

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2018

PRONOUNCED ON: 26.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1929 of 2003

Subramaniam

Appellant

Vs.

Tamilnadu Electricity Board,
Viilupuram Electricity Distribution Circle,
Rep. By its,

1.Superintending Engineer,
Villupuram.

2.Executive Engineer (D&M)
Tindivanam.

3.Executive Engineer (O&M),
Virudhachalam.

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.10.2002 passed in A.S.No.127 of 2002 on the file of the Additional District Judge, Fast Track Court-I, Tindivanam, confirming the judgment and decree dated 18.06.1999 passed in O.S.No.705 of 1992 on the file of the Additional District Munsif Court, Tindivanam.

For Appellant : Mr.V.Ajay Khose

For Respondents : Mr.V.Viswanathan
Standing counsel for TNEB

J U D G M E N T

This second appeal is directed against the judgment and decree dated 31.10.2002 passed in A.S.No.127 of 2002 on the file of the Additional District Judge, Fast Track Court-I, Tindivanam, confirming the judgment and decree dated 18.06.1999 passed in O.S.No.705 of 1992 on the file of the Additional District Munsif Court, Tindivanam.

2. The second appeal has been admitted and the following substantial questions of law were formulated for consideration:

(i) Whether the burden of proof is not on the side of the respondents in establishing non-deliver of letter sent by certificate of posting since in the normal course the letter had to be delivered to them as per Section 24 of General Clauses Act r/w Section 114 of the Indian Evidence Act?

(ii) Whether the Lower Appellate Court can take into consideration and rely on the eschewed examination in chief of D.W.3 and pass decree and judgment against the Appellant herein?

(iii) Whether on the facts and circumstances of the case, the lower

Appellate Court should have held that the enquiry had been conducted against the principle of natural justice?

3. Considering the short point involved in this matter as regards the maintainability of the suit laid by the plaintiff, it is found that the factual aspects of the matter need not be elaborately gone into.

4. Suffice to state that the plaintiff, while working as Inspector of Assessment under the Tamil Nadu Electricity Board, admittedly went on medical leave until 28.11.1990. Meanwhile, it is found that he was transferred to Kallakurichi with effect from 05.11.1990 and it is found that as per the case of the plaintiff, on the expiry of the medical leave, he had submitted further extension of leave to his authority and it is stated that the said requisition has been made by the plaintiff by a certificate of posting and therefore, it is the case of the plaintiff that on the expiry of the leave availed by him, he reported for the duty on 14.06.1991 and it is the case of the plaintiff that disciplinary action was initiated against him for not intimating the availment of leave in advance and it is found that accordingly, in the disciplinary action initiated, the plaintiff had been imposed the punishment of stoppage of increment for one year and it is found that the plaintiff without preferring an appeal as against the punishment imposed on him as per the Rules and Regulations of the Tamil Nadu Electricity Board, the suit

has come to be laid by the plaintiff for a declaration that the order issued by the Tamil Nadu Electricity Board dated 27.06.1992 imposing the above said punishment on him is arbitrary, illegal and void and for the consequential relief of permanent injunction from imposing the punishment passed thereunder. The above said suit laid by the plaintiff is resisted by the defendants contending that inasmuch as the disciplinary action had been initiated against the plaintiff for the delinquency committed by him as per the departmental rules, the only remedy available to the plaintiff is to prefer an appeal as against the same and the suit laid by the plaintiff is not maintainable and accordingly, the defendants prayed for the dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 was examined and Exs.A1 to A.17 were marked. On the side of the defendants, DWs 1 to 3 were examined and Exs.B1 to B4 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit laid by the plaintiff as not maintainable and also on the ground that the plaintiff is not entitled to obtain the reliefs sought for. Aggrieved over the same, the present second appeal has been laid.

7. On facts, it is found that there is no dispute that the plaintiff went on medical leave up to 28.11.1990. Thereafter, for the extension of the medical leave availed by the plaintiff, it is the case of the plaintiff that he had sent the necessary requisition with reference to the same by a certificate of posting. However, the same had been vehemently denied by the defendants. On the otherhand, according to the defendants, no such requisition had been received by them and thereby, it is found that the defendants had initiated the necessary disciplinary action against the plaintiff for availing the leave without proper sanction. On his returning duty, it is found that accordingly, the disciplinary action had been initiated against the plaintiff for absenting himself from duty from 29.11.1990 to 18.06.1991 by way of issuing a memo and as the explanation submitted by the plaintiff with reference to the same, being found not satisfactory, charges had been framed against the plaintiff and accordingly, based on the evidence adduced in the departmental enquiry, the impugned punishment has come to be levied on the plaintiff.

