
(2009) 02 MAD CK 0187

In the Madras High Court

Case No : Writ Petition No. 196 of 2000 and W.M.P. No. 7449 of 2001

The Management, Chennai Metropolitan Water Supply and
Sewerage Board

APPELLANT

Vs

The Presiding Officer and M.D. Ponmozhi

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

CMWSS Board Employees (Discipline and Appeal) Regulations, 1978 — Regulation
10(2), 10(4), 14.3, 6, 63
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B

Citation : (2009) 02 MAD CK 0187

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : B. Shanthakumar, for the Appellant; Karthick Rajan, for R2, for the
Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. B. Shanthakumar, learned Counsel appearing for Chennai Metropolitan Water Supply and Sewerage Board and Mr. Karthick Rajan, learned Counsel appearing for the second respondent-workman and perused the records.

2. The petitioner- Chennai Metropolitan Water Supply and Sewerage Board (For short "Metro Water") filed the present writ petition, challenging the award dated 15.2.1999 passed in I.D. No. 234 of 1995. By the aforesaid award, the first respondent-Labour Court directed reinstatement of the second respondent in service with full backwages, continuity of service and other attendant benefits.

3. The writ petition was admitted on 7.1.2000. Pending the writ petition, this Court directed the Metro Water to comply with Section 17B of the Industrial Disputes Act, Subsequently, when the matter came up on 7.11.2001, it was represented that a sum of Rs. 1,02,764/- has been deposited by the petitioner

with the Registrar of this Court. Out of the said sum, the second respondent was permitted to withdraw a sum of Rs. 50,000/- and the remaining sum of Rs. 52,764/- was directed to be invested in a fixed deposit with the Indian Bank, High Court Extension Counter initially for a period of three years with periodical renewal and the second respondent was permitted to withdraw the quarterly interest from the said amount.

4. Apart from this, the petitioner was also directed to pay a sum of Rs. 2,379/- per month to the second respondent starting from 1st December, 1999 till the disposal of the writ petition. At the time of passing of the said order, since there were arrears of payment u/s 17B of the Industrial Disputes Act from December, 1999 to November, 2001, the same was also directed to be paid to the workman in a lumpsum.

5. The short question that arises for consideration is whether the impugned award suffers from any irregularity or illegality, which calls for an interference by this Court exercising jurisdiction under Article 226 of the Constitution of India.

6. It is the admitted stand of the petitioner that when they want to issue a charge memo for unauthorized absence against the second respondent in terms of Regulation 6 of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978, it was sent by Registered Post with Acknowledgment Due. But the same was returned undelivered. Even the copy of the charge memo, which was sent to the Area Engineer for personal service, could not be served on the second respondent, since the second respondent had vacated the premises by then. He was removed from service by the petitioner.

7. The second respondent raised an industrial dispute before the Labour Officer and the said Officer could not bring about mediation, he approached the Labour Court and filed a claim statement along with the failure report. The said claim statement was taken on file as I.D. No. 234 of 1995. Notice was issued to the petitioner-Metro Water. The petitioner filed a counter statement dated nil. (August. 1995). Before the Labour Court, on behalf of the second respondent, five documents were filed and they were marked as Ex.W1 to W5 and he had also examined himself as W.W.1. The petitioner-Management filed six documents and they were marked as Ex.M1 to M6 and on behalf of the petitioner-Management, one Vijayakumar was examined as M.W.1.

8. In paragraph 10 of the counter statement filed by the petitioner-Management before the Labour Court, it is stated that since they could not serve the second respondent either by post or personally and hence a public notice was issued in two Tamil dailies on 13.1.1994 in "Thina Thanthi" and "Thina Malar", directing the second respondent to appear for an enquiry on 20.1.1994. Since the second respondent did not appear for the enquiry on the said date, the enquiry was conducted and pursuant to the same, he was dismissed from service with effect from 4.3.1994. In paragraph 11 of the said counter, it is stated that the second respondent was evading service and according to Regulation 10(4)(b) of CMWSS

Employees (Discipline and Appeal) Regulation, 1978, if communication becomes impossible, the charge sheeted employee can be removed from service without any further compliance and thus, they justified the removal of the second respondent.

9. The Labour Court framed two issues. With reference to the first issue regarding non employment, the Labour Court came to the conclusion that non-employment was unjustified. Since the major contention before the Labour Court was regarding mode of service of the charge memo, the Labour Court dealt with the rival contentions at length and recorded its finding in paragraph 11 as follows:

The very fact the petitioner failed to report for work after the suspension was revoked and reinstated in service would go to show that only in view of his mental condition he was unable to return to duty, which he could not have done voluntarily and in fit physical condition. The notices and letters sent by the respondent to the petitioner's address at Chennai could not be served to him, since it appears that he was not doing regular work and subsistence allowance paid to him was not sufficient he shifted his residence to the native place at North Arcot, the address of which was admittedly furnished by him and entered accordingly in his service register. But the letters and orders reinstating the petitioner in service were not sent to his address at native village. Further since the petitioner was suffering from mental depression due to his family dispute, loss of property and loss of job etc., and since the letters and orders could not be sent to his address in native village, his non-appearance for enquiry with regard to his unauthorised absence despite he was reinstated in the circumstances is justifiable.

