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W.P.No.14087 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.14087 of 2008

P.Arumugam

.. **Petitioner**

Vs.

1.The Presiding Officer
I Addl.Labour Court
High Court Compound
Chennai – 600 104.

2.The Management of
Tamil Nadu Electricity Board
800, Anna Salai
Chennai – 600 002.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records from the file of the 1st respondent relating to I.D.No.525 of 1998 and to quash the impugned award made therein dated 08.02.2008 and consequently direct the 2nd respondent herein



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to reinstate the petitioner in service with continuity of service with back wages and with all other attendant benefits.

For the Petitioner : Mr.K.M.Ramesh
Senior Counsel
for Mr.V.Subramani
For the Respondents : Mr.Anand Gopalan
for M/s T.S.Gopalan & Co. for R2
for R1 – Court

ORDER

This Writ Petition is filed challenging the award of the Labour Court dated 08.02.2008 made in I.D.No. 525 of 1998.

2. Brief facts leading to the filing of the Writ Petition are that the petitioner was originally working as a helper in the 2nd respondent - Management of Tamil Nadu Electricity Board and thereafter was promoted as Assessor. While so on 23.04.1986, it is alleged that the petitioner was caught red-handed along with another person with whom he colluded to tamper with the meter at Door No. 32/1, Javanman Sowcar Street, Chennai 600 021, and they were immediately taken to the police station. A case in Crime No.227 of 1986 was also registered.



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3. Initially the petitioner was suspended and thereafter he was tried by the Criminal Court. A charge memorandum was issued on 03.05.1986. The petitioner denied the charges. An explanation was submitted by the petitioner stating that he came to the nearby shop to repair his coffee jar and he was wrongly apprehended. After conducting domestic enquiry and after issuance of 2nd show cause notice the petitioner was dismissed from service by an order dated 11.02.1988.

4. The petitioner continued to be prosecuted in the criminal case, and by a judgment dated 20.05.1992 in C.C. No. 2143 of 1987, the petitioner was acquitted by the Criminal Court. Even thereafter, the petitioner was not reinstated into service. The petitioner, therefore, sent repeated representations and reminders. Since there was no positive response, ultimately, in the year 1998, the petitioner raised an industrial dispute and, upon failure of conciliation, filed a claim petition in I.D.No. 525 of 1998.

5. By a preliminary award, it was found that the procedure adopted in the



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domestic enquiry was not fair and proper and thereafter the Labour Court proceeded to consider the charge on merits. After considering the evidence on record the Labour Court held against the workmen and in favour of the Management and held the charge as proved and also held that the punishment of dismissal is justified given the nature of the charge. Aggrieved by the same, the workman has filed this Writ Petition.

6. *Mr K. M. Ramesh*, the learned Senior Counsel appearing on behalf of the workman would take this court to the findings in the Criminal Court, which he would submit that there was a bar on the pronouncement on merits. In that view of the matter, subsequently, the Labour Court couldn't have come to a different finding. Secondly, he would submit that the Labour Court has relied upon the evidence of M.W.1 who alone was the witness. The said person was not examined in the domestic enquiry or before the Criminal Court. He has come up with an improvised and false version. Suggestions were put to the witness in this regard. Therefore, the Labour Court ought not to have found the charge as proved, on the sole evidence of M.W.2 and ought not to have held the petitioner



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guilty of the charge.

7. He would further submit that on a reading of the entire facts that came out during the domestic enquiry, it would be clear that only on that day reconnection was given to the said premises and therefore nobody would have benefited by tampering with the meter. He would submit that this is a case where the charge is cooked up against the petitioner. He would further submit that in any event, considering the long number of years of service, the Labour Court ought to have held that the punishment of dismissal from service was unjustified and at least ought to have been one of compulsory retirement.

8. *Per contra*, Mr.Anand, appearing on behalf of the 2nd respondent - Management would submit that the charge in this case is a serious one. It relates to the tampering of the meter and not correcting the readings of the meter. The seal of the meter is sought to be opened and if it is set on the reverse, it will show lesser readings than the actual power consumed by the consumer, therefore the consumer was very much benefited by the act of tampering with the seal. This is the case where the petitioner was also caught red-handed on the premises of the



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consumer. The eyewitness has been examined and the charge is duly proved before the Labour Court. The Labour Court has considered the charge on merits and has held that the punishment is only proportionate. No interference is called for.

9. I have considered the rival submissions made on either side and perused the material records of the case.

10. To consider the first submission made on behalf of the Senior Counsel for the petitioner, the judgment of the Criminal Court has to be read in full. The Criminal Court has expressly held that it is extending the benefit of the doubt to the accused. Even otherwise, a reading of the entire Judgment would categorically demonstrate that it is by giving the benefit of doubt to the accused he was acquitted and hence the contention in this regard stands rejected.

11. Merely because a particular witness was not examined in the domestic enquiry, there is no bar for the Management to let in fresh evidence to prove the



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charge before the Labour Court. When the workman himself, in the earliest explanation, has admitted that officials, seven in number, have come in a Jeep, then it cannot be said that the M.W. 2 is an improbable eyewitness to the case. Non-examination of the eyewitness in the domestic enquiry cannot be fatal to the case. The explanation on behalf of the Management was that when three of the officials were present witnessing the incident, the official who was available at the time of trial before the labour court was examined. It is to be noted that the petitioner had raised the dispute 10 years after the punishment. The conduct of the workmen in keeping quiet against the punishment until the criminal case was pending and after acquittal, mustering courage and starting to send representations is to be noted. In view thereof, the findings of the Labour Court after appraisal of the evidence under section 11A of the Industrial Disputes Act are in Order. The Writ Petition is dismissed. No costs.

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