

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.18973 of 2010

&

M.P.No.1 of 2010

A.Shankar

... Petitioner

vs.

1. The Superintending Engineer,
TNEB,
Dharmapuri Electricity Distribution Circle,
Dharmapuri.
2. The Chief Engineer,
Personal, TNEB,
144, Anna Salai,
Chennai.
3. The Assistant Commissioner of Labour
(Head Quarters),
5th Floor,
Office of the Labour Commissioner,
Teynampet,
Chennai-6.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing 1st respondent to pay the unpaid wages for the period from 22.12.2006 to 25.02.2008, reinstate the petitioner with continuity of service, full back wages, and all other attendant benefits as per the order of the 3rd respondent in PA2/12576/08 dated 13.10.2008.

For Petitioner : Mr.N.Chinnaraj

For Respondents : Mr. M. Fakkir Mohideen for R1 and R2
Mr.G.K.Muthukumar, Spl.G.P. for R3

O R D E R

I heard the learned counsel for the Petitioner, the learned counsel for the Electricity Board and Mr.G.K.Muthukumar,

learned Special Government Pleader on behalf of the third Respondent.

2. In this writ petition, the Petitioner seeks a Writ of Mandamus for reinstatement with continuity of service with full back wages and other attendant benefits as per the order dated 13.10.2008 of the third Respondent.

3. The case of the Petitioner is that charges were framed against him and an enquiry was conducted in respect of such charges but the report of the enquiry officer is totally perverse and not sustainable. In addition, conciliation proceedings were pending in respect of a common dispute pertaining to the use of electronic meters and, therefore, approval should have been obtained before passing the order of dismissal. Therefore, the Bhaarathiya Electricity Employees Federation, by communication dated 07.03.2008, cited Section 33 (1)(b) of the Industrial Disputes Act, 1947 (the ID Act) and informed the Commissioner, Labour Welfare, that the dismissal of the Petitioner contravenes the ID Act and requested for his intervention so as to cancel the order of dismissal. Eventually, the communication dated 13.10.2008 was issued by the third Respondent stating that approval should have been obtained under Section 33(2)(b) of the ID Act before terminating the services of the Petitioner. The present writ petition is filed in order to enforce the said communication/order dated 13.10.2008 and on that basis to obtain reinstatement with back wages and attendant benefits.

4. The learned counsel for the Petitioner reiterated the averments that are set out in the affidavit in support of the writ petition and emphasized that pending conciliation proceedings in respect of a common dispute, the Electricity Board should not have dismissed the Petitioner from service without obtaining requisite approval under Section 33(2)(b) of the ID Act. In support of this contention, he referred to and relied upon the order dated 13.10.2008 of the third Respondent.

5. On the contrary, the learned counsel for the Electricity Board submitted that the order of termination dated 25.02.2008 is subject to an appeal order and that the order specifies that an appeal may be filed before the Chief Engineer, Distribution, Vellore, within 30 days from the date of receipt of the order. In addition, he submits that the purported order dated 13.10.2008, upon which the Petitioner relies, is not an order as would be evident upon reading the said communication. Accordingly, he pointed out both from the subject of the said communication as well as paragraph-1 thereof that it is in the nature of a suggestion and not an order. He further pointed out that the dispute, which was pending before the Conciliation Officer, pertained to the use of electronic meters, and the said

dispute had no connection with the charges on the basis of which the Petitioner's services were terminated. In particular, he pointed out that the charges against the Petitioner were that he caused a total loss of Rs.12,83,690/- to the Electricity Board in respect of charges payable in respect of the Electricity Service Connection No.533 of the Muthu Arts College premises and also that the Petitioner had noted down the readings while sitting in office and without visiting the aforesaid premises. According to him, after duly conducting an enquiry, these charges were proved and, therefore, the disciplinary authority by order dated 25.02.2008 terminated the services of the Petitioner. Significantly, he submits that the said order of termination has not been challenged in this writ petition.

6. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

7. It is clear from the documents on record that the services of the Petitioner were terminated by order dated 25.02.2008 by considering the enquiry report and after evaluating the explanation provided by the Petitioner. The said termination is in respect of two charges pertaining to the Electricity Service Connection No.533 in the Muthu Arts College premises. The charge is that the Petitioner caused a total loss of Rs.12,83,690/- to the Electricity Department by noting down the readings while sitting in office and without visiting the aforesaid premises. It is significant to note that the said order of termination is subject to an appeal to the Chief Engineer, Distribution, Vellore. Such appellate remedy was not availed of by the Petitioner. Even otherwise, the Petitioner has not challenged the order of termination before this Court. Instead, the Petitioner has filed this writ petition entirely on the basis of the communication dated 13.10.2008 of the third Respondent.

8. Upon perusal thereof, as contended by the learned counsel for the Electricity Board, it is clear that it is not in the nature of an order and is in the nature of a suggestion or advice. In the counter affidavit, the Electricity Board has taken the stand that the Assistant Commissioner of Labour does not have jurisdiction or authority to issue such a communication and that the dispute pending in conciliation is completely unconnected with the charges that were proved against the Petitioner herein.

9. Upon examining the relevant records, I find that the contentions of the learned counsel for the Electricity Board are liable to be accepted. The Petitioner failed to establish that principles of natural justice were not complied with in the

conduct of disciplinary proceedings. Significantly, the order of termination has not been challenged in this writ petition. Moreover, the specified appellate remedy has not been exercised by the Petitioner. For all these reasons, I am not inclined to exercise jurisdiction in favour of the Petitioner. This order will not preclude the Petitioner from taking appropriate action to challenge the order of termination in accordance with law and the applicable rules.

10. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer,
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(Head Quarters),
5th Floor,
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+1 cc to M/s.G.B.Saravanabhavan, Advocate Sr.No. 36267
+1 cc to M/s.M.Fakkir Mohideen, Advocate Sr.No. 36465
+1 cc to The Government Pleader, Sr.No. 36736

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NRJK (CO)
RMP (15/12/2020)

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