



W.A.(MD).No.251 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 31.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.(MD).No.251 of 2018
and
C.M.P.(MD).No.1475 of 2018

The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni.

... Appellant/Petitioner

Vs.

1.The Labour Court,
Madurai.

2.P.Thangian (died)

3.T.Ranjitha

4.Navaneethakrishnan

5.Iniyan
(R-5 represented by his mother
and natural guardian R-3)

... Respondents/Respondents

*(R-3 to R-5 substituted as legal heirs of R-2 vide order dated 26.03.2013
made in M.P.(MD).Nos.1 and 2 of 2012)*



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 26.03.2013 passed in W.P.(MD).No.10335 of 2009.

For Appellant : Mrs.P.Malini

For R-3 to R-5 : Mr.R.Thangasamy

JUDGMENT

(Judgment of the Court was made by K.RAJASEKAR,J.)

This Intra-Court appeal has been filed by the Electricity Distribution Circle, Theni against the order passed in W.P.(MD).No.10335 of 2009 dated 26.03.2013, whereby, the learned Single Judge has confirmed the award passed in I.D.No.132 of 2005 by the Labour Court, Madurai dated 11.05.2009 and confirmed the order modifying the order of dismissal into increment cut for three years.

2. The brief facts leading to the filing of this appeal:

2.1. Disciplinary proceedings for misconduct was initiated against the workman/second respondent herein on the ground that he has impersonated and submitted educational certificate for obtaining employment in the Tamil Nadu Electricity Board. Originally, the workman was engaged as a contract



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labourer and subsequently, as per the Scheme prepared by the Electricity Board, the workman was absorbed as a Helper on 06.04.1998. Subsequently, it was revealed that the educational certificate produced by the workman herein is a bogus one and the original name of the workman is Palaniappan and he has impersonated his brother Thangian and by using his brother's educational certificate, he has obtained employment. After conclusion of the domestic enquiry, he was dismissed from service as per order dated 31.01.2005.

Proceedings of the Labour Court:

2.2. Aggrieved over the order of dismissal, the workman herein has raised an Industrial Dispute in I.D.No.132/2005 on the file of the Labour Court, Madurai. Before the Labour Court, the parties were permitted to adduce their evidence.

2.3. It is the case of the workman that he was engaged as a contract labourer by the Electricity Board from 26.04.1989. As per the directions of the Hon'ble Apex Court, One Man Commission was appointed to abolish and absorb the contract workmen in the Electricity Board and accordingly,



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an interview was conducted for absorbing the workmen. The workman herein participated in the interview and submitted his application. He was appointed as a Helper on 06.04.1998. The One Man Commission has prescribed no educational qualification. Hence, if the certificates to prove the educational qualification are found to be false, it shall not be taken into consideration by the Board and in this regard, the Electricity Board has issued Board Proceedings No.27. The workman has not impersonated any person and he joined in the service in the name of Thangiah, S/o.Ponniah Gounder. The departmental enquiry was initiated on the basis of false complaint and the order of dismissal passed against him is also not proper. It is also stated that no one was enquired during the departmental enquiry and no documents were produced and there is violation of principles of natural justice and the punishment imposed is also disproportionate to the allegations made against him.

2.4. The contentions raised by the workman were disputed by the Electricity Board on the ground that the original name of the workman was Palaniappan and the workman had suppressed the same and by using his brother's name, P.Thangian, he produced the educational certificate and by



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joining hands with Trade Union, he obtained the employment. After due enquiry, it was revealed that the name of the workman is only Palaniappan and the workman has obtained a bogus certificate by altering the name of his brother 'P.Thangiah' into 'P.Thangian' and submitted the same for getting employment. He has also pleaded guilty before the learned Judicial Magistrate for the case registered against him for impersonation and production of bogus documents. The Board Proceedings in B.P.No.27 dated 07.11.2002 is not applicable to the case of the workman herein, wherein, the Electricity Board has decided to continue to engage the persons, who have produced the fake educational certificates and the case of the workman herein is not relating to production of fake educational certificates. It is a case of impersonation and also submission of fake certificates. Hence, the workman having pleaded guilty before the criminal Court is not entitled to contend that he has not impersonated and submitted bogus certificate.

2.5. The Labour Court, after considering the evidence placed on record, has relied on the Board Proceedings in B.P.(F.B.)No.27 (Administrative Branch) dated 07.11.2002, by which, the Board has decided to cancel the punishment of dismissal or removal from service of the



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persons, who have submitted bogus certificates, instead decided to reduction of scale of pay and also increment cuts etc. The Labour Court has also held that the Board Proceedings are applicable to the workman herein and has modified the punishment of dismissal from service into reduction of pay to the minimum of the time scale of pay of the post held on the date of issue of orders for a period of three years, which will operate for future increments, by award dated 11.05.2009.

