documents were marked, with the consent of both the parties, as W.1 to W.4 and M.1 to M.31.

8. The labour Court, after considering the facts passed the award dismissing the claim petition by award dated 16/3/1995. This award is challenged in this writ petition.

9. From the order passed by the disciplinary authority, it is seen that though there was a proposal to demote the petitioner to a lower post, the disciplinary authority was considered with the explanations submitted by the petitioner stating that he is absented from duty, without obeying the orders of his superiors and it is evident from the above record of service.

10. That apart, it is admitted by the disciplinary authority that the petitioner was handling very sensitive matters including confidential reference while he was working as an Assistant in the Establishment Section. These aspects were focussed/fixed by the petitioner, yet the labour Court did not consider the same in a proper perspective.

11. Further, it is seen that the labour Court, did not properly consider the period from 13/2/1986 to 9/10/1986 as an unauthorised absence, based on the enquiry report and the petitioner has been punished twice for the same allegation.

12. Thus, the labour Court did not take into consideration the entire matter more particularly, the contention as regards to the proportionately of the penalty. Admittedly, there is no adverse report against the petitioner and therefore, the labour Court could have exercised its jurisdiction under Section 11 A of the Industrial Disputes Act and examined as to whether the punishment to the charge which is said to have been proved.

13. In the light of the above, this Court is of the view that the punishment of average of increment for three years with cumulative effect is too harsh for the charge which is said to have been proved against the petitioner and accordingly, this Court, exercising its discretion and jurisdiction, reduces the penalty to that of the stoppage of next increment for the period one year with cumulative effect. In all other respects, the award passed by the Tribunal remains unaltered.

14. The learned counsel appearing for the respondent Board states that the petitioner is no more, but he has no record to substantiate the same. In the event the petitioner is no more, his legal heirs are entitled to the corresponding monetary benefits on account of the order passed in this writ petition reducing the punishment.

15. In the result, this writ petition is partly allowed.  
No costs.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Presiding Officer  
Labour Court  
Salem.
2. The Superintending Engineer  
Tamil nadu Electricity Board  
(Generation)  
Hydro Areas Erode 9.
3. The Chief Engineer/Hydro Generation  
Tamil Nadu Electricity Board  
800 Anna Salai  
Chennai 2.
4. The Section, Officer,  
VR Section,  
High Court, Madras

[31/05/2016]

+1 cc to Mr.V.Bharathidasan, Advocate sr.62883  
+1 cc to Mr.P.R.DhilipKumar Advocate sr.62746

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