10. In this context, it is necessary to refer to the Regulation 14.3 of CMWSS Employees (Discipline and Appeal) Regulation, 1978 with reference to the mode of service of notice and other process on employee of Metro Board and it reads as follows:

Every order, notice, and other process made or issued under these rules shall be served in person on the Board servant concerned or sent to him by registered post with acknowledgments due or if such person is not found by leaving it at his last known place of residence or by giving or tendering it to an adult member of his family or if any of the means aforesaid is not available then by affixing it in some conspicuous part of his last known place of residence.

11. A perusal of Regulation 14.3 clearly shows that if the mode of postal service is not effective, then it contemplates giving notice to a adult member of the family, failing which it provides for notice by affixure. When Regulation provides a particular procedure to be followed, it is not open to the Metro Water to follow its own procedure.

12. The Labour Court was correct in holding that the method of service was not proper. In the present case, even the so called personal service by Area Engineer could not be done because of want of residential address was disbelieved by the

Labour Court. The Labour Court found that the service records showed that the workman had notified the new address and it was also found in the service register.

13. The second contention that the Regulation provided for dispensation of an enquiry in terms of Section 10(2)(b) of CMWSS Employees (Discipline and Appeal) Regulation, 1978 cannot be pressed into service. Though the argument of the learned Counsel appearing for Metro Board is attractive, Regulation 10(2) (b) of CMWSS Employees (Discipline and Appeal) Regulation, 1978 will apply only when it is found impracticable to complete service on an employee. The paper publication by the Metro Water is diametrically opposed to the manner of service of notice on an employee. Besides, the Labour Court also disbelieved the stand of the Metro Water that it was not having the proper address of the workman as he had never left the address with the Authorities. On the contrary, the Labour Court recorded a finding that the new address was furnished by the second respondent and entered in the service register. The Labour Court also found that the workman was not mentally well for some time. Hence he was absent for some time for which dismissal from service was not proper.

14. When a similar question came up for consideration in the matter of interpreting a similar Regulation relating to Food Corporation of India, this Court in *A. Anandan v. The Chairman, FCI and Ors.* in W.P. No. 36779 of 2006 dated 4.9.2006 in paras 12 and 13 held as follows:

12. Regulation 75(iii) clearly states that if any employee for whom notice is sent by registered post returned unserved, it should be published in the local/regional language newspaper and in addition to that, an All India Newspaper as appropriate and upon such publication only, it can be deemed to have been personally served on such employee. Nowhere the respondent FCI had complied with the Regulation 75(iii) of the Regulations. The only option open to the FCI is to publish either in the local or in the regional language newspaper and All India Newspaper and it does not talk about publication in any English newspaper, which is neither the local nor regional language. Therefore, the fault is on the FCI taking advantage of the deemed service provided under Regulation 75(iii) of the Regulations. The basis on which the show cause notice was issued and the removal order do not exist, as admittedly, the publication was done only in English newspaper.

13. Then the next question arises as to whether the circumstances of the present case warranting the disciplinary authority to be satisfied that it was not reasonably practical to hold an enquiry in the manner provided under the Regulations. In fact, as can be seen from the passage found in the dismissal order extracted above, the only ground on which Regulation 63(ii) was invoked and that it is not possible to communicate the petitioner either in person or by post. That cannot be a ground to dispense with the enquiry because Regulation 75 of the Regulations provides that if an order is not able to be communicated, it provides for a method and mode of service of other means and as found earlier,

that method or mode was not followed in the present case. Secondly, it is not the case where it was reasonably practical to hold an enquiry because there was no such activities of terrorising, threatening or intimidating witnesses, who may give evidence against the employees and there was no atmosphere of creating violence as found in Tulsi Ram Patel's case (cited supra). Even the factors found in Ajit Kumar Nag's case as found in paragraph 53 of the said judgment extracted above, the workman taking an unruly mob resulting in damage to property and assaulting hospital staff does not exist in the present case. Even in Ajit Kumar Nag's case, the Supreme Court has cautiously held that exercise of extraordinary power in exceptional circumstances cannot be said to be arbitrary, unreasonable or mala fide.

The said decision was also confirmed by a Division Bench headed by A.P. SHAH, CJ. (as he then was) in W.A. No. 1420 of 2007 dated 6.3.2008.

15. In the light of the above, the writ petition stands dismissed. Since the writ petition was dismissed and the award being confirmed by this Court, the second respondent is permitted to withdraw the amounts lying in deposit with Indian Bank, High Court Extension Counter and claim the balance amount from the petitioner-Metro Water. The petitioner-Metro Water shall give effect to the award passed by the Labour Court within eight weeks from the date of receipt of a copy of this order. In other respects, the writ petition stands dismissed. Consequently, the connected W.M.P. is also dismissed. No costs.