



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM

THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.15821 of 2005

1.P.Krishnan (Died)

2.Kaveri

3.Vincent

4.Vidhya

5.Vijaya

6.Vinotha

... Petitioners

(P2 to P6 are substituted as LRs of the deceased sole petitioner vide order dated 13.09.2021 made in W.M.P.No.34556 of 2019)

Vs.

1. The Management of Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.

2. The Management,
Ennore Thermal Power Station,
Ennore, Chennai - 57.

3. The Management.
The Executive Engineer,
Ennore Thermal Power Station,
Ennore, Chennai - 57.

4. Presiding Officer,
1st Additional Labour Court,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records relating to the order passed by the 4th respondent in I.D.No.635/1999 dated 12.02.2004 and quash the same and allow the said I.D.No.635 of 1999 and reinstate the petitioner with all backwages and benefits.

For Petitioner	: Mr.S.Parthasarathy
For Respondents	: R4 - Court
	Mr.P.Subramanian,
	Standing Counsel (R1 to R3)



O R D E R

The petitioner herein, who was employed as Grade-II Fitter in the respondent - Electricity Board was charged for unauthorized absence for a period of 180 days commencing from 23.08.1992 to 18.02.1993. Pursuant to an enquiry, a show cause notice dated 16.08.1993 was issued and being not satisfied with the reply of the petitioner, the order dated 21.12.1993, with the maximum punishment of removal from the services of the Board, was issued. The Labour Court had taken note of the evidences before it and also the employee's antecedent and had come to the conclusion that the punishment of dismissal was proportionate to the charges and thereby rejected the employee's claim for reinstatement and other benefits.

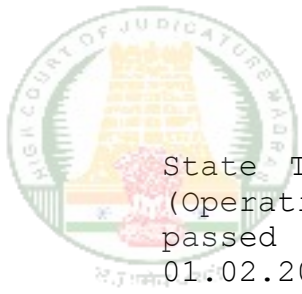
2.The learned counsel for the petitioner, though had raised several grounds touching upon the merits of the case, of which the findings of the Labour Court was established, would submit that though the Enquiry Officer as well as the Labour Court had found the charges to be proved, they should not have opted for the maximum punishment of dismissal from service.

3.Per contra, the learned Standing Counsel for the respondent-Board would state that the petitioner-employee was earlier punished on ten occasions for similar charges of unauthorized absence and since he was a habitual absentee, ultimately the punishment of dismissal was imposed on him, which does not require any interference.

4.Pending the Writ Petition, the petitioner-employee had died and is substituted by his legal heirs.

5.It is not in dispute that the deceased employee was earlier charged on ten occasions for similar misconduct of unauthorized absence and during all these occurrences, he was either imposed with punishment of censure or stoppage of increment for a given period without cumulative effect. However, in the instant case, the respondent had resorted to the grave punishment of dismissing him from service. The Standing Orders of the respondent-Board provides for ten different punishments for misconduct by any of the employees of the Board, among which, dismissal from service is the gravest of them.

6.In an identical circumstance, when an employee of the respondent-Corporation was dismissed from service for unauthorized absence, this Court, had thought it fit to modify the punishment into one of compulsory retirement, thereby enabling the family members of the deceased employee to receive pensionary benefits, in the case of R.M.Chitra Vs. Tamil Nadu



State Transport Corporation Ltd., rep by the General Manager (Operation) and others reported in 2019 SCC Online Mad 28165 passed in the Writ Petition in W.P.No.19089 of 2014 dated 01.02.2019. In R.M.Chitra's case, supra, the employee was also involved in twelve previous occurrences of misconduct of unauthorized absence. However, by referring to various alternate punishments available under the Standing Orders governing the respondent-Corporation, the learned Judge thought it fit to modify the punishment in order to enable the family members to receive the pensionary benefits. The relevant portion of the order reads as follows:

"...

18. There are atleast 10 different kinds of alternate punishment that are prescribed under Clause 25 and depending upon the gravity of the charges, the respondents can punish the employee. Clause 25 of the Standing Order of the respondents are as follows:

"25. Punishment for misconduct:

1) The following shall be the prescribed punishment that may be awarded to workman, guilty of misconduct.

i. Censure

ii. Fine: Subject to the provisions of Payment of Wages Act.

iii. Stoppage of increments : Stoppage of increments with or without cumulative effect.

iv. a) Recovery from wages whole or part of any pecuniary loss, cause to the Corporation by the negligence or breach of orders of the workman.

b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be with hold where such an order cannot be given effect to.

c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered where such an ordered cannot be given effect to.

v. Suspension not exceeding 30 days.

vi. Demotion to lower post or lower grades. No workmen shall be demoted to any post or grades lower



8. In the light of the above observations, the impugned order dated 12.02.2004 on the file of the 4th respondent is set aside. Consequently, the punishment of dismissal from service by order dated 21.12.1993, is modified into one of compulsory retirement. In this background, there shall be a direction to the 1st respondent herein to disburse all the Death-Cum-Retirement benefits to the petitioners herein, including the pensionary benefits, as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

9. The Writ Petition stands ordered accordingly. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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Ennore Thermal Power Station,
Ennore, Chennai - 57.
4. Presiding Officer,
1st Additional Labour Court,
Chennai.

+1CC to Mr.S.Parthasarathy, Advocate, Sr.No.49878
+1CC to Mr.P.Subramanian, Advocate, Sr.No.50224

W.P.No.15821 of 2005

BS (CO)

K.RK. (13.10.2021)