Writ Proceedings by the Electricity Board:

3. Aggrieved over the award passed by the Labour Court, the Electricity Board has filed Writ Petition for Certiorarified Mandamus challenging the award. It was contended before the Writ Court that the interference by the Labour Court in the punishment imposed is based on the wrong interpretation of the Board Proceedings No.27 dated 07.11.2002. The Board Proceedings is applicable only to the case of production of bogus educational certificates, whereas, in this case, the workman herein has not only produced the bogus certificate, but also impersonated himself as his brother, namely, Thangiah by suppressing his original name Palaniappan.



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4. Before the Writ Court, the workman filed a counter and contended that the charge of impersonation made against the workman is false and there was no satisfactory proof available before the domestic enquiry officer to hold that the charges are proved and the Labour Court, after considering the factual and legal aspects, passed an award and therefore, it does not call for any interference.

5. The learned Single Judge, after considering the submissions, has dismissed the Writ Petition and confirmed the award passed by the Labour Court. Aggrieved over the same, the present Writ Appeal is filed by the Electricity Board.

Arguments of the Electricity Board:

6. The learned counsel for the appellant submits that the Board Proceedings No.27 was issued after categorising the cases of the persons, who have submitted bogus educational certificates based on the proceedings initiated in batch of Writ Petitions filed by various workmen challenging their punishment. Admittedly, against the workman herein, a criminal case was also registered stating that the workman has impersonated himself as



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his brother Thangiah and by producing the fabricated educational certificates, he obtained employment. The workman has also pleaded guilty in C.C.No.67 of 2006 on the file of the learned Judicial Magistrate, Andipatty. The workman has committed the offence of fabrication of records, impersonation and cheating and the same has also not been disputed by the workman by pleading guilty and having suffered guilty, he is not entitled to get the benefit of the above proceedings. Hence, the learned counsel prays to set aside the order of the learned Single Judge.

Arguments of the workman:

7. Per contra, the learned counsel for the workman submits that after carefully analysing the Board Proceedings No.27 dated 07.11.2002, the Labour Court has held that the punishment imposed against the workman is not in accordance with the Board Proceedings issued by the Electricity Board and no evidence was produced before the Labour Court to show that the workman has pleaded guilty. Since there was no perversity in the award passed by the Labour Court, the learned Single Judge has not interfered with the above award and the learned counsel prays to confirm the order passed by the learned Single Judge in the Writ Petition as well as the award passed by the Labour Court.



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8. We have heard the submissions made on either side and perused the materials available on record.

Discussion:

9. Admittedly, the judgment passed in C.C.No.67 of 2006, whereby, the workman was convicted, was not placed on record before the Labour Court while evidence was recorded. Even though it was stated before the Labour Court that the workman had pleaded guilty, the learned Judicial Magistrate has released the workman by invoking Section 4 of the Probation of Offenders Act, 1958. The records also show that the workman was permitted to serve till 12.02.2004 and he was dismissed from service on 31.01.2005 and thereafter, he was not reinstated again. However, he was engaged by the Electricity Board unofficially and allowed to attend work at Kutchanoor Village on 04.03.2011 and he suffered a fatal accident and succumbed to the injuries. Based on the same, a criminal case was also registered in Crime No.130/2011 on the file of the Chinnamanoor Police Station. Subsequently, the wife of the workman has filed a claim petition before the Labour Commissioner seeking compensation under Employees' Compensation Act, 1925 and she was also awarded compensation on the



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ground that the workman was not reinstated and he was engaged as daily wager and while attending the work of the Electricity Board, he sustained injury. It was further held that the workman died during the course of his employment.

10. Between the year 1997-1998, the contract labourers of Tamil Nadu Electricity Board have initiated various proceedings against their employer for absorption and regularisation of their service with the Electricity Board. Subsequently, the Electricity Board has taken a policy decision to abolish contract labour system and by intervention of the Hon'ble Apex Court, a Commission headed by Mr. Justice Khalid was constituted so as to implement the process of absorption. Based on the recommendation of Justice Khalid Commission, the Electricity Board has absorbed several thousands of contract labourers, who were engaged in Distribution and General Construction Circles, Hydro and Thermal Stations and Gas Turbine Power Projects. Allegations were levelled against many workmen that they have produced bogus certificates to prove their educational qualification to get employment. Subsequently, an enquiry was ordered and disciplinary proceedings were initiated against several persons



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and those persons have approached this Court by way of various Writ Petitions. The First Bench of this Court, in a batch of Writ Appeals in W.A.Nos.2454 and 2589 of 2002 and batch of Writ Petitions, have suggested to the Electricity Board to consider whether a lesser punishment could be inflicted, taking into account the factor of proportionality of punishment and more so, in view of the fact that Mr. Justice Khalid Commission has recommended relaxation in the educational qualification as also age. Based on the above suggestion by the First Bench of this Court, the Board Proceedings in B.P.(F.B.)No.27 (Administrative Branch) dated 07.11.2002 was issued by the Electricity Board.

