



WEB COPY



W.P. No.30288 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HON'BLE MS. JUSTICE R.N. MANJULA

W.P.No.30288 of 2019 and W.M.P. No.30264 of 2019

The Superintending Engineer
Salem Electricity Distribution Circle
Tamil Nadu Electricity Board
Chinna Pudur
Salem 636 014

Petitioner

vs.

The General Secretary
Salem Electricity Distribution Circle
Tamil Nadu Minsara Kazhaga
Tholilalar Munnetra Union
Regn. No.38, C.P.D.
394/296, Nagappa Gounder Street
Chinna Pudur
Salem – 7

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the Presiding Officer, Labour Court, Salem in I.D. No.228 of 2010 dated 18.11.2014 and quash the same.

For petitioner Mr. R. Nikkhilesh Athar
for Mr. K. Rajkumar

For respondent Mr. R.M.D. Nasrullah



WEB COPY



W.P. No.30288 of 2024



ORDER

This writ petition has been filed challenging the award dated 18.11.2014 passed by the Presiding Officer, Labour Court, Salem (for brevity “the Labour Court”) in I.D.No.228 of 2010, whereby and whereunder, the punishment of 'reduction of pay for a period of three years which will operate for future increment' imposed by the petitioner on one of its employees by name Selvam, who is represented by the respondent, has been set aside.

2. For the sake of clarity and better comprehension, the petitioner, the employee referred to above and the respondent will hereinafter be adverted to as petitioner Board, Selvam and respondent Union respectively.

3. The learned counsel for the petitioner Board submitted that the Labour Court did not appreciate the oral and documentary evidence in a proper perspective, especially when there are materials to show that Selvam himself has admitted his guilt by writing a letter stating that he has stolen the receipt book and misused it for collecting charges from consumers and committed an act of misappropriation.



WEB COPY

4. The allegation against Selvam is that he has stolen some 254 receipts from a receipt book and misused the same for collecting money from consumers and misappropriated the same without accounting it to the petitioner Board.

5. So far as the alleged admission letter is concerned, it is the stance of the respondent Union that the said letter was obtained from Selvam under threat.

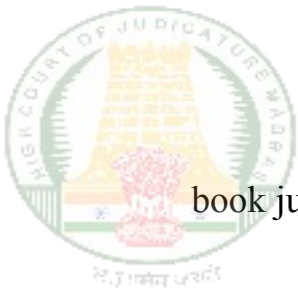
6. While appreciating the above stance, the Labour Court has held that such an objection was not raised by Selvam during the domestic enquiry and that the same was raised only before the Labour Court. Though, in all probability, it is correct that the one who is alleged to have executed a letter admitting his guilt ought to have denied it if it had been obtained by threat, but, that alone cannot be taken as the material on which the petitioner Board can presume that the charges against Selvam have been proved. Even in the absence of specific denial about the voluntariness in which the admission letter has been executed, it is for the petitioner Board to ascertain as to whether the alleged letter was executed by Selvam on his own volition without any pressure from any quarter. Apart from the above fact of execution of admission letter, the petitioner Board has to discharge the burden of proving,



WEB COPY

from other materials available on record, that the receipt book was stolen by Selvam and it was misused by him. Even though there may not be any eyewitness who might speak about the act of Selvam stealing the receipt book, the whole object of stealing a receipt book should be only for the purpose of misusing the same by collecting amount from consumers and then, using the said ill-gotten money for personal gain. So, in the instant case, it is for the petitioner Board to establish the fact that the receipt book was stolen and misused by Selvam and he had used the money so earned through misappropriation, for his personal cause.

7. Further, one important witness, viz., one Saravanan, who is said to have given money to Selvam for which Selvam is alleged to have issued receipt, has been examined as a Management witness in the domestic enquiry. This crucial witness has stated in his evidence that he did not give any amount to Selvam and that he had not given any statement in that regard as well. The Labour Court has appreciated this vital fact along with the above corroborative circumstances and has held that there is no complaint given by Saravanan. When the allegation that the receipts have been misused by Selvam has not been proved, then, the very basis of the allegation that the receipt book has been stolen by Selvam has no legs to stand. In such a case, it cannot be presumed by the petitioner Board that Selvam has stolen the receipt



book just for the fun of stealing the same.

WEB COPY

8. The learned counsel for the petitioner submitted that the standard of proof in a departmental proceedings is only preponderance of probability and the petitioner Board is not under any obligation to prove the allegations beyond reasonable doubt, as in the case of a criminal trial.

