



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.3496 of 2010

and

M.P(MD)No.2 of 2010

WEB COPY

1.The Dean,
Agricultural College and Research Institute,
Killikulam,
Vallanad Post,
Thoothukudi District.

2.The Registrar,
Tamil Nadu Agricultural University,
Coimbatore - 3.

... Petitioners

Vs.

1.A.Gopalakrishnan

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the second respondent connecting to the order passed on 29.06.2009 in I.D.No.7 of 2002 and quash the portion of the said order, more specifically in respect of the orders passed by the second respondent directing the petitioners herein to pay compensation to the first respondent herein at 50% of the last drawn full month salary for 9 years and 7 months.

For Petitioners : Mr.A.Thirumurthy
For Respondent : No appearance
for R.1

ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorari, to call for the records of the second respondent connecting to the order passed on 29.06.2009 in I.D.No.7 of 2002 and quash the portion of the said order, more specifically in respect of the orders passed by the second respondent directing the petitioners herein to pay compensation to the first respondent herein at 50% of the last drawn full month salary for 9 years and 7 months.

2. The case of the petitioners is that the petitioner
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University has been established by the Legislature of Tamil Nadu by the Government of Tamil Nadu Agricultural University Act 1971 and the employees of the petitioner University are governed by the provisions of the said Act. There are 10 Colleges and 50 Research stations functioning as the constituent units of the petitioner University throughout the State and hence, under the Statutory provisions, the employees of the petitioner University are liable for transfer among these constituent units on administrative grounds as well as on need basis. While so, the first respondent was appointed as unskilled-Weeding Mazdoor on 22.12.1967 in the category of Menials paid from contingencies and he was brought under regular establishment in the time scale of pay from 01.04.1973. The first respondent's category being the cadre of manual worker, they are attending the manual works allotted to them on need basis viz., ploughing, bund forming, planting, irrigation, bird scaring, sanitation, watch and ward, harvesting, cleaning, stocking and other maintenance works of the campuses. The first respondent attended watch and ward work for some time and later allotted to the farm field work at Coimbatore. Admittedly, he attended the field work without any objection. Later, he refused to attend field work, disobeyed the directions of superiors and involved in misconducts and hence, the disciplinary action was taken and the punishment of reduction of pay to the minimum in the time scale of pay was awarded. The first respondent raised dispute against his engagement for farm field work, however, the Government rejected the said dispute holding that there was no change in the working condition.

3. Thereafter, the first respondent was transferred from Coimbatore to the first petitioner College on 26.11.1988 and relieved from Coimbatore on 02.12.1988. However, the first respondent refused to receive the transfer and relieving orders in person, but he malafidely applied leave to evade the receipt of the said orders. Hence, a memo was issued on 04.01.1989 refusing the leave applied by him and also directing him to join duty at the first petitioner College. The first respondent did not join duty but sent post cards stating that he was attending duty at Coimbatore. Hence, the second petitioner issued memo on 26.01.1989 indicating his disobedience and directing him to join duty at the first petitioner College. Since the first respondent did not join the duty, the second petitioner continued the disciplinary action against the first respondent and issued the memo on 07.03.1989 calling his explanation for refusal to receive transfer and relieving orders and disobedience to the said orders of the University. After receipt of the said memo, the first respondent submitted his explanation on 23.03.1989 and admitted the service of the said transfer and relieving orders on him and he filed a complaint No.1 of 89 in I.D.No.254 of 87, against his transfer alleging that the transfer is in violation of Section 33(A) of the Industrial Disputes Act. As the said complaint was taken on the file of the Labour Court, the second petitioner kept the

