

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.6928 of 2004

R.Uthandi

..Petitioner

..Vs..

1. The Chief Engineer
Madurai Region, Tamil Nadu Electricity Board,
K.Pudur, Madurai - 625 007.
2. The Superintending Engineer
Madurai Distribution Circle,
Tamil Nadu Electricity Board, Madurai. p...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records relating to the second respondent's proceedings made in Ka.No.934/Ni.Pi.1/Uthavi.3/99-8, dated 30.08.2003 and as confirmed by the first respondent in his order Ku.No.23300/791/T.1/2003.3, dated 07.02.2004 to quash the same and consequently direct the respondents to extend all benefits both service and monetary, including backwages and revised pension and pensionary benefits etc.,

For petitioner : Mr.A.M.O.Gurunarayanan Rao
For Respondents : Mr.P.R.Dhilip Kumar
Standing Counsel for TNEB

O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus calling for records relating to the second respondent's proceedings made in Ka.No.934/Ni.Pi.1/Uthavi.3/99-8, dated 30.08.2003 and as confirmed by the first respondent in his order Ku.No.23300/791/T.1/2003.3, dated 07.02.2004 to quash the same and consequently direct the respondents to extend all benefits both service and monetary, including backwages and revised pension and pensionary benefits etc.,

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows :

The petitioner was appointed as Lascar during 1967 at the respondents Board. Subsequently he had been promoted as Wireman, Lineman, Line Inspector and finally he was promoted as

Foreman. When he was working as Foreman, a Disciplinary Proceedings was initiated against him by issuing a charge and based on which, a domestic enquiry was conducted. Pursuant to the domestic enquiry report, after giving opportunity to the petitioner, the Disciplinary Authority passed the order on 30.08.2003, whereby the petitioner was inflicted with maximum punishment of removal of service. Aggrieved over the same, the petitioner filed appeal to the appellate authority on 26.09.2003 and the appellate authority by order, dated 07.02.2004 had confirmed the order of punishment. Therefore challenging the said order of punishment, dated 30.08.2003 of the original authority as well as the order passed by the appellate authority, confirming the said punishment by order, dated 07.02.2004, this writ petition has been filed with the aforesaid prayer.

3. I have heard Mr.A.M.O.Gurunarayanan Rao, the learned counsel for the petitioner and Mr.P.R.Dhilip Kumar, the learned standing counsel for the respondents.

4. There had been 11 charges against the petitioner. On perusal of the charges, it discloses that, pursuant to the Hon'ble Supreme Court Order, Justice Khalid Committee was appointed and based on its recommendation, nearly about 18000 contract labourers working at various divisions of the respondents Board throughout the State had been observed at the respondents Board as permanent employees.

5. It seems that, in order to identify those employees, committee comprising representatives of various unions had been constituted. Since the petitioner was one of the office bearer of the Tamil Nadu Electricity Federation at Madurai, he was also appointed as one of the member of the said committee representing his union. The committee conducted interviews and on the basis of identification verified with the local union level official records and that of the service certificates issued by the concerned Section Officers coupled with Educational Records, Ration card and identification of the respective union representatives, those contract employees had been appointed.

6. In this regard, it was the charge against the petitioner that, 11 of such employees, who had been identified by the petitioner were not actually the employees and therefore in order to get appointment to those 11 persons or in order to pave way for getting appointment of those 11 persons, the petitioner had wrongly identified those persons. With the result, those who are otherwise not eligible to get appointment or undeserving in the department, has been given such appointment and therefore for the alleged action on the part of the petitioner in wrongly identifying the wrong persons, as if they had been contract

employees entitled to get appointment, those charges had been framed.

7. The said charges had been refuted by the petitioner by giving explanation. Also before the Enquiry Officer, the petitioner had explained his position that, he had not identified any of the 11 persons and more over it is not on the basis of the identification of the committee members the appointment had been made and in fact, the circle level, division level officials and staff as well as union had identified each of such employee and thereafter thoroughly verifying the identification and the qualification certificate etc., such appointments had been made and therefore in that regard, the petitioner had nothing to do with the identification.

8. In spite of the refutation and defence taken by the petitioner, the Enquiry Officer concluded the enquiry with the report that, 10 out of 11 charges had been proved against the petitioner. It means that out of 11 persons allegedly had been identified wrongly by the petitioner, 10 of such persons had been identified only by the petitioner and that, had been proved and therefore such wrong identification since having been made by the petitioner, those employees have been given appointment and therefore those charges had been proved.

