

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
16.03.2016	18.03.2016

CORAM

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

W.P.No.3226 of 2015
and
WMP.Nos.5602 & 5603 of 2016 & M.P.No.2 of 2015

The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Dharmapuri-5. Petitioner

Vs

1. The Presiding Officer,
Labour Court, Salem.
2. T.Karuppannan Respondents

Prayer :- Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the award passed by the first respondent made in I.D.No.7/2006, dated 03.08.2013, and quash the same.

For petitioner : Mr.M.Fakkir Mohideen

For Respondents : Mr.L.Chandrakumar for R2
R1-Court

O R D E R

This Writ Petition has been filed by the Superintending Engineer, Dharmapuri, Electricity Distribution Circle, Tamil Nadu Electricity Board, challenging the award passed by the Labour Court, Salem in I.D.No.7 of 2006, dated 03.08.2013.

2. The second respondent raised a dispute before the Labour Court challenging the order of dismissal passed by the petitioner alleging that the second respondent has secured employment, as Helper in the petitioner Board, by impersonation. The petitioner resisted the claim made by the second respondent by filing a counter statement stating that the second respondent had used some of the particulars of the transfer certificate of one A.Rajendran, who had studied upto sixth standard and left the school in 1977 and got his appointment order in the Board and he is not the right person for selection and appointment as per the selection committee. It was further submitted that the domestic enquiry was conducted in a fair manner and opportunity was given to the second respondent and the enquiry officer submitted a report holding that the charge is proved, which was accepted by the Management and the order of termination has been passed. Therefore, it was submitted that the order of punishment imposed on the second respondent was fully justified.

3. On the above pleading, the parties went for trial. Both of them did not adduce any oral evidence. The second respondent placed 16 documents which were marked as Exhibits P1 to P16 and the Management marked 19 documents as Exhibits M1 to M19.

4. The Labour Court, on consideration of the documentary evidence and the pleadings, framed two questions for consideration, namely, (i) whether the order of termination passed by the Management, dated 23.05.2005, is just and proper; (ii) whether the second respondent is entitled to an award of reinstatement with backwages and continuity of service.

5. During the course of argument, the petitioner Management had focused before the Labour Court that the second respondent had used some of the particulars of the Transfer Certificate of one A.Rajendran, who studied upto sixth standard and left the school in 1977 and secured the appointment in the Board and he is not the right person for selection and appointment as per the Selection Committee. In fact, based on this allegation, action was initiated against the petitioner by issuance of charge memo dated 06.09.1999. Ultimately, by order dated 22.11.1999, the second respondent was dismissed from service. The statutory appeal filed against such order was also dismissed on 24.08.2000. Thereafter, the second respondent raised a dispute before the Labour Court, Salem, in I.D.No.109 of 2001, and the Labour Court directed the petitioner Management to reinstate the petitioner in service without backwages, but with continuity of service. The said award was not challenged by the petitioner Management, but they accepted the same and reinstated the second respondent. Therefore, the petitioner Management cannot raise

the grounds on which the earlier order of dismissal, dated 22.11.1999 was passed, to advance the present case before the Labour Court. The Labour Court, after considering the matter elaborately pointed out that the Management has failed to produce any document to substantiate the action initiated against the second respondent from 2004 and except the Vigilance Report, there is no other document placed before the Labour Court to establish the charge. This finding has been rendered by the Labour Court in more than two places in the impugned award. That apart, the Board attempted to shift the burden of proof on the second respondent, when it was their duty to prove the charge.

6. The case of the petitioner Management is pitched on a statement said to have been recorded before the Deputy Superintendent of Police wherein he appears to have stated that he will be called as Raja@ Rajendran, and since his family deity was Karuppasami, he was given the name as Karuppannan. It is submitted by the learned counsel for the petitioner that in the claim statement filed before the Labour Court, totally a different stand has been taken by the second respondent. However, on such a ground, the impugned award cannot be interfered for more than one reason, firstly, because the alleged statement given by the petitioner before the Police authorities, could not have been placed reliance to non-suit the second respondent before the Labour Court. The first and foremost aspect to be proved in a case of impersonation is that there should be a third party, in whose favour an order was passed by the Board by granting him an appointment and the second respondent impersonated the said person and secured appointment for which he is not entitled to. The charge of impersonation is a criminal charge. Therefore, there should be material evidence to establish the charge of impersonation. The petitioner Management having miserably failed to establish the charge before the Labour Court by producing oral and documentary evidence, the Labour Court was fully justified in interfering with the order of punishment. The Labour Court has assigned elaborate reasons to hold that how the charge of impersonation has not been established by the petitioner Management.

