

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1434 of 2018
and
C.M.P.No.11349 of 2018

- 1.Tamil Nadu Generation and Distribution Corporation Ltd.,
rep. by its Chairman and Managing Director,
144, Anna Salai, Chennai - 2.
- 2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai, Chennai 600 002.
- 3.The Chief Engineer (Distribution),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Chennai Region (South),
144, Anna Salai, Chennai - 2.
- 4.The Superintending Engineer,
Chennai Electricity Distribution Circle (South-II),
Tamil Nadu Generation and Distribution Corporation Ltd.,
K.K.Nagar, Chennai - 78. .. Appellants

Vs.

A.Karthikeyan

.. Respondent

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 01.06.2017, made in W.P.No.11304 of 2017.

WP.No.11304/2017:Writ petition filed under Article 226 of the constitution of India, praying for the issuance of writ of mandamus to direct the respondents to consider the petitioner representations dated 15.02.2016 19.09.2016 08.12.2016 16.12.2016 20.02.2017 12.04.2017 and 22.04.2017 and to treat the period of suspension from 28.01.2003 A.N. to 11.04.2006 A.N. as duty for all purposes to pay him pay and allowances for the period; to sanction him annual and other increments from 09.05.2003 including the special increment for Golden Jubilee Celebration; to pre-pone his date of declaration and

completion of his successful probation period of suspension and to promote him as Assistant Executive Engineer (Electrical) from 24.08.2012 on par with his immediate junior Thiru S. Muthiah with due and appropriate Seniority by placing him above Thiru.S.Muthiah in the post of Assistant Executive Engineer (Electrical) in the parcel dated 03/08/2012 and the allotment order dated 24/08/2012 issued by the second respondent in memo.no.013019/43/G1/G11/2011-108 and letter No.072015/G11/G-III/2012-1, with monetary benefits and all other consequential benefits.

For Appellants : Mr.P.R.Dhilipkumar

For Respondent : Mr.V.Ajay Khose

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Challenge in this writ appeal is to the order of the writ court dated 01.06.2017, made in W.P.No.11304 of 2017, by which the writ court, disposed of the writ petition, directing the first respondent to consider writ petitioner's various representation on merits and pass appropriate orders, in the light of Rulings 9, r/w Rule 57(B) of TNEB Service Regulations, within a period of eight weeks from the date of receipt of a copy of that order.

2. Material on record discloses that the respondent was arrested and remanded to judicial custody, by the Director of Vigilance of Anti Corruption, Chennai. Vide proceedings dated 30.01.2003, he was placed under suspension, with effect from 28.01.2003. Thereafter, a case in Crime No.1/AC/2003/CC-II, was registered by the Vigilance and Anti Corruption Wing, City Special Cell-III, Adyar, Chennai-20, against the respondent. The said case was taken cognizance by the Chief Judicial Magistrate, Chengalpat, in Special Case No.3 of 2003 under Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Vide proceedings of the Chief Engineer/Distribution, Chennai Region/South, Chennai-2, dated 07.04.2006, suspension of the respondent was revoked. Subsistence allowance of the respondent was periodically enhanced upto 75%.

4. Vide Judgment, dated 01.02.2016, Special Case No.14 of 2006, on the file of the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, ended in acquittal, on the grounds that the prosecution has failed to prove the charges levelled against the accused, beyond reasonable doubts.

5. Inasmuch as, the name of the respondent was not included in the approved panel, dated 03.08.2012, for the post of Assistant Executive Engineer (Electrical), during the

pendency of the Criminal Proceedings, consequent to acquittal, respondent has made a representation, dated 15.02.2016, to the Chairman-cum-Managing Director, TANGEDCO, Chennai, to regularise his services, restore his original seniority in the post of Assistant Executive Engineer (Electrical) and to consider promotion for the post of Assistant Executive Engineer (Electrical).

