

W.P.No.1065 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 04.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 1065 of 2021
and
W.M.P.Nos. 1183, 23120 and 23482 of 2021

The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai – 600 005.

....Petitioner

Vs.

R.Dorairaj,
Assistant Engineer (Retired)
Tamil Nadu Water Supply and Drainage Board,
Door No.15, Church Road,
Bharathidasan Nagar,
TTK Nagar Backside,
Peerkanikaranai
Chennai – 600045.

...Respondent

Prayer in WP

To issue Writ of Certiorari or Order or Direction calling for the records relating to C.P.No.64 of 2017 dated 10.07.2020 on the file of the Principal Labour Court, Chennai, and quash the same and to order any other remedy as this Hon'ble Court may deem fit and proper.



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Prayer in W.M.P. No. 1183 of 2021

To grant stay of further proceedings in C.P.No. 64/2017 dated 10.7.2020 on the file of the Principal labour court, Chennai-104 till the disposal of the above writ petition.

Prayer in W.M.P. No. 23120 of 2021

To vacate the stay granted by this Hon'ble Court in W.M.P.No.1183/2021 in W.P.No.1065/2021 on 20-01-2021 and dismiss the above writ petition filed by the petitioner with cost.

Prayer in WMP No. 23482 of 2021

To permit the petitioner / Respondent to withdraw Rs.3,89,652/- (Rupees Three Lakhs Eighty Nine Thousand Six Hundred and Fifty Two only) deposited by the Respondent / Petitioner before the Honourable Principal Labour Court, Chennai on 02.03.2021 and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Appearance of Parties:

For Respondent : Ms.Law Square, Advocate

For Petitioner : Mr.S.Ravindran, Senior Advocate
For Ms.Mekhala Advocate

J U D G M E N T

Heard.

2.The petitioner is the Tamil Nadu Water Supply and Drainage Board (hereinafter referred to as "TWAD Board"). In the present writ petition, the



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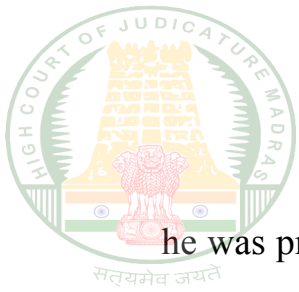
petitioner challenges the order dated 10.07.2020 passed by the Principal Labour

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Court, Chennai in C.P. No. 64 of 2017, whereby the Labour Court computed a sum of Rs.12,98,842/- as due and payable to the respondent, along with interest at the rate of 9% per annum if paid within six months, failing which the amount would carry interest at 12% per annum.

3. When the matter was listed on 20.01.2021, while ordering notice to the respondent, this Court directed the petitioner—TWAD Board to deposit 30% of the amount awarded by the Labour Court within a period of eight weeks. Upon receipt of notice, the respondent entered appearance and filed two miscellaneous petitions—one seeking vacating of the interim stay and the other seeking permission to withdraw the amount deposited. However, no orders were passed on those applications. Meanwhile, when the matter was taken up on 05.12.2024, this Court directed that it be listed before the National Lok Adalat scheduled for 14.12.2024. As no settlement was arrived at, the matter has now been posted for final hearing.

4. The records reveal that the respondent was employed as an Assistant Engineer in the TWAD Board. He was initially appointed as a Junior Draughting Officer Grade III and assumed charge on 24.02.1977. Subsequently,



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he was promoted and appointed as a Junior Engineer, taking charge in that post

on 01.03.1980. He was placed under suspension with effect from 04.08.1994, pending disciplinary proceedings. Ultimately, he was dismissed from service, and the Board, by its proceedings in B.P. Ms. No. 48 dated 07.02.2002, also resolved to initiate a civil suit to recover a sum of Rs.2,49,124/-, alleged to be the loss caused to the Board due to irregularities attributed to the respondent.

5. Aggrieved by his dismissal, the respondent filed W.P. No. 14155 of 2002 challenging the dismissal order. His writ petition was heard together with two other connected writ petitions filed by similarly placed employees, and a common judgment was delivered on 01.02.2013. By the said judgment, this Court set aside the order of dismissal and remanded the matter to the petitioner–Board with a direction to impose any penalty other than dismissal from service or total denial of pensionary benefits, including full recovery from DCRG, in the case of Mr. Ranganathan, who had also filed W.P. No. 14156 of 2002.