7. It is a settled legal principle that normally this Court exercising jurisdiction under Article 226 of the Constitution will not interfere with the award of the Labour Court unless and until it is shown that the award is perverse or if the same is not based on legal evidence, as held in *Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan*, reported in (2005) 3 SCC 193 at 196 para 12]. The relevant portion of the judgment reads as follows:-

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon.

8. It has been further held that when the order is not so irrational or perverse, the same should not be normally interfered in the case of *Nelton India v. Bipin V. Patel*, reported in (2006) 9 SCC 192 at 194 & 195, para 9 and the judgment reads thus:-

9. We are of the view that the High Court should not have interfered with the interim order of the Labour Court unless it were of the opinion that the conclusion of the Labour Court was so perverse that it could not be reasonably supported. In our opinion, having regard to the facts of the case, the reasoning of the Labour Court for not granting interim relief to the respondent could not be said to be so irrational that it warranted interference under the extraordinary jurisdiction of the High Court. We are of the view that the orders of the learned Single Judge of the High Court as well as the Division Bench cannot be supported on this ground alone.

9. As observed in the preceding paragraphs, the Labour Court has elaborately analysed the matter and then rendered a finding and there is no perversity in the approach of the Labour Court warranting interference by this Court under Article 226 of the Constitution of India.

10. For all the above reasons, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

pbn

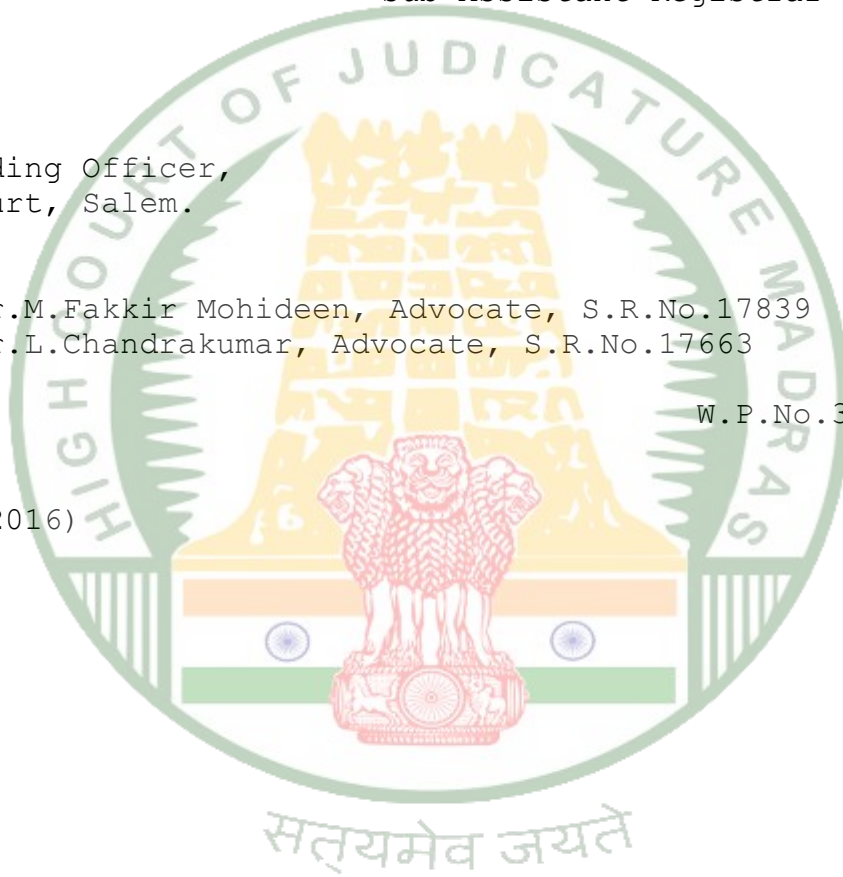
To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.M.Fakkir Mohideen, Advocate, S.R.No.17839
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.17663

W.P.No.3226 of 2015

KK(CO)
CA(29/03/2016)



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