



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.5461 of 2011

and

M.P. (MD) .No.1 of 2011 and W.M.P (MD)No.14729 of 2019

WEB COPY

The Superintending Engineer,
Kanyakumari Electricity Distribution Circle,
Tamil Nadu Electricity Board, Nagercoil- 629 003. ... Petitioner
Vs.

1.The Secretary,
Tamil Nadu Min Kazhaga Kannakkayar,
Kazha Thozhilalar Sangam, Nagercoil.

2.The Presiding Officer, Labour Court,
Tirunelveli. ... Respondents

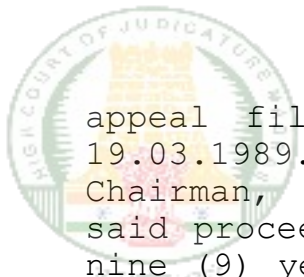
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari, to call for the records pertaining to the order passed by the second respondent in I.D.No.100 of 1999, dated 23.02.2005 and quash the same.

For Petitioner	:	Mr.Anand Gopalan for M/s.T.S.Gopalan & Co.,
For Respondent No.1	:	Mr.R.Thangasamy
Respondent No.2	:	Labour Court

ORDER

This writ petition is filed seeking a writ of certiorari, to quash the award dated 23.02.2005 passed in I.D.No.100 of 1999 on the file of the Labour Court, Tirunelveli.

2. The case of the petitioner is that the petitioner's employees namely, one Paulraj and Shanmugaperumal were working as Assessors in Kanyakumari Electricity Distribution Circle. While they are in service, Department enquiry was conducted against them on a charge of misappropriation of Board's money for a sum of Rs.11,001.90/- against the said Paulraj and for a sum of Rs.2,000/- against the said Shanmugaperumal and thereafter, enquiry was conducted after giving personal hearing of the said two employees. After completion of enquiry, punishment of stoppage of next increment for a period of five years with cumulative effect was imposed against the said Paulraj on 20.05.1987. Similarly, punishment of stoppage of next increment for a period of three years with cumulative effect was imposed against the said Shanmugaperumal on 29.05.1987. Aggrieved by the same, the said Paulraj preferred an appeal on 09.06.1987 before the Chief Engineer, Distribution, Madurai and the same was dismissed on 16.12.1988. Similarly, the



appeal filed by the said Shanmugaperumal was also dismissed on 19.03.1989. Thereafter, the mercy petition was also rejected by the Chairman, Tamil Nadu Electricity Board on 21.05.1990. Though the said proceedings were concluded in the year 1990, after a lapse of nine (9) years, the employees sought for reference and the same was granted in G.O.Ms.No.600 Labour and Employment Department dated 15.07.1999 for adjudication. Thereafter, the first respondent filed an industrial dispute in I.D.No.100 of 1999 before the Labour Court, Tirunelveli, second respondent herein. The second respondent on erroneous view of law and facts and without properly considering the documentary evidences and merits of the case, passed an award on 23.02.2005 reducing and modifying the punishment to the extent of removing the cumulative effect. Challenging the same, the present writ petition has been filed.

3. Mr.Anand Gopalan, learned counsel appearing for the petitioner would submit that the charge against the said employees, namely, Paulraj and Shanmugaperumal was clearly established before the enquiry officer and based on the enquiry officer report, a minimum punishment was awarded against the workmen, who have committed temporary misappropriation of funds to the tune of Rs.11,001.90/- and Rs.2,000/- respectively, and their appeals and mercy petitions also rejected. After nine years they have initiated a reference and the first respondent Thozhilalar Sangam filed industrial dispute in I.D.No.100 of 1999 before the Labour Court, Tirunelveli, is hit by latches. Further, the Labour Court having arrived a conclusion that there was temporary misappropriation by the workmen. However, passed an award on 23.02.2005 reducing and modifying the punishment to the extent of removing the cumulative effect as against law and without any basis.

4. Per contra, Mr.R.Thangasamy, learned counsel appearing for the first respondent would submit that the Labour Court have its discretion to modify and set aside the order passed by the enquiry officer in the present case, there is no intention of the members of the first respondent's workmen to temporary misappropriation of funds and the workmen came to know about the same, they refund the said amount immediately. The said act itself shows the intention and the same was recorded by the Labour Court and after considering the evidence, the Trial Court modified the punishment which cannot be interfered with.

5. The learned counsel for the petitioner would further submit that the said Paulraj and the Shanmugaperumal, who were working as Assessors in the Kanyakumari Electricity Distribution Circle. They collected the money and they have to handed over the money to one Paul Natarajan, who is also an Assessor to deposit the money the said Paul Natarajan was misappropriated the amount and thereafter he was removed from service hence the workmen, Paulraj and Shanmugaperumal have no intention to misappropriate the said amount. The Labour Court has modified the punishment.



6. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

7. Considering the facts and circumstances of the case, admittedly, the first respondent's members namely Paulraj and Shanmugaperumal worked as Assessor in the Kanyakumari Electricity Distribution Circle. The nature of the job of the individual is to collect the Electricity Consumption money from the consumers and to deposit the same to the credit of the Electricity Board. However, the said amount was not deposited and it is alleged that the said Paulraj misappropriated the amount of Rs.11,0001.90/- and the said Shanmugaperumal misappropriated the amount of Rs.2,000/-.

8. On perusal of the Labour Court award, it reveals that the said amount was subsequently paid by the said employers. Having record the said findings by the Labour Court, this Court is unable to understand what was the justified reason to the Labour Court to modify the punishment. The temporary misappropriation was established before the Disciplinary Authority as well as the Labour Court. Hence, the lenient view taken by the Labour Court is unreasonable. Further the case against the temporary misappropriation, there cannot be leniency. Hence, the order of the Labour Court is liable to be interfered and accordingly, the same is set aside.

9. In the result, this Writ Petition is allowed. No Costs. Consequently, the connected miscellaneous petitions are closed.

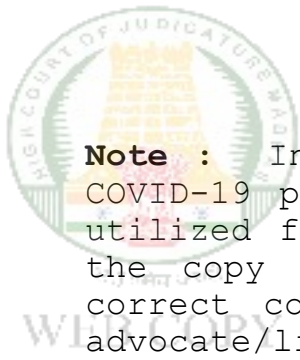
Sd/-

Assistant Registrar (CS-III)

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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.P.MALINI, Advocate (SR-762[F] dated 11/01/2021)

W.P (MD) No.5461 of 2011

08.01.2021

(NA) CO

AP (09/02/2021) 4P 3C