

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 45781 of 2006
and M.P.No.1 of 2006

The Superintending Engineer/
Purchase and Administration,
Mettur Thermal Power Station,
Mettur Dam-636 406. ...Petitioner

Versus

1.Presiding Officer,
Labour Court,
Salem.

2.V.Duraisamy, ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the 1st Respondent in his proceedings dated 13.4.2005 passed the Award in I.D.No.54 of 2004 and quash the same.

For Petitioner : Mr.P.R.Dhilp Kumar

For Respondents : Mr. V.Ajoy Khose (for R2)

O R D E R

The petitioner/management has filed this Writ Petition challenging the award passed by the first respondent dated 13.04.2005 in I.D.No.54 of 2004 directing the petitioner to cancel the order fixing his pay at the minimum time scale of pay for a period of two years and to modify the above punishment as Censure.

2.The case of the second respondent is that the second respondent was working as contract labourer at MTPS, Mettur Dam and subsequently he was absorbed into Board's service w.e.f. 01.05.1999, as per memo dated 01.11.1999, the petitioner-Management imposed a condition that on absorption as Helper, if any discrepancy is noticed in the particulars furnished by the second respondent, at a later date, then the appointment order

will be liable for cancellation, without further notice. At the time of absorption, the second respondent produced a medical certificate dated 05.05.1999, as if, his age was 45. Later, the Petitioner-Management came to know that the second respondent had worked in TANSI from 22.08.1964 to 06.01.1986 and had obtained voluntary retirement. However, in the records of TANSI, his date of birth is mentioned as 01.07.1946 based on the medical certificate produced by him at that time. Accordingly, the petitioner-Management initiated disciplinary proceedings vide memo dated 01.11.2000 as per Tamilnadu Electricity Board Standing Orders applicable to the employees for having suppressed the facts of medical certificate already obtained way back in the year 1966, while he was appointed in TANSI. After receipt of the charge memo, the second respondent submitted his explanation and the departmental enquiry ended in punishment as stated above. Aggrieved against such punishment, the petitioner filed an appeal before the Appellate Authority/Chief Engineer, MTPS, Mettur Dam. The Appellate Authority after considering the entire proceedings had rejected the appeal and confirmed the punishment passed by the petitioner/Management and the same was communicated to the second respondent on 03.09.2002. Thereafter, the second respondent raised Industrial Dispute through his Union in I.D.No.54 of 2004. The first respondent-Labour Court, modified the punishment as CENSURE holding that just because of the Medical Certificate state the age of the second respondent as 46 years cannot be said that he had furnished wrong particulars at the time of appointment. Against which, the petitioner-Management has filed the present Writ Petition.

3.Heard both sides.

4. The learned counsel for the petitioner would submit that the initial appointment by TANSI was suppressed by the petitioner and had applied for appointment by producing another Medical Certificate. As per the records of TANSI, the second respondent's date of birth is 01.07.1946. However, suppressing the fact, the second respondent has produced another Medical Certificate as if, he is aged 45 years and this suppression of fact amounts to mis-conduct. Accordingly, the Authorities have passed an order of punishment as fixing his pay to the minimum time scale for a period of two year with cumulative effect and the Appellate Authority without any justification has modified the order is unsustainable.

5.The learned counsel for the second respondent would submit that the Industrial Tribunal by observing Section 10 of the Industrial Act, being well aware of the fact modified the punishment as 'CENSURE' on the ground that merely submitting a Medical Certificate stating the age of the second respondent as

46 years shall not be taken as that he has produced false particulars at the time of appointment. The second respondent had joined the MTPS only after relieving from service from TANSI. At the time of appointment at MTPS, he has produced a Medical Certificate stating his age as 45 years. The said certificate was given by a medical practitioner and the petitioner has nothing to do with the opinion of a medical practitioner. Since the second respondent did not have a Birth Certificate, on the instructions of the Board, he has produced a Medical Certificate obtained from a medical practitioner and it cannot be treated as misconduct by the respondent. Considering the above said facts, the Labour Court modified the punishment as 'CENSURE'.

6.I have considered the rival submissions made on either side.

7.In the present case, the issue involved is whether the fresh Medical Certificate contrary to earlier Medical Certificate produced by the second respondent is mis-conduct or not?

8.It is undisputed case that the the petitioner was initially employed at TANSI by producing a medical certificate obtained from a Medical Practitioner and after retirement, the petitioner entered into service to the petitioner/Management producing another Medical Certificate. After retirement, he entered into the Petitioner Management as contract labourer. Thereafter, the petitioner's service was regularized upon production of the Medical Certificate and other relevant documents. After verification, the petitioner Management has noticed that there are two Medical Certificates, one from TANSI and another from the petitioner Management. So, the petitioner was issued with show cause notice and punished with stoppage of increment.

9.In the present case, the petitioner did not produce any Birth Certificate before TANSI. If it is so, definitely there is misconduct. However, the petitioner has produced only the medical certificate given by a Medical Practitioner. Hence, the petitioner cannot be blamed since the Medical Certificate was given by a Medical Practitioner. However, there is some mis-conduct found against the petitioner and the Labour Court, Salem had discussed the same and modified the punishment of "fixing his pay at the minimum time scale of his pay for a period of two years" to "CENSURE".

10.Already, the Labour Court, Salem had discussed in detail and modified the punishment. Hence, the writ petition cannot be entertained and re-appreciation of evidence is not possible

under Article 226 of the Constitution of India, unless the order passed by the Labour Court is perverse or arbitrary. Accordingly, the Writ Petition stands dismissed.

11.While entertaining the Writ Petition, this Court had passed interim stay on condition that the petitioner deposits the differential pay to the credit of I.A.No.54 of 2004 on the file of the Labour Court, Salem within a period of four weeks from the date of receipt of copy of order. The learned counsel for the petitioner would submit that as per the order dated 27.11.2006, the petitioner has deposited the amount. In view of the dismissal of the Writ Petition, the second respondent is given liberty to file appropriate application for withdrawal of such amount.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

- 1.Presiding Officer,
Labour Court,
Salem.
2. The Superintendent Engineer,
Purchase and administration,
Mettur Thermal power Station,
Mettur Dam 636 406.
- 3.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Ajoy Khose, Advocate SR.No.46107

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and M.P.No.1 of 2006

AK(CO)
GN(13/08/2018)