8. The grievance of the plaintiff seems to be that the disciplinary action initiated against him has not been properly conducted and hence, the punishment imposed by way of the disciplinary action is void, illegal and arbitrary. However, the above contention of the plaintiff did not find acceptance before the Courts below. It is found that the plaintiff

examined as P.W.1, during the course of cross examination, has admitted that the disciplinary action had been initiated against him for not reporting duty from 29.11.1990 to 18.06.1991 and on that basis, the disciplinary action was initiated against him as per the Rules of the Board and further admitted that as per the rules, he had been charged with the charge memo and on that charges, enquiry was conducted and during the course of enquiry, he was provided adequate opportunity to defend his case and he had also cross examined the witnesses and the enquiry was conducted by the officer concerned, based upon the materials presented by him and ultimately, the punishment was levied upon him. Further, according to the plaintiff, he has also admitted that he had preferred an appeal to the higher authority and however, no action had been taken with reference to the same. However, as rightly argued by the defendants, there is no material placed to show that the plaintiff had preferred an appeal before the higher authority as per the rules. The plaintiff has not even whispered in the plaint that he has preferred the appeal before the higher authority impugning the punishment levied upon him. It is thus found that even as per the admitted case of the plaintiff, the disciplinary action had been initiated against the plaintiff in accordance with the rules of the Board and accordingly, after framing necessary charges and after providing adequate and sufficient opportunity to the plaintiff to present his case and affording him opportunity to cross examine the

witnesses in the matter, it is found that the punishment had come to be levied. In such view of the matter, the claim of the plaintiff in the plaint that the punishment inflicted on him by way of the disciplinary action is illegal and arbitrary and thereby, the same is void, as such, is found to be unacceptable.

9. The further contention put forth by the plaintiff that the requisition sent by him for extension of medical leave by way of certificate of posting as now projected in the suit by way of Exs.A13 to A17 were not properly taken into consideration during the departmental enquiry also cannot be accepted, particularly, when the said documents are not accepted by the defendants as such. If really, the said documents are true and genuine and available with the plaintiff, the same would have been produced by the plaintiff during the course of the disciplinary proceedings. As to why he had not chosen to present the said documents during the course of the disciplinary proceedings initiated against him, there is no acceptable explanation forthcoming and accordingly, it is found that the Courts below rightly did not place acceptance upon the abovesaid documents and further, it is also noted from the evidence of the enquiry officer examined as D.W.3 that he has been taken all the steps to verify and ensure as to whether the plaintiff had submitted any requisition for the extension of medical leave from the concerned department and on getting the information that no such

requisition had been made by the plaintiff, accordingly, it is his case that he had proceeded with the enquiry on the available materials and determined the matter as against the plaintiff.

10. It is thus found that in all aspects, the enquiry had been conducted by the department as against the plaintiff for his unauthorised absence over a long period of time without proper sanction fairly and in accordance with the principles of natural justice and in such view of the matter, the challenge made to the same by the plaintiff by way of a civil action is found to be not maintainable. The only remedy available to the plaintiff as against the the punishment imposed is to only prefer an appeal as provided under the rules of the department and in such view of the matter, the Courts below are justified in holding that the suit laid by the plaintiff is not maintainable and also justified in holding that the disciplinary action initiated against the plaintiff had been conducted fairly, after providing due and adequate opportunity to the plaintiff in all aspects and in adherence to the principles of natural justice. The Courts below had rightly not placed any reliance upon the documents projected by the plaintiff to contend that he had sent the requisition for the extension of medical leave by certificate of posting as the said documents are not established to be genuine documents as such and as above discussed, if the said documents were true and really sent by the plaintiff, the same would

have been projected by the plaintiff during the course of the departmental enquiry. It is thus found that the plaintiff having failed to establish that he had sent the requisition for the extension of medical leave to his higher authority properly and failed to establish the same during the course of the departmental enquiry, it is found that nothing survives in the matter and the Courts below had rightly appreciated the materials placed on record, both oral and documentary and rightly held that the suit is devoid of merits and not maintainable. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

At the end, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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26.03.2018

Index:yes/No
Internet:yes/No
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To

- 1.The Additional District Fast Track Court-I,
Tindivanam.
2. The Additional District Munsif Court, Tindivanam.
- 3.The Section Officer, VR Section, High Court.

T.RAVINDRAN, J.

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Pre-delivery judgment made in

S.A.No. 1929 of 2003

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