

(2011) 03 MAD CK 0476

In the Madras High Court

Case No : Writ Petition (MD) No. 8011 of 2005 and M.P. (MD) No. 8655 of 2005

The Superintending Engineer Tamil Nadu Electricity Board APPELLANT

Vs

The Presiding Officer Labour Court and S. Subramanian RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 17
Limitation Act, 1963 — Article 137

Citation : (2011) 03 MAD CK 0476

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : V. Panneerselvam, for the Appellant; R. Thangasamy, for R2, for the Respondent

Judgement

D. Hariparanthaman, J.—The 2nd Respondent joined the Tamil Nadu Electricity Board, the writ Petitioner herein as a daily wages worker in 1970. He was regularized as Field Assistant in 1975. He was posted as Junior Assistant in 1979 and posted as Assessor on 26.12.1981.

2. While so, the 2nd Respondent was unauthorizedly absent from 02.09.1982 to 07.09.1982. He sent a telegram on 06.09.1982, seeking 25 days leave and thereafter, he sent another telegram on 01.10.1982 seeking 30 days leave. But, his leave was not sanctioned.

3. In such circumstances, a charge memo dated 07.02.1983 was issued alleging that the 2nd Respondent was unauthorizedly absent from 02.09.1982 to 07.09.1982. The 2nd Respondent did not submit his explanation. Thereafter, an Enquiry Officer was appointed. The 2nd Respondent did not participate in the enquiry. The Enquiry officer conducted an ex-parte enquiry and submitted a report holding that the charge was established. Based on the findings of the Enquiry Officer, the writ Petitioner issued a second show cause notice dated 06.06.1983 proposing to dismiss the 2nd Respondent from service. However, the 2nd Respondent did not give any explanation even to the 2nd show cause notice.

In the circumstances, the 2nd Respondent was removed from service by an order dated 22.08.1983 by the Superintending Engineer, Electricity Distribution Circle, Tamil Nadu Electricity Board, Virudhunagar.

4. The 2nd Respondent filed an appeal dated 19.04.1985 before the Chief Engineer, Madurai Region of Tamil Nadu Electricity Board. The appellate authority rejected the appeal by an order dated 19.07.1985. According to the 2nd Respondent, he made various representations dated 19.05.1986, 03.12.1989, 21.09.1991, 24.02.1993, 12.12.1995 and 02.09.1996 to the Chairman of Tamil Nadu Electricity Board and various authorities seeking interference in the removal order. The Chairman of the writ Petitioner Electricity Board, has given a reply dated 01.11.1996 rejecting the memorial dated 2.9.1996. Thereafter, the 2nd Respondent raised an Industrial Dispute u/s 2(A)(2) of the Industrial Disputes Act, 1947 (for short "the Act") before the Labour Officer on 06.02.1996. The conciliation ended in failure and the Labour Officer submitted failure report u/s 12(4) of the Act on 30.04.1997. Thereafter, the 2nd Respondent filed a claim petition seeking reinstatement, continuity of service and back wages u/s 2(A)(2) of the Act on 04.06.1997 before the Labour Court, Madurai. The Labour Court took it on file in I.D. No. 79 of 1997. The writ Petitioner contested the industrial dispute and filed counter statement disputing the allegations made in the petition.

5. Before the Labour court, both the writ Petitioner as well as the 2nd Respondent did not examine any witness. Documents Exs.W1 to W24 and Exs.M1 to M28 were marked by consent. After hearing the arguments on both sides, the Labour Court, passed an award dated 24.09.2004 in I.D. No. 79 of 1997, ordering reinstatement with continuity of service and backwages.

6. The Labour Court mainly relied on Exs. No. W23 and W24, to set aside the removal order and to grant reliefs as stated above. Exs.W23 is the punishment order given to one co-employee, who was also unauthorizedly absent. In Ex.W.23, the employee was given a punishment of stoppage of increment for 2 years without cumulative effect. Ex.W24 is relating to punishment awarded to another co-employee, who was given a punishment of stoppage of increment for 2 years with cumulative effect. The allegations against the employee in Ex.W24 is accepting bribe. The Labour Court also took into account Ex.W10, Service Register of the 2nd Respondent and recorded a finding that the past record of the Petitioner was without any blemish. In the circumstances, the Labour Court ordered reinstatement with continuity of service and backwages. The Tamilnadu Electricity Board has filed the present writ petition to quash the award dated 24.09.2004 made in I.D. No79 of 1997.

7. Heard both sides.

8. The learned Counsel for the Petitioner has strenuously contended that the Labour Court failed to advert to the issue as to delay in raising the dispute. According to him, the 2nd Respondent approached the authorities under the Act after 16 years and therefore, the said Industrial Dispute is not maintainable. The

learned Counsel submits that the Labour Court ought not to have interfered with the order of removal.

9. On the other hand, the learned Counsel for the 2nd Respondent submits that no limitation is prescribed under the Act. In any event, it is submitted that the 2nd Respondent made a series of representations dated 19.05.1986, 27.08.1987, 03.12.1989, 21.09.1991, 24.02.1993, 12.12.1994 and 02.09.1996, after the appellate authority rejected his appeal by an order dated 19.07.1985. Since he pursued with the aforesaid representations and ultimately, the Chairman passed an order dated 01.11.1996 refusing to interfere with the order of removal, there is no delay at all. In any event, the learned Counsel submits that there is no basis to allege that there was 16 years delay.