11. The Board Proceedings in B.P.(F.B.)No.27 (Administrative Branch) dated 07.11.2002, reads as follows:

“5. After careful consideration, the Board has decided to cancel the punishment of dismissal/removal from service imposed by the Superintending Engineers. The Board has also decided that alternative punishment of "reduction of pay to the minimum of scale of pay of the post held on the date of imposing the punishment for a period of three years which will operate for future increments" will be sufficient. Consequently, the complaint lodged with the police will also be withdrawn. The period of



suspension/ absence in these cases shall be regularized as follows:

a. If the orders of dismissal/removal from service are already given effect, the period from the date of dismissal/removal from Board's service till the date of rejoining will be regularized as extraordinary leave without pay and allowances.

b. Where show cause notice/ final order is challenged and stay obtained, and the individual is continuing in service, the period will be treated as duty.

c. Where is suspension order was challenged and stay obtained and the individuals are continuing in service, in such cases the employees will be reinstated without prejudice to the Disciplinary proceedings to be initiated and the period will be treated as Duty.

d. Where the employee is under suspension and disciplinary proceedings is pending, the employee will be reinstated without prejudice to the disciplinary proceedings pending against him. The period of absence will be regularized by sanction of E.L. at credit and the balance amount E.O.L. without pay and allowances. The subsistence allowance already paid will be adjusted for E.L. at credit and balance amount will be recovered in easy installments.

6. Accordingly, the Tamil Nadu Electricity Board hereby passes the following orders:



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a.(i) The punishment of removal/ dismissal from service imposed by the Superintending Engineers for production of bogus certificate for qualification/ age by contract labourers absorbed as helpers shall be

a.(ii) In these cases, the punishment of dismissal/ removal imposed shall be modified to that of reduction of pay to the minimum of the time scale of pay of the post held on the date of issue of orders for a period of three years which will operate for future

b. The period of suspension/ absence of these workmen shall be regularized as detailed in para 5 above.

7. The Superintending Engineers are informed that when the school records are found bogus the date of birth indicated in the school records and reckoned earlier for determining the age of the workmen cannot hold good. Hence in these cases, the individual workman may be directed to obtain and produce birth certificates from competent authorities for determining their age. In case there is difficulty to obtain birth certificate, medical certificate from the D.M.O. on equivalent rank may be accepted.

8. The above orders will strictly apply only to the case of contract labourers absorbed as Helpers and who were dismissed/ removed from service solely for production of bogus certificate.”

On careful perusal of the above proceedings, Clause 8 shows that this Board



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Proceedings will apply only to the contract labourers absorbed as Helpers and who are dismissed/removed from service solely for production of bogus certificate. There is no clarity whether the term 'bogus certificate' includes the certificate produced by impersonation. It is the specific allegation levelled against the workman that his original name is Palaniappan and only for the purpose of getting employment, he claimed himself as Thangian, i.e., the name of his brother (Thangiah). If he has produced a fabricated bogus certificate in his original name, then, he is eligible under this proceedings. However, it has been accepted by the workman that he has impersonated fabricated documents and also cheated the Electricity Board by way of pleading guilty in the criminal proceedings initiated against him in C.C.No.67/2006 on the file of the learned Judicial Magistrate, Andipatty as per judgment dated 17.04.2006. Even though he has pleaded guilty, he has been released under Section 4 of Probation of Offenders Act and he has been asked to maintain good conduct for a period of one year.

12. Section 12 of the Probation of Offenders Act, 1958, removes the disqualification attached to the conviction, which reads as follows:

“12. Removal of disqualification attaching to conviction.-
Notwithstanding anything contained in any other law, a person



found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.”

The Hon'ble Apex Court while interpreting this Section in ***Trikha Ram Vs. V.K.Seth and another*** reported in ***AIR 1988 SC 285*** has observed that an offender who has been released on probation shall not suffer disqualification attaching to a conviction of the offence for which he has been convicted notwithstanding anything contained in any other law. It was further held that instead of dismissing an employee from service, he should have been removed from service so that the order of punishment did not operate as a bar and disqualification for future employment with the Government and accordingly, the order of dismissal was converted into order of removal from service. In ***Union of India v. Bakshi Ram*** reported in ***(1990) 2 SCC 426***, the Hon'ble Apex has again considered the scope of Section 12 of the Probation of Offenders Act and observed as follows:

“8. It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3, 4 and 9 of the



Probation of Offenders Act, Fazal Ali, J. in Divisional Personnel Officer, Southern Railway v. T.R. Chellappan [(1976) 3 SCC 190, 198 : 1976 SCC (L&S) 398 : (1975) 2 SLR 587, 596] speaking for the court observed : (SCC p. 198, para 11)

“These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the court that he is guilty cannot be washed out at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4 or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the



stigma of conviction.”

10. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The court while invoking the provisions of Section 3 or 4 of the Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

11. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Courts speaks with one voice. The Madras High Court in R. Kumaraswami Aiyar v. Commissioner, Municipal Council, Tiruvannamalai [(1957) 58 Cri LJ 255 : (1956) Mad LJ 562 (Mad)] and Embaru, P. v. Chairman, Madras Port Trust [(1963) 1 LLJ 49 (Mad)] the Andhra Pradesh High Court in A. Satyanarayana Murthy v. Zonal Manager, LIC [AIR 1959 AP 371] , the Madhya Pradesh High Court in Prem Kumar v. Union of



India [1971 Lab IC 823 : (1971) 2 LLJ 346 : 1971 MPLJ 483 (MP)] , the Punjab and Haryana High Court in Om Parkash v. Director Postal Services (Posts and Telegraphs Deptt.) Punjab Circle, Ambala [(1971) 1 SLR 648 (P&H)] , the Delhi High Court in Director of Postal Services v. Daya Nand [1972 SLR 325 : 1972 Lab IC 736 (Del)] have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Court in T.R. Challappan case [(1976) 3 SCC 190, 198 : 1976 SCC (L&S) 398 : (1975) 2 SLR 587, 596] .

12. In Trikha Ram v. V.K. Seth [1987 Supp SCC 39 : 1987 SCC (L&S) 282 : (1987) 4 ATC 208] this Court after referring to Section 12 has altered the punishment of dismissal of the petitioner therein into “removal from service”, so that it may help him to secure future employment in other establishment.

13. Section 12 is thus clear and it only directs that the offender “shall not suffer disqualification, if any, attaching to a conviction of an offence under such law”. Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently,



such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.”

13. In this case, the workman herein was appointed on 06.04.1998 and continued his work till 2004 and after enquiry, he was dismissed from service on 31.01.2005. After passing of the award of the Labour Court, he was not reinstated. Similarly, at the time of enquiry before the Labour Court, the workman herein has taken a stand that the punishment imposed shall be only in accordance with the Board Proceedings No.27, i.e., lenient punishment to be imposed on him and he has not questioned or challenged the contention of the Electricity Board that he has been convicted by way of pleading guilty. Admittedly, the judgment passed in the criminal case was not produced before the Labour Court or before the learned Single Judge.

14. Even though it is contended by the Electricity Board that Board Proceedings No.27 is not applicable to the case of the workman herein, since he has not only produced fabricated educational certificate, but also impersonated by claiming himself as Thangian, there is no clarification regarding the term 'bogus certificate' used in the Board Proceedings. It has not been properly demonstrated before this Court or before the Writ Court



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as to how the workman's case would not fall within the term 'bogus certificate'. However, it is admitted in this appeal that the workman has been convicted on the basis of the plea of guilty not only for production of fabricated educational certificate and for impersonation and cheating also. Hence, the case of the workman would not squarely fall within the Board Proceedings, which only deals with the production of bogus certificate. However, as observed earlier, as per Section 12 of the Probation of Offenders Act, 1958, the conviction of the workman herein shall not be a disqualification and this conviction alone is not a ground to remove the workman from service. However, the Labour Court has accepted the case of the Electricity Board that, workman has produced bogus certificate. The act of pleading guilty is sufficient to hold that, the workman has admitted his misconduct. Therefore, we are of the view that, in order to give quietus to the issue, the punishment of dismissal passed against the workman shall be modified into a compulsory retirement. We have also noted that even though the workman has succeeded before the Labour Court, he was not reinstated and he was continuously engaged as a daily wager and subsequently, he has succumbed to the injuries suffered during the course of his employment.



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15. In view of the above discussion, the order of dismissal passed against the workman is hereby modified into a compulsory retirement with effect from 11.05.2009, i.e., the date of award passed by the Labour Court in I.D.No.132/2005. The appellant Board is liable to pay all the terminal benefits to the workman treating the service period of the workman from 06.04.1998 till 11.05.2009 and he is also entitled for pensionary benefits, if any, for the above period. It is clarified that the workman is not entitled to get any backwages as per award passed by the Labour Court.

16. With the above observations, the Writ Appeal stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(A.D.J.C.,J.) (K.R.S.,J.)
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NCC : Yes / No
Index : Yes / No
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To
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Madurai.



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