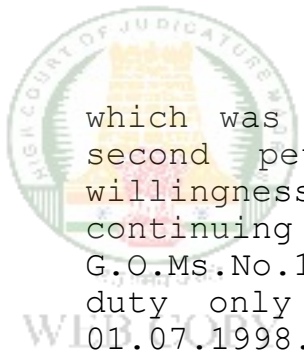


complaint. Thereafter, the Labour Court dismissed the said complaint on 30.04.1992 holding that the second petitioner has authority to transfer the first respondent and there is no malafide in his transfer. Even though, the first respondent did not join duty, instead he filed W.P.No.6416 of 1993 against the order of the dismissal of the complaint. The said writ petition was also dismissed on 26.07.2000 holding that the first respondent was not a workman concerned with I.D.No.254 of 1987. Thereafter, the first respondent filed a suit in O.S.No.179 of 1991 before the District Munsif Court, Coimbatore against his transfer and ad-interim injunction was granted on 21.02.1991 and after trial, the said suit was dismissed on 01.09.1995 holding that the transfer was valid. However, the first respondent did not join duty at the first petitioner college during the year 1995.

4. In the meanwhile, the first respondent filed computation petitions before the Labour Court, Coimbatore claiming salary from 1988 to July 1991, though he did not report for work and the same were ordered in his favour for the reason that no order has been passed before stoppage of salary. Again, the first respondent filed C.P.No.345 of 1993 claiming salary for the period from August 1991 to May 1993 and the said Claim Petition was dismissed on 07.11.1995 by holding that the first respondent did not join duty at the transferred station by filing various cases. Even thereafter, the first respondent did not join duty at the first petitioner's college. Again the first respondent filed another case in Sa.Pa.No.21 of 1998 under Payment of Wages Act before the Deputy Commissioner of Labour, Coimbatore claiming salary from August 1991 to March 1998 and the same was also dismissed on 25.06.1999, holding that the first respondent did not join duty after his transfer and relieve from Coimbatore on 02.12.1988.

5. The first respondent, having failed in all the court cases as stated supra, the first respondent made a representation on 20.12.1997 before the first petitioner expressing his willingness to join duty at the first petitioner College. The first respondent again malafidely raised another industrial dispute before the Labour Court, Coimbatore in Na.Ka.No.129 of 1998 by claiming reinstatement with back wages from 06.06.1988, though he had not been terminated from service on 06.06.1988.

6. As per G.O.Ms.No.1046, Personnel and Administrative Reforms (FR.III) Department, dated 13.11.1987, when a Government servant (permanent or approved probationer) does not resume duty after remaining on leave or absence for a continuous period either six months or one year as the case may be, he may be removed from service, following the procedure laid down in Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Further the willingness of the first respondent to rejoin duty after his unauthorized absence for 9 years was examined in the light of the Government Order in force and pending disciplinary action



which was initiated in the year 1989 and based on the same, the second petitioner issued orders on 16.06.1998 accepting his willingness to join duty at the first petitioner College, subject to continuing disciplinary action in the light of the provisions in G.O.Ms.No.1046, dated 13.11.1987. However, the petitioner rejoined duty only on 06.07.1998 at the petitioner College instead of 01.07.1998.

7. The petitioner further continued the disciplinary action against the first respondent and issued a memo on 08.12.1998 indicating the misconducts committed by him. Since the first respondent did not submit any acceptable explanations, a charge memo was issued on 25.01.1999. After providing sufficient opportunity, the Enquiry Committee conducted an enquiry and based on the proven minute, final order was passed on 21.08.1999 by removing the first respondent from service.

8. Against the removal of service, the first respondent raised an industrial dispute before the second respondent in I.D.No.7 of 2002 under Section 2(A) of the Industrial Disputes Act. After elaborate trial, the Labour has passed an award dated 29.06.2009 by rejecting the claim for reinstatement and back wages, however, the Labour Court directed the petitioners to pay compensation to the first respondent at 50% of the last drawn full month salary for a period of 9 years and 7 months, alleging the delay in initiating disciplinary action. Against the said award, the present writ petition has been filed by the petitioners.

