



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2018
CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

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W.P.(MD) Nos.22067 and 22068 of 2016
and
W.M.P(MD)Nos.15777 and 15778 of 2016

The Superintending Engineer,
Thoothukudi Electricity Distribution Circle,
Tamil Nadu Electricity Generation and Distribution
Corporation Limited,
Thoothukudi Post and District.

... Petitioner in both W.Ps'

-vs-

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Secretary
Tamil Nadu Electricity Employees Central Organization,
Tuticorin.

... Respondents in both W.Ps'

Prayer in W.P(MD)No.22067 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in pursuant to the impugned order passed by the first respondent in I.D.No.37 of 2003 dated 29.4.2011 and to quash the same.

Prayer in W.P(MD)No.22068 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in pursuant to the impugned order passed by the first respondent in C.P.No.16 of 2016 dated 22.09.2016 and to quash the same.

For Petitioner : Ms.S.Srimathy
in both W.Ps for M/s.M.S.Johnny Basha
For Respondent-1 : Court
in both W.Ps'
For Respondent-2 : Mr.R.Diwakaran
in both W.Ps'

COMMON ORDER

The TANGEDCO is the Writ Petitioner in both these Writ Petitions. The award made in I.D.No.37 of 2013, on the file of Labour Court, Tirunelveli is questioned in W.P(MD)No.22067 of 2016. The consequential order, dated 22.09.2016 in C.P.No.16 of 2016 is the subject-matter of challenge in W.P(MD)No.22068 of 2016.



2.One P.Mariappan was employed as Inspector of Assessment in Tamil Nadu Electricity Board. On 15.9.1998, a sum of Rs.4,57,613 representing the Collection amount from the consumers of Tamil Nadu Electricity Board was kept in safety custody in the premises of Tamil Nadu Electricity Board at Kovilpatti. The said sum was stolen. In this regard, a criminal case was registered and a sum of Rs.2.5 lakhs was also recovered from the accused.

3.The Tamil Nadu Electricity Board Management took a view that the amounts collected from the consumers of electricity ought to have been remitted in the bank account on the same day and that since the delinquents have committed lapse by keeping it in Office premises and that paved the way for commission of offence of theft. On this ground they were proceeded against departmentally. The said Mariappan as well as the other delinquents were found guilty of the charges framed against them. Thiru.Mariappan was levied with punishment of reduction of scale of pay without cumulative effect for a period of three years. Similar punishments were imposed on the other delinquents also.

4.The case of the said Mariappan was taken up by the second respondent/Organisation and I.D.No.37 of 2003 was filed in this regard. The Labour Court allowed the Industrial Dispute on 29.4.2011. Since the benefits granted to the said Mariappan were not disbursed, C.P.No. 16 of 2016 was filed and the same was allowed on 22.09.2016. Challenging the award made in I.D.No.37 of 2003 and the order in C.P.No.16 of 2016, these Writ Petitions have been filed.

5.The learned Standing Counsel for the TANGEDCO would contend that the co-delinquent moved this Court by filing Writ Petitions and that they were dismissed and that the punishments imposed on them had become final. She also pointed out that there was delay in raising the industrial dispute. She further contended that the Labour Court had erred in holding that the charges were not established against the said Mariappan. She would point out that there is no special circumstances obtaining in this case. When in the case of the co-delinquents charges as well as the punishments have become final whereas in the case of Mariappan, it has been held that the charges were not proved. She also high-lighted the aspect that the said Mariappan chose to absent himself from the domestic enquiry.

6.This Court is not in a position to accept any of these submissions. As rightly pointed out by the learned counsel for the second respondent, the co-delinquents, no doubt, moved this Court questioning the orders of punishment. But this Court by order in W.P.No.16851 to 16855 of 2007 non-suited the Writ Petitioner therein and required the Petitioners therein to avail the alternative remedy of departmental appeal. It is no doubt true that in the departmental appeals orders originally passed were affirmed. But then this cannot come in the way of Labour Court in examining



the whole issue afresh at the instance of the Trade Union, which is certainly competent to espouse the case of Mariappan.

7.The question of delay cannot be put against the second respondent and it is seen that the order of punishment was passed on 31.8.2000.The ID was filed in 2003 itself. During the relevant point of time, there was no limitation prescribed for filing the Industrial Dispute. So the Industrial Dispute cannot be said to be belatedly filed.

8.What happened here was an act of theft. Therefore there is no question of misconduct on the part of Mariappan. In this regard, the learned counsel for the second respondent would point out that as per the Board proceedings No. 22/4.11.1987, the collection amount need to be remitted only before the expiry of the next working day. Of course, there was an subsequent amendment and it had been laid down that the collection made from 8.30 a.m. to 12.30 p.m should be remitted in the bank on the same day without fail. The subsequent proceedings were issued only on 4.12.1998. This was after the occurrence of the subject event. Mariappan cannot be found guilty on account of the subsequently issued proceedings, dated 4.12.1998, when the occurrence took place on 15.9.1998.

9.The reasons set out in the impugned awards are sound and accordingly W.P(MD)No.22067 of 2016 stands dismissed. As a consequence, W.P(MD)No.22068 of 2016 is also dismissed. No costs. Consequently,connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Tirunelveli

+2ccs to M/s.D.Geetha, Advocate, SR.Nos.52891 and 52892

+1cc to Mr.S.M.S.Johnny Basha, Advocate, SR.No.52740

vsn

RL/5C/3P/SV/MMS/SAR4/17/4/2018

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