

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No. 10617 of 2017

A.Saravanabavan

... Petitioner

Vs.

1. The Chairman,
Tamilnadu Electricity Board,
Chennai 600 002.
 2. The Chief Engineer/ Distribution,
Tamilnadu Electricity Board,
Villupuram Region,
Villupuram.
 3. The Superintending Engineer,
Tamilnadu Electricity Board,
Villupuram Electricity Distribution Circle,
Villupuram.
- ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by third respondent herein in his proceedings Memo No.013591/PR. 1733/Adm.3/A1/F.D V & AC/2000 dated 22.04.2000 and consequential order passed by the second respondent herein in his proceedings Memo No.007304 (341)/Adm.B/B2/2001-25 dated 23.04.2004 and quash the same and consequently direct the respondents herein to allow the petitioner to retire from service w.e.f. 30.04.2004 and treat the period of suspension as duty for all purposes in accordance with Fundamental Rules 54. Ruling-9 and disburse all terminal and retirement benefits due to the petitioner together with 12% interest per annum, within a time-frame as deem fit and proper by this Hon'ble Court.

For Petitioner : M/s.G.Bala and Daisy
For Respondents : Mr.M.Fakkir Mohideen

O R D E R

The order of suspension issued on 22nd April 2000 is under challenge in this writ petition. The writ petitioner was appointed as Commercial Assistant in the Tamil Nadu Electricity Board and thereafter, promoted to the posts of Junior Engineer, Assistant Engineer and Executive Engineer. The writ petitioner was placed under suspension on account of the contemplation of charges.

2. The learned counsel appearing for the writ petitioner submitted that the writ petitioner was acquitted in the criminal case in S.C. No.2 of 2001 on 29th November 2008. Against the order of acquittal passed by the Chief Judicial Magistrate, Villupuram, the State had preferred a criminal appeal bearing Criminal Appeal No.435 of 2010 and the appeal preferred by the State was also dismissed by this Court on 28th June 2017. In spite of the confirmation of the acquittal, the respondents have not taken any action to reinstate and settle the retirement benefits of the writ petitioner.

3. The learned counsel appearing for the writ petitioner submitted that through the writ petitioner was due to retire from service on 30th April 2004, no action has been taken by the respondents. Hence, the present writ petition is filed, challenging the order of suspension and for a consequential direction to settle the terminal benefits.

4. Though notice was served to the respondents and the learned counsel for the Tamil Nadu Electricity Board appeared in this matter, the respondents have not filed any counter defending the writ petition. Under these circumstances, this Court is of the view that, it is a case where the writ petitioner suffered the order of suspension for about 17 years, despite the fact that the criminal case registered against him was ended with an order of acquittal. Therefore, there is no point of granting adjournment as sought for by the learned counsel appearing for the respondents, for filing counter.

5. On the facts available on record and on perusal of the order of suspension, this Court is able to find out that the petitioner is placed under suspension for about 17 years and he was due to retire from service on 30th April 2004 itself. The orders of acquittal both by the Judicial Magistrate, Villupuram and by this Court in Criminal Appeal No.435 of 2010 are placed before this Court by the learned counsel appearing for the writ petitioner.

6. In this view of the matter, this Court is of the opinion that the writ petitioner is entitled for the relief as sought

for in the writ petition provided that, no other disciplinary proceedings or any other case against the writ petitioner is pending before any Court. Subject to the said condition, the writ petitioner is eligible to get all his retirement benefits based on his date of retirement i.e. on 30th April 2004.

7. The learned counsel further reiterated that no other case is pending against the writ petitioner and therefore, he is entitled for all other benefits and further more, the respondents have neither initiated any other disciplinary proceedings nor continued the disciplinary proceedings initiated, pursuant to the impugned order of suspension dated 22nd April 2000.

8. No doubt, departmental disciplinary proceedings are unconnected with the criminal proceedings. The Criminal proceedings initiated by the State requires 'High Standard of Proof' and for the departmental proceedings "Preponderance of Probabilities" are sufficient to punish an employee. Therefore, there is no bar to continue the disciplinary proceedings, in spite of, the fact that the criminal court has granted acquittal. In other words, an order of acquittal cannot be a bar for the department to continue the disciplinary proceedings.

9. Though, this is the legal principle laid down by this Court, the present case on hand requires consideration in view of the fact that the department was not vigilant enough to continue the disciplinary proceedings for the past more than 17 years and just by passing an order of suspension on 22nd April 2000, the matter stands as it is for about 17 years.

10. Such being the fact regarding the case on hand, this Court is not inclined to grant liberty to the respondents to continue the disciplinary proceedings at this point of time and it may not be possible also to examine the witnesses and produce the records. The writ petitioner also at this age will not be in a position to continue the disciplinary proceedings.

11. Under these circumstances, this Court is inclined to direct the respondents to grant the terminal benefits also. Accordingly, the impugned order of suspension issued by the third respondent in Memo No.013591/PR.1733/Adm.3/A1/F.DV&AC/2000, dated 22nd April 2000 and the consequential order passed by the second respondent in Memo No.007304(341)/Adm.B/B2/2001-25, dated 23rd April 2004 are quashed and the respondents are directed to settle all the retirement benefits to the writ petitioner as early as possible.

Accordingly, the writ petition stands allowed. However, there is no order as to costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

may a

To

1. The Chairman,
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Villupuram.

+1cc to Mr.G.Bala & Daisy, Advocate Sr. 46644
+1cc to Mr.M. Fakkir Mohideen, Advocate Sr. 47496

W.P.No.10617 of 2017

LRS (CO)
VR(19/07/2017)

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