

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.03.2016

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THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.18399 of 2011

and

M.P.No.1 of 2011

The Superintending Engineer,
Coimbatore EDC (North),
Coimbatore - 12.

... Petitioner

Vs.

1. Smt.A.Pappathi

2. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records in I.D.No.5 of 2001 dated 5.12.2007 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.P.R.Dhilip Kumar

For Respondents: Mr.K.V.Shanmuganathan for R.1

O R D E R

Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent.

2. The petitioner is the Superintending Engineer of Coimbatore Electricity Distribution Circle/North, Coimbatore. The challenge in the writ petition is the award of the Labour Court, Coimbatore in I.D.No.5 of 2001. The father of 1st respondent by name A.Murugesan was working as an Inspector of Assessment in the petitioner - Electricity Board and died in harness. Applying the scheme available with the petitioner Board, the 1st respondent, who was the widow of A.Murugesan, was offered the post of Helper on compassionate ground and she joined on 18.2.1993. It is stated that at the time of applying for appointment on compassionate ground, she produced a Transfer Certificate issued by Kannampalayam Government High School stating that she has completed VIII Standard. The certificate was accepted and she was appointed and she continued as such and was promoted as Record Clerk on 8.3.1996. Thereafter, suddenly, the authorities of the petitioner Board woke up and referred the certificate for

verification from the educational authorities and it appears that the educational authorities gave some information that the certificate was not genuine, based on which, the 1st respondent was placed under suspension on 17.1.1997 and a charge memo was issued to the 1st respondent. Ultimately, she was dismissed from service with effect from 8.8.1997 and it is stated that the order of dismissal was published in the news papers. As against such order, the petitioner preferred an appeal to the Chief Engineer of petitioner Board, which was dismissed by order dated 19.1.1997. She filed Memorial Petition before the Chairman of Tamil Nadu Electricity Board, which also met the same fate. Thereafter, she raised an Industrial Dispute before Labour Court, Coimbatore, which was taken on file as I.D.No.5 of 2001.

3. Before the Labour Court, the 1st respondent/ employee did not examine herself, but marked five documents and on behalf of the petitioner - Management, one witness was examined by name Thiru.Kamarajan and 17 documents were marked. The Labour Court framed two issues for consideration viz., whether the 1st respondent was entitled for reinstatement in service with back wages and continuity of service and to what other relief she is entitled to. The Labour Court by an elaborate award discussed the entire factual matrix, took note of the report of Justice Khalid Commission dated 27.2.2003, which was marked by the 1st respondent as Ex.W.2, the order reinstating such contract employees dated 5.3.2003 marked as Ex.W.3 and the order passed by this Court in W.P.No.589 of 2002 dated 11.12.2003.

4. The main issue is that the educational authorities, who are stated to have submitted a report on 24.2.1997, were not examined by the Management and the Labour Court after considering the entire matter found that the ends of justice would be met if the 1st respondent is reinstated with continuity of service, but, without back wages. The exercise of discretion by the Labour Court cannot be faulted. The only ground raised by the petitioner Board is that the employee having accepted the findings of the Disciplinary authority that the charge framed against her is proved, without any reasons, the Labour Court ought not to have directed reinstatement into service by exercising mercy. This contention raised by the petitioner - Management is unsustainable owing to the fact that the Labour Court permitted the authorities to lead evidence, considered the matter as to how the similarly placed persons have been dealt with and thereafter exercised discretion under Section 11-A of the Industrial Disputes Act. Therefore, it is incorrect on the part of the petitioner to state that the Labour Court exercised mercy, but it is a discretion and reasons have been assigned for exercise of such discretion. It cannot be disputed by the petitioner Board that several such helpers were charge-sheeted during the relevant time for having produced bogus educational certificates. However, this Court

held that the post of Helper does not require such qualification and even assuming such certificate was furnished by the 1st respondent, punishment of dismissal would be too harsh and therefore modified the penalty. In fact, that appears to be the underlined principle adopted by the Labour Court. The Labour Court having denied back wages to the 1st respondent itself is a major penalty.

5. Therefore, for all the reasons assigned in the preceding paragraphs, this Court is of the view that the petitioner has not made out any case for interference with the award of the Labour Court.

6. Accordingly, the writ petition fails and the same is dismissed. No costs. consequently, the connected miscellaneous petition is also dismissed.
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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Presiding Officer,
Labour Court, Coimbatore.

+ 1 cc to Mr.K.V.Shanmuganathan, Advocate Sr 13842

+ 1 cc to Mr.P.R.Dhilip Kumar, Advocate Sr 13836

KR/17/3/16

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