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W.Ps.19617 of 2011 and 23610 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2022

PRONOUNCED ON :09.02.2023

C O R A M :

The Hon'ble Mrs. Justice **J.NISHA BANU**

W.P.Nos.19617 of 2011 and 23610 of 2014

W.P.No.19617 of 2011:-

1.The Superintending Engineer

Kancheepuram, Electricity Distribution Circle,
Kancheepuram, Chengalpattu District.

2.The Divisional Engineer

Electricity/O&M/Thiruvallur.

3.The Assistant Engineer

O&M,/Kadambathur
Chengalpattu District.

..Petitioners

Vs

1.M.K.Vasu (died)

Mrs.Subathirammal
wife of K.Vasu

(R2 substituted as Lrs of deceased sole petitioner
vide order dated 19.09.2022)

2.The Presiding Officer

1st Additional Labour Court, Chennai.

..Respondents.



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W.P.No.23610 of 2014 :-

1.M.K.Vasu (died)

Mrs.Subathirammal

wife of K.Vasu

(R2 substituted as Lrs of deceased sole petitioner
vide order dated 19.09.2022)

..Petitioner

.Vs.

1.The Superintending Engineer

Kancheepuram Electricity Distribution Circle

Kancheepuram, New Chengleput District

2.The Divisional Engineer/Electricity/O&M

Thiruvellore

3.The Assistant Engineer/O&M

Kandanbathur, Chengleput District

4.The Presiding Officer, I st Additional Labour Court

Chennai-600 104.

..Respondents.

PRAYER in WP.19617 of 2011:Writ Petition filed under Article 226 of the Constitution of India, praying to call for the records of the second respondent/1st Additional Labour Court at Chennai culminating with its Award dated 06.07.2010 passed in I.D.No.265 of 2001 and quash the same.



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PRAYER in WP.23610 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records of the 1st Additional Labour Court in C.P.No.7/2011, dated 03.06.2013 and quash the same and direct the 1st Additional Labour Court at Chennai to consider the claim on merits and in accordance with law.

For Petitioners : Mr.P.Subramanian, Standing counsel
for the petitioners in WP.No.19617 of
2011&

respondents 1 to 3 in WP.No.23610 of 2014
For respondents : Mr.B.Dinesh Kumar,
for the respondents in W.P.No.19617 of
2011
& for the petitioners in W.P.No.23610 of
2014

COMMON ORDER

The above writ petitions are filed by the (i) Electricity Board seeking to quash the award of the Labour Court, whereby, the Labour Court cancelled the dismissal order dated 30.09.1976 passed by the electricity board, granted 50% of the backwages as the workman attained the age of superannuation i.e.61 years. (ii) Workman also filed writ petition seeking to implement the award of the labour court; challenging



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the order of the Labour Court passed in C.P.No.7 of 2011 dated 03.06.2013 and direct the Labour court to consider the claim on merits and in accordance with law.

2. The writ petitioner in W.P.No.23610 of 2014 is the 1st respondent in W.P.No.19617 of 2011 and he is the workmen before the Labour Court. He was appointed as a temporary casual labourer under the control of the 1st petitioner on 03.07.1968. On 02.03.1975 the workmen applied for 15 days leave and on expiry of medical leave, sought for extension of leave and on expiry of the medical leave, the workman reported for duty , but he was not allowed to join duty.

3. The petitioner was not absorbed to duty thereafter. On 25.08.1976, the workmen received a memo dated 18.08.1976 alleging that he was absent from 02.03.1975 and gave a false address, false medical certificate and that he collected money from Agricultural consumers and failed to submit explanation.

4. The employer-electricity board served the workmen with a



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charge memo dated 25.08.1976. Workmen gave detailed reply on 30.08.1976 denying the charges.

5. The Divisional Engineer-Electricity Board issued order dated 30.09.1976 and terminated the workmen from service retrospectively from 01.04.1975.

6. The workman preferred repeated representations to the authorities and since there was no reply and no orders passed in Appeal of the workmen, workmen filed W.P.No.4289 of 1998 and this court directed the Board to pass orders. The said appeal was disposed of and the workman was denied employment.

7. Aggrieved by the same, the workmen filed I.D.No.265 of 2001 before the Labour Court. The Labour Court passed the award dated 30.12.2008 setting aside the order of dismissal passed by the Divisional Engineer-Electricity Board with 50% of backwages since the workmen reached superannuation by that time.



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8. At that point of time, W.P.No.4477 of 2010 has been filed by the Superintending Engineer, Divisional Engineer and Assistant Engineer, Electricity Board, challenging the award passed by the Labour Court. The challenge in the said writ petition was that the labour court has not framed any preliminary issue with reference to validity of the enquiry, but on a finding that no domestic enquiry was conducted against the workman, since the principles of natural justice being not followed and without oral and documentary evidence, the Electricity Board passed the dismissal order and hence, it was held invalid.

