

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.19968 OF 2019

AND

WMP NOS.19473 OF 2019 AND 1211 OF 2020

The Superintending Engineer
Tamil Nadu Electricity Generation and
Distribution Corporation
Mettur Electricity Distribution Circle
Mettur. ... Petitioner

Versus

C.Balamurugan ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Labour Court, Salem in I.D.No.73 of 2014 and quash its award dated 01.11.2017.

For Petitioner : Mr.S.Haron
for M/s.T.S.Gopalan & Co.,

For Respondent : Mr.A.Deivasigamani

O R D E R

Challenging the Award dated 01.11.2017 passed in I.D.No.73 of 2014, by the Labour Court, Salem, the petitioner is before this Court.

2. From the materials placed before this Court, it is seen that originally a charge sheet dated 20.10.2005 containing four charges was issued. During the pendency of the enquiry proceedings, another charge sheet dated 20.01.2006 containing three charges was issued. Domestic enquiry was conducted into both the charge sheets. Since the respondent has admitted the charges framed under the first charge sheet dated 20.10.2005, the petitioner / TANGEDCO imposed the punishment of termination of service. In the meanwhile, enquiry proceedings into the second charge sheet was also completed. However, in view of the

punishment imposed in respect of the first charge sheet, no further action was taken by the petitioner/TANGEDCO in respect of the second charge sheet.

3. The respondent has raised an industrial dispute against the termination order issued by the petitioner/TANGEDCO in the above industrial dispute. Strangely, the Labour Court, without considering the existence of two different disciplinary proceedings, on two different charge sheets, has confused itself, by applying the enquiry report in respect of the second charge sheet to the charges issued on the first charge sheet dated 20.10.2005. Thereafter, the Labour Court has given a finding that though the charge sheet was issued for four charges, the Enquiry Officer has given a finding only in respect of three charges leaving out one charge. According to the Labour Court, such conduct amounts to non-application of mind and therefore, ordered reinstatement, with backwages, with continuity of service and all other attendant benefits.

4. When the matter is taken up for final hearing, both the learned counsel have fairly conceded that the Labour Court has confused itself by mixing up the first charge sheet and findings with regard to the enquiry conducted for the second charge sheet and passed an erroneous award. The Labour Court did not consider the findings of the Enquiry Officer with respect to the first charge sheet and also failed to take into consideration the relevant documents before passing the award. On the other hand, it proceeded with the irrelevant documents.

5. At the outset, it is very clear that the Labour Court has proceeded on wrong assumption and passed the award not only without considering the relevant documents, but also considering the irrelevant documents. In any event, the award passed by the Labour Court is not sustainable in law.

6. Be that as it may, now that the proceedings were initiated in the year 2005 and the litigations were pending for the past 16 years. At this stage, it is not reasonable to remit the matter and force both the parties to undergo the ordeal of trial. It is well settled that for granting backwages, it is incumbent on the part of the worker / employee to plead and prove that he is not gainfully employed somewhere else. But in the instant case, there is no material to show that both the parties have focused on this issue at all. In the absence of pleadings and proof that the worker was not gainfully employed, grant of backwages is not automatic. However, considering the gravity of the charges, there is no second opinion that some punishment should be imposed on the employee for the admitted misconduct. Since he has already suffered 16 years without employment, this Court is of the considered opinion that the

non-employment for such a larger period itself is a major punishment.

7. Interest of justice would be met if reinstatement is ordered without backwages, but with continuity of service in the present scale of pay. Thus, the Award dated 01.11.2017 passed in I.D.No.73 of 2014 by the Labour Court, Salem is interfered and modified to the extent indicated above.

8. In fine, the Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK
To

The Labour Court
Salem.

+1 cc to M/s.A.Deivasigamani, Advocate Sr.No. 13627
+1 cc to M/s.T.S.Gopalan, Advocate Sr.No. 13958

PL (CO)
RMP (23/03/2021)

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