9. Learned Counsel appearing for the petitioners would submit that due to the pendency of the cases filed by the first respondent, the petitioners could not complete the disciplinary action initiated against the first respondent. The learned Counsel would further submit that the Labour Court has power only to reduce or modify the punishment imposed if the punishment is disproportionate to the nature of proved charges and the provision under Section 11(A) of the Industrial Disputes Act does not empower the Labour Court to grant compensation and hence, the order passed by the Labour Court to pay compensation to the first respondent is without jurisdiction. Therefore, the learned Counsel would pray for appropriate orders.

10. No one entered appearance on behalf of the first respondent.

11. Heard the learned Counsel appearing for the petitioner and perused the materials placed on record.

12. The facts in the present case are not in dispute. Admittedly, the petitioner University has been established by the Legislature of Tamil Nadu by the Government of Tamil Nadu Agricultural University Act 1971 and the employees of the petitioner

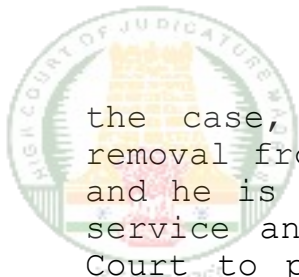


are 10 Colleges and 50 Research stations functioning as the constituent units of the petitioner University throughout the State and hence, under the Statutory provisions, the employees of the petitioner University are liable for transfer among these constituent units on administrative grounds as well as on need basis. While so, the first respondent was appointed as unskilled-Weeding Mazdoor on 22.12.1967 in the category of Menials paid from contingencies and he was brought under regular establishment in the time scale of pay from 01.04.1973. The first respondent attended watch and ward work for some time and later allotted to the farm field work at Coimbatore. Admittedly, he attended the field work without any objection. Later, he refused to attend field work, disobeyed the directions of superiors and involved in misconducts and hence, the disciplinary action was taken and the punishment of reduction of pay to the minimum in the time scale of pay was awarded. The first respondent raised dispute against his engagement for farm field work, however, the Government rejected the said dispute holding that there was no change in the working condition. Thereafter, the first respondent was transferred from Coimbatore to the first petitioner College on 26.11.1988 and relieved from Coimbatore on 02.12.1988. However, the first respondent refused to receive the transfer and relieving orders in person, but he malafidely applied leave to evade the receipt of the said orders. Hence, a memo was issued on 04.01.1989 refusing the leave applied by him and also directing him to join duty at the first petitioner College. However, the first respondent did not join duty. However, he raised various disputes and filed various cases against his transfer and claiming salary for the non-working period and the same were dismissed.

13. The petitioner further continued the disciplinary action against the first respondent and issued a memo on 08.12.1998 indicating the misconducts committed by him. Since the first respondent did not submit any acceptable explanations, a charge memo was issued on 25.01.1999. After providing sufficient opportunity, the Enquiry Committee conducted an enquiry and based on the proven minute, final order was passed on 21.08.1999 by removing the first respondent from service.

14. Against the removal of service, the first respondent raised an industrial dispute before the second respondent in I.D.No.7 of 2002 under Section 2(A) of the Industrial Disputes Act. After elaborate trial, the Labour has passed an award dated 29.06.2009 by rejecting the claim for reinstatement and back wages, however, the Labour Court directed the petitioners to pay compensation to the first respondent at 50% of the last drawn full month salary for a period of 9 years and 7 months, alleging the delay in initiating disciplinary action.

15. On a perusal of the award passed by the Labour Court, it
<https://www.indiancourts.gov.in/> it after considering the facts and circumstances of



the case, the Labour Court rightly held that the punishment of removal from service imposed on the first respondent is valid in law and he is not entitled to reinstatement into service, continuity of service and back wages. However, the order passed by the Labour Court to pay 50% of the last drawn wages for the above said non-working period under Section 11(A) of the Industrial Disputes Act is without power and jurisdiction. The labour court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, awarding 50% of the last drawn wages is unsustainable one. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. However, awarding compensation for the non-working period is non-est in law.

16. For the reasons stated above, the award passed by the Labour Court in I.D.No.7 of 2002, dated 29.06.2009 is liable to be set aside and accordingly the same is set aside. In the result, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-11858[F] dated
17/03/2021)

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