

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 24.08.2018

ORDER PRONOUNCED ON : 16.11.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.14911 of 2009
and M.P.No.1 of 2009

P.Duraisamy

... Petitioner

Vs.

1. The Chief Engineer,
Chief Engineer Office,
Salem Distribution Circle,
Erode - 9.
2. The Superintending Engineer,
Office of Superintending Engineer,
Mettur Electricity Distribution Circle,
Mettur Dam-1, Salem District.
3. The Assistant Divisional Engineer,
North Division,
Tiruchengode. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent dated 19.07.1988 in Memo No.AdmI/A1/DP.1395/AD1121/88 and the order of the 1st respondent dated 10.03.1997 in Memo No.19149/UT.4/95-11 and quash the same, consequently directing the respondents herein to pay the increment for two years which was stopped by the 2nd respondent through his order dated 19.07.88 stated supra with cumulative all benefits.

For Petitioner : Ms.R.Shase
for Mr.R.Marudhachalamurthy

For Respondents : Mr.P.R.Dhilip Kumar
Standing Counsel for TNEB

O R D E R

The instant Writ Petition has been filed for an appropriate Writ or direction, to call for the records pertaining to the order passed by the 2nd respondent dated 19.07.1988 in Memo No.AdmI/A1/AD1121/88 and the order of the 1st respondent dated 10.03.1997 in Memo No.19149/UT.4/95-11 and quash the same and consequently direct the respondents herein to pay the increment for two years which was stopped by the 2nd respondent through his order dated 19.07.1988.

2. The case of the Writ Petitioner is:-

(a) When the petitioner was working with the Electricity Board, Tiruchengode, he got provisional assessment notice dated 22.10.2986 stating that he had utilized the energy for welding purposes, which amounts to malpractice under misuse of Tariff and unauthorized load.

(b) As per the provisional assessment notice dated 22.10.1986, the petitioner was asked to pay a sum of Rs.1,072/- for continuing the supply and further a sum of Rs.536/- plus Rs.50/- towards supervision charges were also directed to be paid, failing which it was stated that the electricity connection will be disconnected without any further notice. The petitioner was also directed to move the unauthorized load.

(c) The petitioner filed a suit being O.S.No.939 of 1986 on the file of the District Munsif, Tiruchengode, challenging the assessment notice contending that he had not utilized the energy for welding purpose and there was no question of malpractice and misuse of Tariff and unauthorized load.

(d) The said suit was decreed in favour of the petitioner and the assessment order was set aside and the appeal filed by the Board has also been dismissed. The petitioner was served with show cause notice No.123 dated 27.01.1987, wherein three charges were framed. The said three charges read as under:-

Charge No.1

Thiru. P.Duraisamy, Accountant, Thiruchengode South Section, in his house service No.739, tarrif-1 Kuttapalli Distribution, without obtaining any permission from the Board at his own accord (unauthorized) way used the electric power and doing welding work is come to be known. Such act is an offence under Ministerial Employee board standing order No. 19(III) and 19(XXIII).

Charge No.2

Thiru. P.Duraisamy, Accountant, Thiruchengode South Section, in his house Service No.739, tariff-1 Kuttapalli Distribution used the electric power and was doing welding works, the penal charge of Rs.1,122/- as to pay the Assistant Executive Engineer/South/Tiruchengode sent report in written (Provisional assessment notice) that has not been paid by him and challenging that filed O.S.No.936/86 in the courts of District Munsif Court, Tiruchengode and as not to disconnect the above electric connection on the basis of the court order paid Rs.300/- is come to be known. He had not obtained prior permission of the Board to file suit. Such act is an offence under Ministerial Employee board standing order No.19(II) is offence.

Charge No.3

Thiru. P.Duraisamy, Accountant, Thiruchengode South Section, in his house Service No.739, tariff-1 Kuttapalli Distribution used electric power monthly 165 electric units that have been count for in green card to writ 165 electric unit but to write 100 electric no more over, in the Board document of green electric meter card; when it was 165, corrected and written to 100 units. In the office default register for the electric connection No.739, Kuttapalli, the accountant have written as used for welding purpose he erased with sharp weapon. Such act is an offence under Ministerial Employee board standing order No.19(III).

3. A reading of three charges would show that they deal with unauthorized utilization of the energy for welding purposes, and false entry in the service connection of the petitioner and for the offences under Electricity Act. For the above-said contravention, notice was issued and the assessment notice was set aside by decree dated 20.09.1994 in O.S.No.939 of 1986 on the file of the District Munsif, Tiruchengode. There is no charge that the petitioner has committed any misconduct unbecoming of an officer of the Electricity Board or that he has committed any fault in his service, as an Inspector of Assessment.