6. The Board preferred three writ appeals, and W.A. No. 402 of 2014 was specifically filed against the writ petition instituted by the respondent. The matter, along with the other two connected writ appeals, was heard by a



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Division Bench, which dismissed all three appeals by a common judgment

dated 16.04.2014. Undeterred, the Board approached the Hon'ble Supreme Court by filing Special Leave Petitions, being SLP Nos. 13036–13037 of 2014, which were also dismissed by order dated 07.11.2014. Following the dismissal of the SLPs, the Board issued proceedings in B.P. Ms. No. 37 (Establishment) dated 27.07.2015, whereby it imposed the following penalty on the respondent:

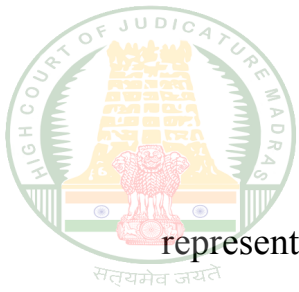
“The Board in its Resolution No.5.12 dated 23.04.2015 after carefully examining the files and connected records relating to the charges framed against Thiru.R.Dorairaj, Assistant Engineer (u/s) in respect of the irregularities committed in the execution of works of the Udagamandalam Water supply improvements scheme, HADP Division, Ooty has Resolved as follows:-

The Board has RESOLVED to modify the punishment already awarded in B.P.Ms.No.48 / dt. 07.02.2002 as “Compulsory Retirement.”

Accordingly, the earlier punishment of dismissal from service and also to file civil suit to recover Rs.2,49,124/- being the loss to the Board awarded to Thiru.R.Dorairaj, Assistant Engineer in B.P.Ms.No.48/dt.07.02.2002 has been modified as “penalty of recovery of 1/3rd of pension and gratuity under Rule 39 of Tamilnadu Pension Rule.”

This order will not debar the Department from prosecuting the petitioner in the criminal case pending against him and in the event of conviction, the petitioner shall be liable for all consequences arising there for in accordance with law.”

7. Aggrieved by the imposition of the said penalty, the respondent filed W.P. No. 26663 of 2018 before this Court, seeking a direction to consider his



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representation dated 21.12.2017. The writ petition was disposed of by order

dated 11.10.2018, directing the petitioner–Board to consider the respondent's

representation. Pursuant thereto, the Board rejected the respondent's claim by

order dated 25.03.2019. Challenging that order, particularly the decision to

recover one-third of his pension, the respondent filed W.P. No. 5572 of 2020.

That writ petition was partly allowed by judgment dated 31.10.2024. In

paragraphs 18 to 20 of the said judgment, this Court made the following

observations and directions:—

“18. In the light of above, the impugned Board proceedings, to the extent of ordering for “recovery of 1/3 rd of the pension and gratuity under Rule 39 of the Tamil Nadu Pension Rules, 1978”, is liable to be quashed and the same is accordingly quashed. Consequently, the consequential impugned letters dated 03.09.2015 are also liable to be quashed.

19. In the light of the conclusions arrived at above and the findings recorded by this Court, this Court does not find any error or illegality in the conclusions arrived at by the Respondent No.2, while issuing the impugned Letter dated 25.03.2019 and the same does not need any interference by this Court.

20. Accordingly, the respondents are further directed to recalculate the pension and other benefits payable to the petitioner by implementing the punishment of compulsory retirement with effect from 07.02.2002 and pay all the amounts that are payable to the petitioner including arrears of pension with interest at the rate of 6% per annum as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this



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order.”

