

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.294 of 2018

K.Mani

..Appellant/Ist Respondent

-vs-

1. The Management of Erode Electricity
Distribution Circle,
rep.by the Superintending Engineer,
Tamil Nadu Electricity Board,
Erode-9.

2. The Presiding Officer,
Labour Court, Salem.

.... Respondents/Petitioner/
2nd Respondent

Appeal filed under Clause 15 of Letters Patent, against the
order passed by this Court in W.P.No.3249 of 2006 dated
15.12.2011.

W.P.No.3249 of 2006:-

Writ Petition filed to issue a Writ of certiorari, or any
other writ or order or direction in the nature of Writ or
certiorari, calling for the records of the Award of the Second
respondent/Labour Court dated 10.01.2005 passed in I.D.No.292 of
2000 and quash the same as illegal and without jurisdiction.

For Appellant :: Mr.Nazarullah Ahmed for
Mr.K.V.Shanmuganathan

For Respondents:: Mr.P.R.Dhilip Kumar for R1
R2-Labour Court

JUDGMENT

(Delivered by M.DHANDAPANI, J.)

This writ appeal has been filed against the order passed by
this Court in W.P.No.3249 of 2006 dated 15.12.2011.

2.The appellant herein was appointed as helper on 12.10.1993 on compassionate ground on account of acquisition of lands belonging to his family by the Tamil Nadu Electricity Board and he joined the service on 21.10.1993. At the time of joining the service, the appellant produced his educational qualification as 8th Standard passed issued by the Government High School, Anandhur, Dharmapuri District. Based on a complaint received that the appellant had produced the bogus educational certificate and that he did not possess minimum qualification, the Department sent the certificate produced by the appellant to the District Educational Officer, Dharmapuri to find out its genuineness. After verifying the certificate with the concerned school records, the District Educational Officer reported that the same was not genuine, but was a forged document. Since this was a serious misconduct, the Department issued a memo dated 11.12.1998 and placed the appellant under suspension. A charge memo was issued on 9.1.1999 wherein two charges were framed. This was followed by an appointment of an enquiry officer, who after the enquiry, submitted the report. After following the due procedure, final orders were passed on 18.11.1999 dismissing the appellant from service. As against the said order, the appellant did not file appeal to the Regional Chief Engineer as per the Standing Orders of the Board, but, however, raised Industrial Dispute before the second respondent - Labour Court under Section 2A(2) of the Industrial Disputes Act. The Labour Court, after considering the facts and circumstances of the case, held that the plea of the appellant that he had completed 8th Standard and that the certificate produced by him was a true certificate, could not be accepted. The Labour Court further pointed out that pursuant to the findings, the Board filed a criminal complaint against the appellant, which ultimately resulted in the discharge of the appellant on the ground of good conduct. Having taken this aspect into consideration, the Labour Court viewed that instead of dismissing the employee from service, the punishment be reduced as denial of backwages. In the circumstances, the Labour Court restored the employment with continuity of service, however, having taken note of the fact that the appellant had furnished the forged document, it held that the appellant was not entitled to backwages and other benefits. Aggrieved by the same, the Management filed a writ petition before this Court in W.P.No.3249 of 2006 and the same was allowed by this Court by order dated 15.12.2011. Challenging the said order, the present appeal has been filed.

3.Today, when this matter was taken up, the learned counsel for the first respondent has produced a copy of the order passed by the Tamil Nadu Electricity Board under similar circumstances, in No.(Per.)B.P.(F.B.)No.27 (Administrative Branch) dated 07.11.2002 and submitted that the said yardstick may be applied

to the present case also.

4.The relevant portion of the said order is extracted hereunder:

"5.After careful consideration, the Board has decided to cancel the punishment of dismissal / removal from service imposed by the Superintending Engineers. The Board has also decided that alternative punishment of 'reduction of pay to the minimum scale of pay of the post held on the date of imposing the punishment for a period of 3 years which will operate for future increments' will be sufficient. Consequently the complaint lodged with the police will also be withdrawn. The period of suspension/ absence in these cases shall be regularised as follows:

a)If the orders of dismissal / removal from service are already given effect, the period from the date of dismissal / removal from Board's service till the date of re-joining will be regularised as Extra-ordinary leave without pay and allowances.

b)Where show cause notice / final orders is challenged and stay obtained, and the individual is continuing in service, the period will be treated as duty.

c)Where the suspension order was challenged and stay obtained and the individuals are continuing in service, in such cases the employees will be reinstated without prejudice to the Disciplinary Proceedings to be initiated and the period will be treated as duty.

d)Where the employee is under suspension and Disciplinary Proceedings is pending, the employee will be reinstated without prejudice to the Disciplinary Proceedings pending against him. The period of absence will be regularised by sanction of E.L. at credit and the balance as E.O.L. without pay and allowances. The subsistence allowance already paid will be adjusted for E.L. at credit and balance amount will be recovered in easy instalments.