6. Contending that the representation remained unanswered, W.P.No.11304 of 2017, has been filed for a Writ of Mandamus, for a direction to the respondents (appellants herein), to consider the representations dated 15.02.2016, 19.09.2016, 08.12.2016, 16.12.2016, 20.02.2017, 12.04.2017 and 22.04.2017 of the writ petitioner and to treat the period of suspension from 28.01.2003 A.N. to 11.04.2006 A.N. as duty for all purposes, to pay him, pay and allowances for that period to sanction him annual and increments from 09.05.2003 including the special increment for Golden Jubilee Celebration; to pre-pone his date of declaration and completion of his successful probation period in the post of Assistant Engineer (Electrical), by excluding the period of suspension and to promote him as Assistance Executive Engineer (Electrical) from 24.08.2012 on par with his immediate junior Thiru.S.Muthiah, with due and appropriate seniority by placing him above Thiru S.Muthiah in the post of Assistant Executive Engineer (Electrical) in the panel dated 03.08.2012 and the allotment order dated 24.08.2012, issued by the second respondent in Memo No.013019/43/G1/G11/2011-108 and letter No.072015/G.11/G.111/2012-1, with monetary benefits and all other consequential benefits.

7. Adverting to the above submissions made by the writ petitioner, and upon hearing, the learned Standing counsel for the TANGEDCO, Chennai, vide order, dated 01.06.2007 made in W.P.No.11304 of 2017, writ court, disposed of the said writ petition directing TANGEDCO, Chennai, represented by its Chariman, to dispose of the petitioner's representations, on merits and pass appropriate orders in the light of Ruling 9, r/w Rule 57(B) of the TNEB Service Regulations, within a period of eight weeks, from the date of receipt of a copy of the order, made in the writ petition.

8. Being aggrieved by the same, appellants have come up with the instant writ appeal on the following grounds:-

"(i) Writ Court ought to have seen that the respondent was trapped and arrested by the Directorate of Vigilance and Anti Corruption while demanding and accepting bribe on 28.01.2003 in the course of public employment and he was placed under suspension immediately as his act was against the public policy and continuance in office would not be in public interest. Writ Court also ought to have considered that the respondent has indulged in the illegal act immediately after appointment in the post and even during the period he was under probation.

(ii) Writ Court ought to have considered that the respondent was charged for the serious offences under the Prevention of Corruption Act 1988 in S.C.No.14 of 2006 but acquitted on 01.02.2016 by giving him the benefit of doubt only.

(iii) Writ Court ought to have considered that the person who was charged for the grave offence of demand and acceptance of bribe in the public office and placed under suspension and as such his personal action in the having indulged in illegal activities in utter violation of the State policy/public interest resulted in temporary cessation in office, is not entitled to claim the duty pay as a matter of right during the interregnum period he was under suspension over and above the subsistence allowance paid to him.

(iv) Writ Court ought to have dismissed the writ petition on the principle of "No Work No Pay", for the interregnum period between the date of suspension and reinstatement on acquittal by the trial Court by giving him the benefit of doubt.

(v) Writ Court ought to have considered that even the acquittal of the respondent by the trial Court would not preclude the department from instituting disciplinary proceedings inasmuch as the criminal proceedings and department proceedings are distinct and different and proof of evidence are distinct and different and that restoration of seniority, etc. pending decision on the departmental proceedings would not be in public interest.

(vi) Writ Court ought to have considered that the writ petition itself was filed before the Registry on 26.04.2017 and as such ought not to have disposed of the writ petition on 01.06.2017 more particularly ought not to have disposed of the writ petition directing the department to dispose of the representations in the light of the ruling 9 under Regulation 57(B) of the TNEB Service Regulations inasmuch as the provisions contained in TNEB Service Regulations has to be read as a whole and not in isolation and also in tune with the nature of violation committed, public policy/interest suffered and that the acquittal only by giving him the benefit of doubt.