9. Based on the said Enquiry Officer's report, the enquiry officer had inflicted the maximum punishment of removal of service on the petitioner by order, dated 30.08.2003.

10. In the order of punishment, dated 30.08.2003, the disciplinary authority had stated that, there had been 12 charges framed against the petitioner. Out of which 11 charges had been proved beyond doubt, therefore the petitioner had been issued show cause notice as to why maximum punishment of removal of service should not be inflicted against him and on receipt of the same, the petitioner also had given reply on 14.08.2003. However on consideration of the said reply as well as the report of the Enquiry Officer, the disciplinary authority was satisfied that, there was no need to accept the said reply or defence given by the petitioner and accordingly inflicted the punishment of removal from service.

11. When this order was appealed by the petitioner to the appellate authority, who in turn also having accepted the conclusion arrived at by the disciplinary authority by confirming the same, has rejected the appeal in the order, dated 07.02.2004.

12. Counter affidavit has been filed on behalf of the respondents, where the following averments had been stated :

"I respectfully submit that the petitioner in

the capacity of office bearer of Tamil Nadu Electricity Federation had wrongly identified 11 individuals as contract labourers, which paved the way to them to enter into Board service as regular Helper by producing bogus service certificates and impersonation."

13. No details had been given in the counter affidavit as to on what basis the disciplinary authority had accepted the Enquiry Officer's report with regard to the charge against the petitioner in identification of the employees wrongly.

14. Therefore during the hearing, this Court wanted the respondents to produce the extract of the relevant record to show prima facie that those 11 persons allegedly had been identified by the petitioner wrongly had been appointed only on the basis of the identification and recommendation made by the petitioner.

15. Pursuant to the said directive, the learned standing counsel has produced the extract of detail containing the name of such employees and other details such as their qualification, when they had been engaged initially and the service particulars produced by each of the employees. In the said document each page, in the last column, under the heading "other details", it has been specifically mentioned against each of the candidate as to who had identified each of such candidate.

16. After thorough home work, the learned counsel appearing for the petitioner has given a list of 11 candidates against whom, allegedly the petitioner had made identification and based on which wrongly those 11 candidates had been appointed, according to the charge of the respondents. Out of the 11 candidates, the name of two candidates, one Muthalu, s/o.Muthusamy and one Mookaiah, s/o.Muthusamy were not at all available in the list. In so far as the other 9 candidates are concerned, all the 9 candidates name are found place in the said list filed by the respondents. The name of the candidate and the serial number where it is found in the list and also the person or official by whom each of such candidate had been identified has been culled out from the record which is extracted hereunder for easy reference :

Name	Father's Name	S.No as per the respondents list	Special Remarks (Identified by whom)
Maharajan	Muthupal	116	A.Raju, Junior Engineer I Gr.
Vadival	Sundaradevar	129	No identification

Name	Father's Name	S.No as per the respondents list	Special Remarks (Identified by whom)
M.Ramakrishnan	Maruthupandi	81	G.Perumal, Assistant Executive Engineer
T.Mariappan	Dhanushkodi	71	Samuvel Chellappa, Junior Engineer I Gr.
M.Kumarasamy	Muthiah	50	B.Jayaraj, Junior Engineer I Gr.9+
A.K.Krishnan	Coolsamy	138	A.Muthiah, Assistant Executive Engineer
Muthalu	Muthusamy	Not in the list	
M.Mookiah	Muthusamy	Not in the list	
A.Kesavan	Azhagu Veerapandi	133	A.Muthiah, Assistant Executive Engineer
Chinnasamy		65	A.Muthiah, Assistant Executive Engineer
Ramar @ Pandi		86	R.Raja Manickam Junior Engineer

17. The aforesaid list would disclose the fact that, none of the 11 candidates had been identified by the petitioner even according to the document filed before this Court by the respondents. Since two candidates name not at all found in the list and in respect of other 9 candidates, each one was identified by various officials, it shows that not even a single candidate was identified by the petitioner. This crucial document, this Court is wondering, why has not been taken into account either by the enquiry officer or by the disciplinary authority or by the appellate authority. When the very basis of the charge that, because of the wrong identification of the petitioner, 11 undeserving persons had been identified and appointed, itself does not have any basis and in fact the record shows something different, this Court is also at loss to understand as to why the enquiry officer had given a finding that the charges framed against the petitioner is proved and also why the disciplinary authority has not taken note of this factor.

