

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.30160 of 2013

The Superintending Engineer,
Tirupattur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Tirupattur - 635 601.

... Petitioner

vs.

1. The Presiding Officer,
Principal Labour Court,
Vellore District.
2. The Secretary,
TNEB Thozillalar Iyykia Sangam,
Tirupattur Sangam Branch,
Tirupattur.
3. G.Prabakaran ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, calling for the records in Award dated 13.05.2010 made in I.D.No.223 of 2004 on the file of the 1st Respondent/Principal Labour Court, Vellore and quash the same.

For Petitioner : Mr.M.Fakkir Mohideen

For Respondents 2 & 3 : Mr.Ajoy Khose

O R D E R

Petitioner/Management has come up with this Writ Petition challenging the Award dated 13.05.2010 passed by the 1st Respondent/Labour Court in I.D.No.223 of 2004.

2. According to the Petitioner/Management, disciplinary proceedings were initiated against the 3rd Respondent/workman for having demanded and accepted bribe for effecting new electricity service connection, by issuing a Memo dated 11.08.2000. After conducting enquiry, the 3rd Respondent/workman was imposed with the punishment of stoppage of increment for a period of two years with cumulative effect vide Memo dated 14.09.2001. It is further stated that after due consideration, the 3rd

Respondent's Appeal and Mercy Petitions were rejected by orders dated 07.12.2001 and 04.04.2003, respectively.

3. Thereafter, the Contesting Respondents raised an Industrial Dispute and consequent to the failure report submitted by the Conciliation Officer, the matter was referred to the Labour Court under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication, which resulted in I.D.No.223 of 2004. The 1st Respondent/Labour Court set aside the penalty imposed on the 3rd Respondent and allowed the Industrial Dispute. Challenging the same, the Petitioner/Management is before this Court.

4. Heard the learned counsel for the parties and perused the material documents available on record.

5. It is seen that out of five charges, except Charge No.3, the Enquiry Officer has held the other four charges proved against the 3rd Respondent. Initially, punishment of stoppage of one increment for three years with cumulative effect was proposed to be imposed on the 3rd Respondent/workman. Based on the Enquiry Report, the Petitioner/Management imposed the punishment of stoppage of one increment for a period of two years with cumulative effect. The Labour Court came to the conclusion that all the averments of the Union have been considered by the Disciplinary Authority in the domestic enquiry and the same cannot be re-agitated, however, interfered with the findings of the Disciplinary Authority, and set aside the penalty imposed on the 3rd Respondent.

6. It is the contention of the learned counsel appearing for Respondents 2 and 3 that though the findings of the Labour Court cannot be said to be perverse, it ought to have called for an explanation from the Disciplinary Authority as to why the nature of the proposed punishment was not stated in the Show Cause Notice, to which, the 3rd Respondent/workman was asked to give an explanation. He further contended that the Disciplinary Authority has not stated as to whether the punishment imposed on the 3rd Respondent/workman is going to have any impact on the workman's pension. According to him, non-consideration of these aspects renders the punishment void and hence, the Labour Court interfered with the punishment imposed on the 3rd Respondent/workman.

7. It is not necessary that the nature of punishment mentioned in the Show Cause Notice need to be imposed on the workman. It is open to the Disciplinary Authority to impose a punishment on the workman, if he is found guilty of the charges. Only after receipt of the explanation, the nature of punishment that will have impact on the terminal benefits, or lesser punishment, will be mentioned in the Show Cause Notice. Further, it

is to be noted that only after imposition of punishment, it will come to light as to whether it will have an impact on the retiral benefits of the workman, or not. If the punishment imposed, has impact on the terminal benefits of the workman, it is for the workman to challenge the same before the Appellate Authority, who is empowered to modify the punishment.

8. In this case, rightly, the 2nd Respondent/Union has raised the dispute challenging the punishment imposed on the 3rd Respondent/workman. But, the Labour Court has interfered with the same on technical grounds, that the proposed punishment has not been mentioned in the Show Cause Notice issued to the 3rd Respondent/workman and that the Petitioner/Management has not informed the workman about the impact of the punishment on his terminal benefits, which according to this Court, cannot be a ground for the Labour Court to interfere with the punishment imposed by the Disciplinary Authority, when the charge of bribe alleged against the workman, is held to be proved.

9. For the charge of bribe, the 3rd Respondent/workman must thank his stars that, he is not imposed with capital punishment of dismissal from service, but, only a lesser punishment.

10. In view of the foregoing, as the employer has imposed a lesser punishment on the 3rd Respondent/workman, and that, there is perversity in the Award dated 13.05.2010 made in I.D.No.223 of 2004, the same requires interference and it is accordingly, set aside.

In fine, the Writ Petition is allowed with the above direction and observation. No costs.

सत्यमेव जयते Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

(aeb)
To:
The Presiding Officer,
Principal Labour Court,
Vellore District.

+1cc to Mr.M.Fakkir Mohideen , Advocate SR.No. 66517
+1cc to Mr.V.Ajay khose , Advocate SR.No. 66268

W.P.No.30160 of 2013

A.SK(06/11/2019)