6.Accordingly, the Tamil Nadu Electricity Board hereby passes the following orders:

a(i)The punishment of removal / dismissal from service imposed by the Superintending Engineers for production of bogus certificate for qualification, age by Contract Labourers absorbed as Helpers shall be cancelled;

a(ii)In these cases, the punishment of dismissal / removal imposed shall be modified to that of reduction of pay to the minimum of the time scale

of pay of the post held on the date of issue of orders for a period of 3 years which will operate for future increments.

b)The period of suspension/ absence of these workmen shall be regularised as detailed in para-5 above.

7.The Superintending Engineers are informed that when the School records are found bogus the date of birth indicated in the school records and reckoned earlier for determining the age of the workman cannot hold good. Hence, in these cases, the individual workman may be directed to obtain and produce birth certificates from competent authorities for determining their age. In case there is difficulty to obtain birth certificate, Medical Certificate from the D.M.O. or equivalent rank may be accepted."

5.We have perused the above order and are of the considered view that the same yardstick shall be applied to the employee in the present case also. Applying so, it is hereby ordered that the punishment of dismissal from service shall be modified to that of reduction of pay to the minimum of the time scale of pay of the post held on the date of issue of orders for a period of 3 years which will operate for future increments, and the appellant shall be regularised as per paragraph-5(a) of the order passed by the Tamil Nadu Electricity Board in No.(Per.) B.P.(F.B.)No.27 (Administrative Branch) dated 07.11.2002. The impugned order of the learned single Judge stands modified accordingly.

6.The writ appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

KM

To

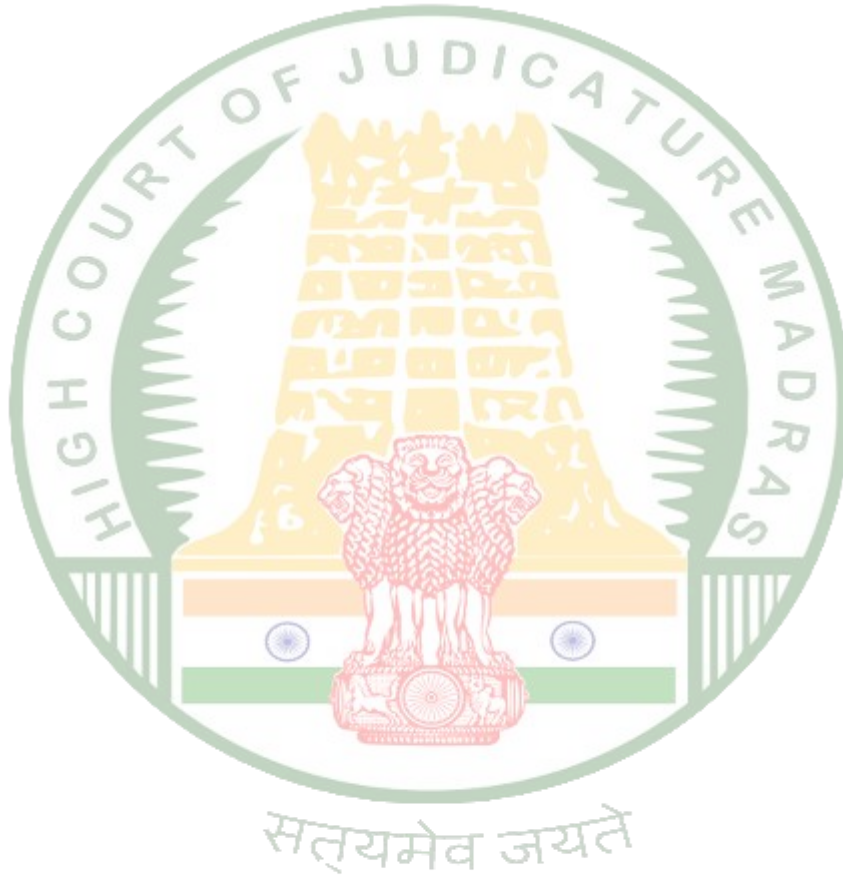
1.The Superintending Engineer,
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Erode-9.

2.The Presiding Officer,
Labour Court, Salem.

+lcc to Mr.P.R.Dhilip Kumar , Advocate, S.R.No.44798
+lcc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.44858

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AK (CO)
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