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8.Following the above developments, the respondent filed a claim petition under Section 33C(2) of the Industrial Disputes Act before the Principal Labour Court, Chennai, seeking a total sum of Rs.14,39,917/-. The claim comprised pay and allowances for the period from 01.01.1990 to 07.02.2002, arrears of service pension from 08.02.2002 to 31.07.2016, arrears of DCRG, and amounts towards encashment of earned leave and unearned leave on private affairs. The petition was taken on file as C.P. No. 64 of 2017, and notice was issued to the Board. In response, the Board filed a counter statement (undated), wherein it was contended that the respondent did not fall within the definition of “workman” under Section 2(s) of the Industrial Disputes Act, as he was employed as an Assistant Engineer in an administrative role, discharging supervisory and managerial functions. On merits, it was further contended that while pensionary benefits had been sanctioned, the period of suspension had not been regularized as duty, and hence related claims were not tenable.

9.The respondent filed a rejoinder dated 07.01.2018, wherein he refuted the stand taken by the Board and asserted that he qualified as a “workman”



under Section 2(s) of the Industrial Disputes Act. He specifically denied having

held any managerial, administrative, or supervisory position during his tenure.

In the proceedings before the Labour Court, the respondent examined himself as PW1 and produced 15 documents, which were marked as Exhibits P1 to P15.

On behalf of the Board, one C. Mohamed Farook, Executive Engineer, was examined as RW1. The Board filed three documents, which were marked as Exhibits R1 to R3—Ex.R1 being the authorization letter, Ex.R2 the dismissal order, and Ex.R3 the order dated 07.02.2002 modifying the punishment.

10. With respect to the issue of whether the respondent qualified as a “workman” under Section 2(s) of the Industrial Disputes Act, the Board’s witness, RW1, during his cross-examination, made the following admission:—

“மனுதாரர் கட்டாய ஓய்வில் அனுப்பப்படும்போது உதவி பொறியாளராக பணிபுரிந்தார் TWAD சட்டப்படி 1972ல் service regulations-கள் ஏற்படுத்தப்பட்டது என்பது சரிதான். அந்த service regulation படி உதவி பொறியாளருக்கு பணி நியமனம் செய்யும் அதிகாரம் இருக்கிறதா என்று பார்த்துதான் சொல்ல முடியும். அந்த service regulation-ல் உதவி பொறியாளருக்கு பணி நியமனம் செய்தல், பணி மாறுதல் செய்தல், சம்பள அனுமதி வழங்குதல், தண்டனை வழங்கும் அதிகாரம், மேல்முறையீட்டு அதிகாரம் ஆகியவை இல்லை என்றால் சரியல்ல. அவருக்கு அதிகாரம் இருக்கிறது என்பதை காண்பிக்க அந்த service regulation ஐ பார்த்தாலே தெரியும்.”

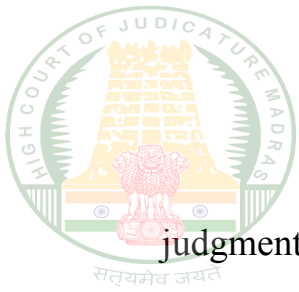


“நான் என்னுடைய பிரமாண வாக்குமூலம் பத்தி 4ல் சொல்லியிருக்கும் மனுதாரரின் பணிமுறைகள் technical supervision மட்டும் என்றால் சரியல்ல. Technical மற்றும் managerial supervision-ம் இருக்கும். மனுதாரருக்கு மனுதாரருக்கு managerial supervision இருக்கிறது என்பது TWAD board regulation லேயே இருக்கிறது. மனுதாரருக்கு எந்த நிர்வாக அதிகாரமும் இல்லாத காரணத்தினால் அவர் வெறும் தொழிலாளி என்றாலும் அவர் மனுவில் கோரியுள்ள அனைத்து பரிகாரமும் கிடைக்கத்தக்கது என்றால் சரியல்ல. மனுதாரருக்கு managerial supervision இருக்கிறது என்பதை காண்பிப்பதற்கு குறிப்பாக எந்த ஆவணமும் தாக்கல் செய்யவில்லை.”