(vii) Writ Court ought to have considered that such imposing of restrictions on the department to consider in the light of a particular ruling would have way for the respondent to claim duty pay for the

interregnum period of suspension as a matter of right despite indulged in serious crime and consequently in would be a premium to a wrong doer.

(viii) Writ Court ought to have considered the position in law including the following decisions of the Hon'ble Supreme Court:-

(1) In Ramchhodji Chaturji Thakore -vs- Superintending Engineer, Gujarat Electricity Board, Himmat Nagar (Gujarat) and others reported in AIR 1997 SC 1802, the Hon'ble Supreme Court has held as follows:-

"13. The question is whether he is entitled to backwages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of backwages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging his duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own facts and circumstances. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of backwages."

(2) In Baldev Singh -Vs-Union of India and others AIR 2006 SC 531 the Hon'ble Supreme Court has held that "merely because there has been an acquittal does not automatically entitle him to get salary for the concerned period. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting of service."

(3) In State Bank of India and another -vs- Mohammed Abdul Rahim, C.A.No.5472 of 2013 dated 15.07.2013 (2013) 11 SCC 67, the Hon'ble Supreme Court has held that grant of back wages is not automatic on reinstatement and such entitlement has to be judged in the context of totality of facts of a given case - In the instant case, S.10(1)(b)(i) of Banking Regulation Act, 1949 imposed clear ban on banking company from employing or continuing to

employ a person who was convicted by criminal court of an offence involving moral turpitude. Conviction of appellant under S.498-A, Penal Code and S.4, Dowry Prohibition Act, 1961 continued to remain on record until it was reversed by appellate court. Since respondent could not have remained employed with appellant-bank during the said period, there was no question of his being entitled to salary during that period. His subsequent acquittal though obliterates his conviction, but does not operate retrospectively to wipe out legal consequences of conviction under the Act. But he was entitled to reinstatement. However, it was further held therein that such employee is entitled to wages from date of demand till date of his reinstatement.

(4) The Hon'ble Supreme Court in Babu Lal -vs- Haryana State Agricultural Marketing Board in C.A.No.884 of 2009 dated 11.02.2009 reported in 2009 (2) LLN 92 has held as follows:-

"6. A reading of the aforesaid decision of this Court would show that the authorities are vested with power to decide whether an employee at all deserves any salary for intervening period and if he does, the extent to which he deserves it. This decision also clearly suggests that there is no inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings, he should be automatically entitled to salary including all benefits for the intervening period. This decision of this Court would also show that where the acquittal of an employee in a criminal proceeding was on benefit of doubt, the employer has a right to decide whether or not such an employee deserves any salary for the intervening period.

(x) In a similar circumstances, the Hon'ble Division Bench of Madurai Bench of this Hon'ble Court in W.A.(MD) No.449 of 2017 dated 10.08.2017 held as follows:-

"5. The appellants are directed to regularize the period of suspension in view of the Judgment of acquittal. However, it is made clear that the appellant will not be entitled to any other benefits for the period from the date of suspension when he was under suspension from service till 29.01.2016. This writ appeal is partly allowed."

(xi) In W.A.No.1303 of 2017, in Tamil Nadu Electricity Board and another Vs. P.V.Sarguru, decided on 12.02.2018, in a case involving corruption in public office and acquittal in appeal, this Hon'ble Court was pleased to pass the following order, which principle will equally applicable to the case on hand to deny duty pay

during the interregnum period between the date of suspension and reinstatement on acquittal:-

"6. However, considering the facts and circumstances of the case especially, the length of service put in by the respondent without any remark but, for the present one and the acquittal of charges in the criminal proceedings, we are of the view that the the punishment of dismissal of service would be disproportionate, and therefore, we are not inclined to interfere with the order passed by the learned Single Judge, however, we feel that the order passed by the the learned Single Judge requires modification to some extent and accordingly, while upholding the order passed by the learned Single Judge, it is hereby made clear that the the respondent would be entitled to terminal benefits by calculating his service from his date of joining in the year 1967 upto 4.9.2000 alone as he was suspended on 5.9.2000 and accordingly, he would be entitled to get 75% of the pensionary benefits by calculating the same for a period from 1967 to 4.9.2000. It is needless to say that he would be entitled to future pension also on the above basis. Arrears, if any, would be calculated and disbursed to him within a period of three months from the date of receipt of a copy of this judgment."