9. This court, by order dated 17.03.2010, allowed the said writ petition holding that since no enquiry conducted by the board, remand was made for the purpose of leading evidence and also for the workmen to lead counter evidence. This court directed the labour court to dispose of the Industrial dispute within 3 months. Further directed the Board to pay Rs.20,000/- towards costs to the workman.

10. Thereafter, by framing preliminary issues, the labour court



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held that the allegations of submitting false address and false medical certificate and collection of money from farmers were not proved by the Electricity Board.

11. Even before the Labour court, in the cross examination, it has been admitted by the witness on the side of the Electricity Board that the Divisional Engineer has no power to dismiss the Workmen. In such circumstances, the Labour court set aside the dismissal order passed by the Board and directed the Board to award 50% backwages to the workman.

12. Since the award of the labour court was not implemented, the workmen filed C.P.No.7 of 2011 claiming (i) 50% arrears of back wages (ii) 50% encashment of earn leave (iii) 50% bonus and (iv) superannuation pension arrears totally amounting to Rs.15,09,268.50/-.

13. While C.P.No.7 of 2011 was pending, the employer-Electricity Board filed W.P.No.19617 of 2011 and sought interim stay. This court by order dated 24.08.2011 granted interim stay on condition



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that the Electricity Board deposits the entire amount due in terms of the I.D.No.265 of 2001 with the 2nd respondent Labour Court.

14. However, the Employer-Electricity Board deposited only Rs.7,04,000/- before the Labour Court. The workmen filed M.P.No.1 of 2012 seeking permission to withdraw the said sum of Rs.7,04,000/-. This court also permitted the workmen to withdraw the said amount.

15. In the course of subsequent development, C.P.No.7 of 2011 was dismissed by the Labour Court on 03.06.2013 accepting the counter filed by the Board.

16. Heard both sides and perused the records.

17. Admittedly, after remand, the employer-electricity board was given opportunity to lead evidence to justify the dismissal order passed on the workman.

18. Before the Labour Court, no additional facts was put forth



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by the employer to justify the termination of the workman. The Labour court, on the basis of evidence and submissions, held that charges against the workman as regards charges of providing false address, false medical certificate and workman collected amounts from the farmers and that no reply given by the workman to the charges levelled against him, were not proved.

19. On such findings, the Labour Court concluded that since the workman reached the age of superannuation and aged 61 years at the time of passing the Award dated 06.07.2010, reinstating the workman into service would not arise. Thus, the Labour Court, set aside the order of dismissal dated 30.09.1976 passed against the workman by the Electricity Board and directed the Electricity Board to pay 50% of back wages till his date of superannuation of the workman.

20. As far as the claim of the workman / petitioner in W.P.No.23610 of 2014 is concerned, he was dismissed from service by the Electricity Board on 30.09.1976. By award dated 06.07.2010, the



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Labour Court set aside the dismissal order. However, since he was not reinstated into service as he attained the age of superannuation, the workman is not entitled to any other benefits like EL wages bonus and superannuation pension arrears.

21. It is relevant to note that workman was dismissed from service on 30.09.1976. In the industrial dispute raised by him, 1st award was passed on 30.12.2008, which was set aside by this court and the matter was remanded back to the trial court to let in evidence. In compliance to the order of this court, 2nd award was passed on 06.07.2010 setting aside the order of dismissal which is after 34 years. By that time, the workman was 61 years old and he was not reinstated into service. As the workman was not under the employment of Electricity Board, the claim towards wages, bonus, Pension arrears etc would not arise.

22. The Labour Court, by order dated 03.06.2013, observed that



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the Management paid a sum of Rs.7,04,445/- being 50% of back wages by way of cheque dated 17.11.2011. The Labour court further observed that the claim petition is not maintainable under Section 33(c)(2) of the Act and the Management has deposited Rs.7,04,445/- being 50% of the back wages, the workman is not entitled to claim any other amounts.

23. The findings of the Labour Court in both I.D.No.265 of 2001 and C.P.No.7 of 2011 are in accordance with law and no interference is required. I do not find any reason to disturb the findings of the Labour court.

24. Considering the aforesaid, I find no illegality in the impugned order. I do not find any reason to interfere with the Award passed by the Labour Court. The Writ Petitions filed by the Management and workman are bereft of merits. Accordingly, the writ petitions are dismissed, confirming the Award passed by the Labour court dated 06.07.2010 and the order passed in Claim Petition dated 03.06.2013. No costs.



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Index: Yes/No

Speaking/Non speaking

nvsri

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