4.Despite the fact that the writ petitioner is also in the year 2009 and that the notice was issued in the writ petition on 30.07.2009. The respondent Board had not chosen to file a counter. They have also not filed the Board standing

orders to substantiate the punishment imposed on the petitioner. As stated above, none of the above charges deals with misconduct of the petitioner in his official capacity or in any manner while discharging the services.

5. The learned counsel for the Electricity Board asked to produce relevant Standing Order. The Counsel for the Electricity Board has filed Tamil Nadu Electricity Board Employees Conduct Regulations. Regulation 21 reads as under:-

"21. Vindication of acts and character of employees:

No employee shall, except with the previous sanction of the Board, have recourse to any court or to the press for the vindication of any official act which has been the subject matter of adverse criticism, or any attack of a defamatory character.

Explanation: Nothing in this regulation shall be deemed to prohibit an employee from vindicating his private character or any act done by him in his private capacity.

Note: No employee shall, except with the previous sanction of the Board, accept from any person or body of persons compensation of any kind for any malicious prosecution brought against him or for any defamatory attack made on his public acts or character, unless such compensation has been awarded by a competent court."

6. Disciplinary proceedings could not be initiated on this ground. Disciplinary proceedings initiated against the petitioner are unsustainable. The entire proceedings have to be set aside and consequential order dated 19.07.1988 passed by the 2nd respondent stopping the increment for two years is also liable to be set aside.

7. Accordingly, the order dated 19.07.1988 passed by the 2nd respondent/the Superintending Engineer, Mettur Electricity Distribution Circle, Mettur Dam-1, Salem District, in Memo No. AdmI/A1/AD1121/88, is set aside and the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

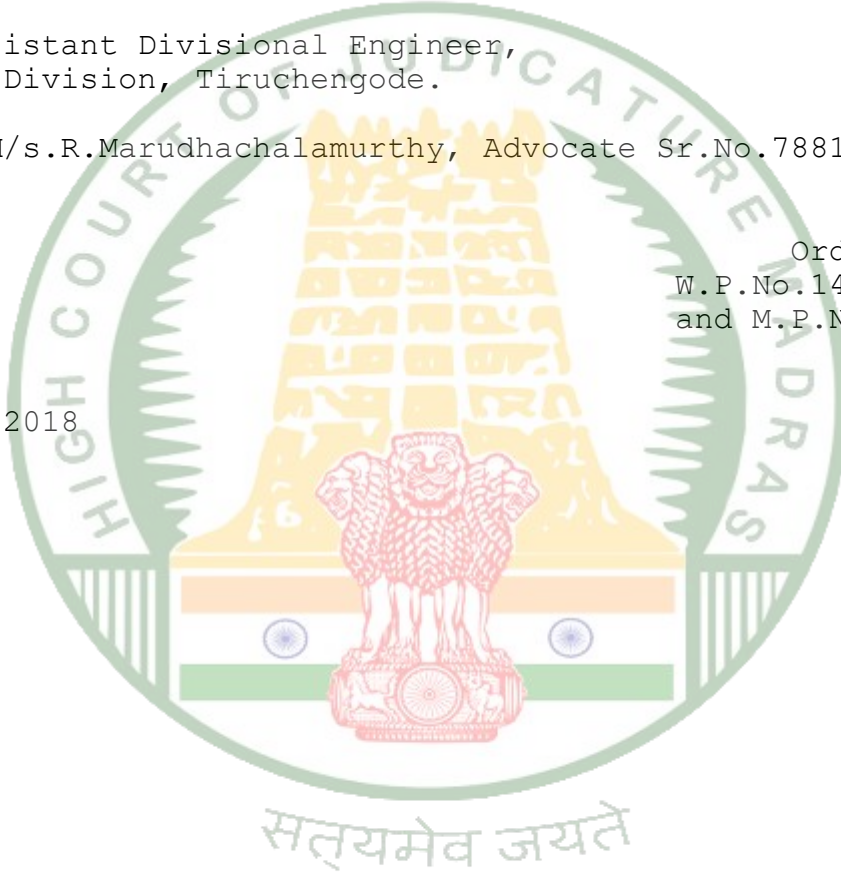
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To

1. The Chief Engineer,
Chief Engineer Office,
Salem Distribution Circle,
Erode - 9.
 2. The Superintending Engineer,
Office of Superintending Engineer,
Mettur Electricity Distribution Circle,
Mettur Dam-1, Salem District.
 3. The Assistant Divisional Engineer,
North Division, Tiruchengode.
- +1 cc to M/s.R.Marudhachalamurthy, Advocate Sr.No.78819

Order made in
W.P.No.14911 of 2009
and M.P.No.1 of 2009

CP (CO)
CSL/06.12.2018



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