18. In view of the aforesaid startling factors which has been disclosed before this Court, I am of the considered view that, absolutely there had been no basis for the charges framed against the petitioner and therefore the consequential report of the enquiry officer as well as the conclusion arrived at by the disciplinary authority also do not have any basis for concluding that, the charges framed against the petitioner had been proved.

19. Therefore this Court has no hesitation to hold that, the punishment inflicted on the petitioner is totally unsustainable and therefore it is liable to be interfered with.

20. This aspect has not been considered by the appellate authority also in his order and therefore the appellate authority order is also equally unsustainable.

21. In view of the aforesaid factors and the discloses made above, this Court is inclined to pass the following order :

(1) Both the impugned orders are quashed.

(2) Since the petitioner already attained superannuation and he has rendered 36 years of service before he was removed from service, the remaining period of service also shall be taken into account till his superannuation age as qualifying service with back wages

(3) The respondents shall accordingly calculate the backwages for the remaining period of the petitioner and pay the same to the petitioner along with retiral benefits and all other attendant benefits, taking in to account his entire service as qualifying service for all purposes.

(4) The aforesaid exercise shall be undertaken by the respondents with in a period of three months from the date of receipt of a copy of this order.

With these directions this writ petition is allowed. No costs.

सत्यमेव जयते

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

dua / tsvn

To

1. The Chief Engineer

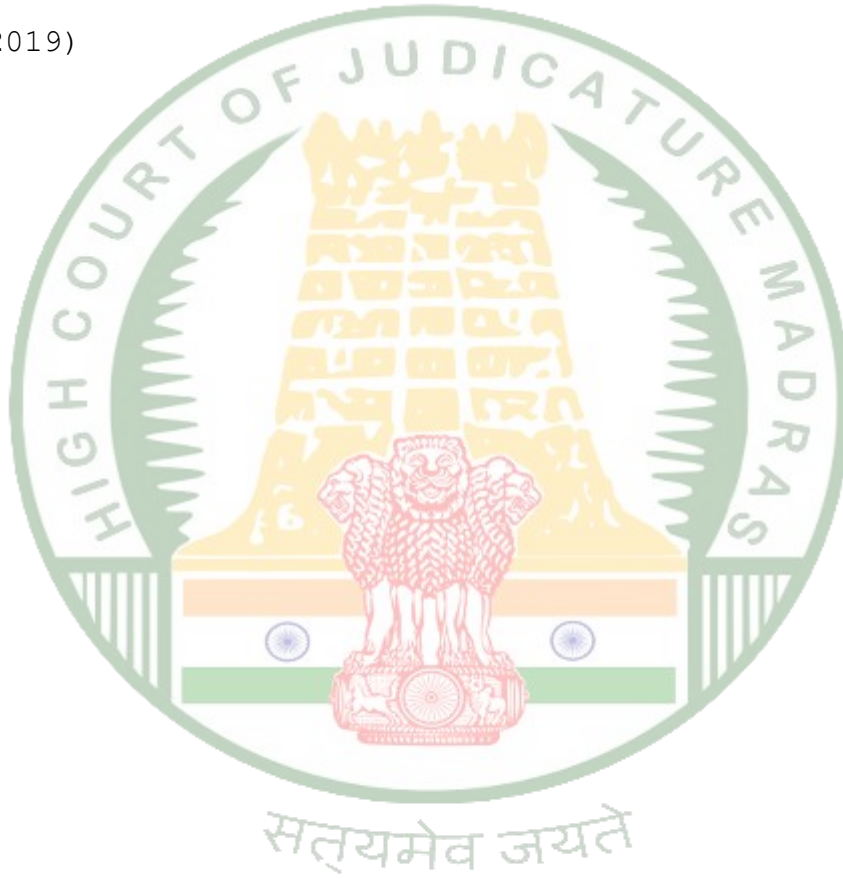
Madurai Region, Tamil Nadu Electricity Board,
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2. The Superintending Engineer
Madurai Distribution Circle,
Tamil Nadu Electricity Board, Madurai.

+2 Ccs to Mr. Hari & Guru, Advocate sr 67377.
+1 CC to Mr.P.R.Dhilip Kumar, Advocate sr 67225.

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EV(CO)
SP(07/01/2019)



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