11.The Labour Court, in paragraphs 10 and 11 of the impugned award, held that the respondent fell within the definition of “workman” under Section 2(s) of the Industrial Disputes Act. It accepted the testimony of the respondent, who was examined as PW1, and recorded a finding in his favour. In support of this conclusion, learned counsel for the respondent relied on five judgments of various courts (citations not provided), which are listed as follows:

- (a)Andhra Scientific Co Ltd Vs. A.Seshagiri Rao (AIR 1967 SC 408)
- (b)Devinder Singh Vs. Municipal Council Sanaur (2011 (6) SCC 584)
- (c)U.P.State Sugar Corpn. Ltd Vs. Deputy Labour Commissioner (1992 I LLJ 177 ALL)
- (d)Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd (1985 (3) SCC 371)
- (e)National Engineering Industries Vs. Shri Shri Kishan Bhageria (1988 SCC (SUPP) 82)

12.However, the issue stands squarely addressed by this Court in its



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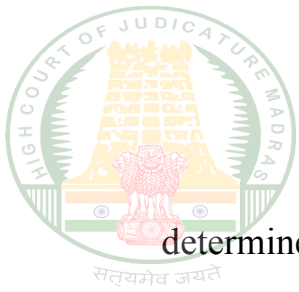
judgment in **M/s. Ashok Leyland Ltd. v. A. Vijayakumar, reported in 1981**

(2) LLJ 9, wherein the following principles were laid down:—

“It is true as a general proposition of law, as laid down in *B.S.O.S. & D. Co. v. Management Staff Association* [1970-II L.L.J. 590], where a person is employed by reason of his technical qualifications is a supervisor or a manager or even an Administrator he cannot claim to be a workman because he would fall under the exempted category, But, the facts here are entirely different, as seen above. Thus I conclude that the first respondent was working only in his technical capacity. But not either in his administrative capacity of managerial capacity. The factual findings arrived at why the Labour Court is unassailable and such a finding as laid down in [Andhra Scientific Co., Ltd. v. Seshagiri Rao and another](#). [1961-II L.L.J. 117] at 119, cannot be interfered with under Art, 226, of the Constitution because it is stated thereunder :

"What functions were actually being performed by the employee is a question of fact and the High Court has rightly pointed out that when the Labour Court has on a consideration of the evidence come to a conclusion as regards these functions and has on the basis thereof held that the employee comes within the definition of workman in [S. 2\(s\)](#) of the Act, the High Court, would not interfere under Art, 226 except in cases where there is clear error on the face of the record."

13.The above judgment was subsequently affirmed by a Division Bench in **Ashok Leyland Ltd. v. A. Vijayakumar, reported in 1988 (2) LLJ 528**, wherein it was held that the question of whether an individual is discharging administrative or managerial functions is essentially a question of fact to be



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determined on the basis of evidence. In view of this settled position, the objection raised by the petitioner regarding the respondent's status is rejected, and the finding of the Labour Court on this issue stands confirmed. Of course, during arguments the learned Senior Counsel for the petitioner also submitted that he was not pressing any contentions raised on the point of status of workmen.

14.Lastly, it was contended that there was no existing dispute regarding the pay and allowances due to the respondent, and therefore, the Labour Court had no jurisdiction to adjudicate such claims in a petition filed under Section 33C(2) of the Industrial Disputes Act. In response, learned counsel for the respondent relied on the decision of the Hon'ble Supreme Court in **State Bank of India v. Ram Chandra Dubey, reported in (2001) 1 SCC 73**, and referred to the following passage from paragraph 8 of the judgment:—

“The principles enunciated in the decisions referred by either side can be summed up as follows: Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is



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necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

15. In view of the above discussion, no grounds have been made out to warrant interference with the impugned order passed by the Labour Court. Accordingly, the writ petition stands dismissed. All connected miscellaneous



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petitions are closed. There shall be no order as to costs. If any amount has been deposited before the Labour Court pursuant to the interim order of this Court, the respondent is at liberty to withdraw the same. For the balance amount, the respondent may proceed by filing an appropriate execution application in accordance with law.

29.05.2025

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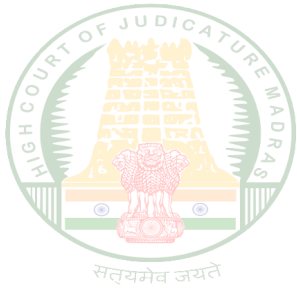
NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

The Presiding Officer,
Principal Labour Court,
Chennai – 600104



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 1065 of 2021
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29.05.2025