10. The learned Counsel for the 2nd Respondent also points out that the aforesaid representations were marked as Exs.W15 to W21 and those documents were marked by consent. Hence, the delay was sufficiently explained. In such circumstances, particularly taking into account that no limitation is prescribed under the Act, there is nothing wrong with the Labour Court to entertain the Industrial Dispute. The learned Counsel relies on the decision of this Court reported in 2001 WLR 848 (Executive Engineer, etc. V.V. Gajapathi and Anr.) following the judgment of the Apex Court reported in Bidyadhar Mohapatra and Others Vs. District Labour Officer-cum-Conciliation Officer and Others, in support of his submission that the Labour Court could not reject the Industrial Dispute, on the ground of delay alone, as no limitation is prescribed under the Act, and the Labour Court could mould the relief taking into account the delay aspect. According to him, in the said circumstances, no such arguments were advanced by the Management before the Labour Court, questioning the delay, presumably based on Exs.W15 to W21, though a plea was raised in the counter statement. It is also submitted that the award is based on Exs.W.10, 23 and 24 and the same are not questioned in the writ petition on merits.

11. The learned Counsel for the 2nd Respondent further submits that the Petitioner already reached the age of superannuation and he would be entitled only to pensionary benefits. In any event, it is alternatively submitted that at the most, the Labour Court could be found fault with awarding backwages and not for awarding reinstatement.

12. I have considered the submissions made on either side.

13. The 2nd Respondent was removed from service on the charge that he was unauthorizedly absent, by an order dated 22.08.1983. He preferred an appeal dated 19.04.1985. The appeal was dismissed on 19.07.1985. Thereafter, the Chairman of the Electricity Board rejected his memorial dated 02.09.1996 on 01.11.1996. Therefore, the Petitioner is not correct in contending that there was a delay of 16 years. At the most, there is a delay of 11 years. At the same time, the argument of the learned Counsel for the 2nd Respondent has some force in view of Exs.W15 to 21, the representations in between 19.07.1985 and

01.11.1996 and those exhibits were also marked by consent. That is, the 2nd Respondent pursued the matter with various representations.

14. As rightly contended by the learned Counsel for the 2nd Respondent, there is no limitation prescribed under the Act, for raising an industrial dispute. However, the Industrial Dispute could be rejected on the ground of unexplained laches. Since the 2nd Respondent made repeated representations in Exs.W15 to 21 and since there is no limitation prescribed under the Act, I am of the view that the Labour Court did not commit any error in entertaining the Industrial Dispute. However, it will have a bearing in granting relief.

15. When the Labour Court granted relief mainly based on the exhibits Ex.S10, W23 and W24, the Petitioner does not deal with Ex.W10, 23 and 24 in the affidavit filed in support of the writ petition. As rightly contended by the learned Counsel for the 2nd Respondent, Ex.W10 is the service record of the 2nd Respondent, wherein the service of the 2nd Respondent is without any blemish. The Clause 21(ix) of the Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, provides that while awarding punishment, the punishment authority shall take into account the previous records of the workman. Hence, the Labour Court was justified in relying on Ex.W10, in granting the relief of reinstatement.

16. Likewise, EXS.W23 and W24 are the punishment awarded to the co-employees of the 2nd Respondent. In Ex.W23, the employee, who also remained absent, was imposed a minor penalty. In Ex.W24, another employee, who was charged for accepting a bribe, was imposed with the punishment of stoppage of increment for 2 years with cumulative effect.

17. Furthermore, the matter is squarely covered by the decision of this Court reported in 2001WLR 848 (Executive Engineer, etc. V. V. Gajapathi and Anr.) following the judgment of the Hon'ble Apex Court reported in Bidyadhar Mohapatra and Others Vs. District Labour Officer-cum-Conciliation Officer and Others, wherein, the Apex Court and this Court had categorically held that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The relevant passage from the decision of the Hon'ble Apex Court is extracted hereunder:

It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he

raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.

18. Hence, I am of the view that there is no error in awarding reinstatement.

However, in my view, the Labour Court is not correct in granting backwages to the 2nd Respondent, particularly when the 2nd Respondent approached the machinery under the Act after 11 years. Hence, I hold that the 2nd Respondent is not entitled to backwages and he is entitled only to reinstatement and continuity of service.

19. In such circumstances, I am inclined to interfere with the award passed by the Labour Court, in so far as the backwages are concerned and the impugned award is modified depriving backwages alone. Since, the 2nd Respondent had retired on 31.01.2010, on attaining the age of superannuation as his date of birth is 10.01.1952, which is established in Ex.W10, his service record, the writ Petitioner is directed to pay wages from the date of the award after adjusting the payment made u/s 17(b) of the Industrial Disputes Act and also to settle all terminal benefits including the pension within a period of 8 weeks from the date of receipt of the copy of this order. The writ petition is disposed of in the above terms. No costs.