9. In this context, it is worth pointing out that it is not the question of standard of proof that made the difference in the award passed by the Labour Court. The Labour Court has gone into the fundamental evidence through which preponderance can be settled in favour of the petitioner Board. As there is a specific charge that the stolen receipts have been utilised by Selvam for collecting money from consumers, one of whom is Saravanan, and when Saravanan who was examined as a Management witness in the domestic enquiry, has stated unequivocally that he did not give any money to Selvam, that goes to the root of the matter and shakes the very charge itself. In fact, the Labour Court has further observed that the said Saravanan has stated in the domestic enquiry that if the employee is produced before him, he would identify whether he is the person who declared himself as Selvam and collected money from him. But, the said exercise of showing the employee to Saravanan to obtain a statement from him in this regard has not been



undertaken by the petitioner Board. In fact, before the Labour Court, neither the petitioner Board nor Selvam has examined any witness and the award of the Labour Court is based only on the documentary evidence let in by both sides. If the petitioner Board wished to strengthen its case only on the basis of the alleged admission letter given by Selvam, the Labour Court is perfectly justified in holding that, that alone is not sufficient to establish the charges.

10. Next, the learned counsel for the petitioner Board submitted that it is a settled proposition of law that once the delinquent himself admits his guilt, there need not be an elaborate disciplinary proceedings by the Management.

11. One can have no quarrel with the said proposition. But, it all depends upon the voluntariness in which such admission is made by the delinquent. In the instant case, no doubt, the admission letter alleged to have been executed by Selvam does play a crucial role in the matter of proving the charges levelled against him. At the same time, this Court cannot lose sight of the circumstance during which the admission letter was executed. When an employee is charged of theft and misappropriation and when the authority proceeds to initiate disciplinary action, it is not only likely but also quite natural for the charged employee to feel scared and insecure. With that



WEB COPY

feeling of helplessness, it is possible for him to execute letters suiting to the terms of the petitioner Management in order to soothe the petitioner Management, instead of earning its wrath and displeasure. So, in that context, it is important that the persons who are examined as witnesses on the side of the Management to support the case of the Management. But, in the case on hand, the situation is topsy-turvy. In other words, the evidence of Saravanan is just contrary to what is found in the admission letter and this would only enure to Selvam's advantage. If the petitioner Board had taken the risk of not initiating domestic enquiry on the strength of the admission letter and by proceeding to punish Selvam based on the admission letter, then, it would have been a different scenario. But, once the petitioner Board had thought it fit to initiate domestic enquiry in which certain facts and materials have been obtained, it is unfair on the part of the petitioner Board to later ignore the same and rely solely on the admission letter. The Labour Court has done the right exercise of appreciating the evidence in a holistic manner and not in piecemeal, and arrived at a just conclusion that Selvam's guilt has not been proved.

12. The last nail in the coffin of the submission of the learned counsel for the petitioner Board is that the respondent Union is not a registered body and further, in service matters, a union cannot espouse the



cause of its members. To buttress this submission, the learned counsel placed reliance on a Division Bench judgment of this Court in **the Secretary to Government, School Education Department and 2 others vs. The Tamil Nadu Higher Secondary Vocational Teachers Welfare Association¹**.

13. It is a fundamental fact that an industrial dispute can be raised either by a workman or by a union in which the workman concerned is a member. In the instant case, in fact, the respondent Union has not raised any dispute for seeking any collective relief. Further, there is no denial that Selvam is a member of the respondent Union. Furthermore, though it is the stand of the petitioner Board that the respondent Union is not a registered body, the same has not been substantiated and that apart, the locus of the respondent Union has not been challenged before the matter was taken up for final hearing.

14. As for the reliance placed by the learned counsel for the petitioner on the Division Bench judgment, *supra*, it is worth pointing out that the said case is one coming under service jurisprudence, whereas, the instant case is one of labour. At this juncture, it is apropos to highlight that a Constitution Bench of the Supreme Court, in **Padma Sundara Rao and**

¹ W.A No.1792 of 2017 decided on 28.03.2018
<https://www.mhc.tn.gov.in/judis>



others v State of Tamil Nadu and others², has held in no uncertain terms that law cannot be applied straightaway when facts are completely different.

The relevant passage from the said judgment is as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.' (emphasis supplied)

15. In view of the above discussion, this Court has no incertitude in holding that the award of the Labour Court does not suffer from any infirmity or illegality warranting interference.

² (2002) 3 SCC 533
<https://www.mhc.tn.gov.in/juris>



WEB COPY



W.P. No.30288 of 2019

R.N. MANJULA, J.

cad

In the result, this writ petition fails and is accordingly dismissed,
however, sans costs. Connected W.M.P. stands closed.

30.09.2024

cad

Index:Yes

Neutral Citation:Yes/No

W.P. No.30288 of 2019