9. On this day, when the matter came up for admission, Mr.V.Ajay Khose, learned counsel for the respondent submitted that on the direction issued by this Court in W.P.No.11304 of 2017, dated 01.06.2017, the Chief Engineer (Personnel), has issued proceedings in Memo No.013019/43/G1/G11/2011-108, dated 03.08.2012, including the name of the respondent, in the approved panel, for the post of Assistant Engineer (Electrical), with due seniority and accordingly, placed the respondent name above S.Muthiah.

10. He further submitted that on behalf of Chief Engineer/Personnel, Assistant Personnel Officer/Electrical, has also issued proceedings in Letter No.072015/G.11/G.111/2012-1, dated 24.08.2012, promoting the respondent, as Assistant Executive Engineer (Electrical).

11. According to him, the second appellant/Chief Engineer (Personnel), TANGEDCO, Chennai, has implemented the order of this Court in terms of the directions issued by this Court, taking note of the Ruling 9, r/w Rule 57(B) of the fundamental rules, which is extracted hereunder:-

"9.Where a Board employee is -

(a) Placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or

trial; or

(b) dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge and-

-the Board employee is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service."

12. He further submitted that 75% of the subsistence allowance had already been paid, during the period of suspension and what remains to be considered by TANGEDCO, is payment of remaining 25% for which, orders has to be passed by TANGEDCO.

13. Mr.P.R.Dhilipkumar, learned counsel for the appellants, acknowledges the submission that orders have been issued, for inclusion of the respondent, in the approved panel, dated 03.08.2012, for the post of Assistant Engineer (Electrical), with due seniority. He also endorses, that subsequently order promoting the respondent has been issued.

14. For brevity, proceedings dated 18.07.2017, directing inclusion of the respondent's name in the approved panel dated 03.08.2012, for the post of Assistant Engineer (Electrical), with due seniority, is extracted hereunder:-

"Consequent on the direction issued by the Hon'ble High Court/Madras in its order dated 01.06.17 made in W.P.No.11304/2017, Thiru A.Karthikeyan, (D.O.B.15.04.1973) Assistant Engineer/Electrical/SE/CEDC South II representation has been examined in detail and it has been decided to include your name in the approved panel dated 03.08.2012 to the post of Assistant Executive Engineer/Electrical with due seniority.

2. Accordingly, the name of Thiru A.Karthikeyan, (D.O.B.15.04.1973) Assistant Engineer/Electrical is hereby fixed at Sl.No.95(a) (i.e.,) below Thiru V.Rajmohan (D.O.B.05.06.1970), TTPS at Sl.No.95 and

above Thiru S.Muthiah (D.O.B.27.04.1968), Tirunelveli EDC at Sl.No.96 in the approved panel for the post of Assistant Executive Engineer/Electrical communicated vide CE/Per's No.013019/43/G.1/G.11/2011- 108, dated 03.08.2012.

3. The receipt of this memo may be acknowledged.

(BY ORDER OF THE CHAIRMAN CUM MANAGING DIRECTOR) "

15. Reading of the same, shows that the directions issued by this Court in W.P.No.11304 of 2017, dated 01.06.2017, have been implemented and with due seniority, respondent has been placed above S.Muthiah. Consequently, Chief Engineer (Personnel), Chennai, has also issued the above said letter, directing promotion. According to Mr.V.Ajay Khose, learned counsel for the respondent, the respondent has already joined the post of the Assistant Engineer in Chennai Electricity Distribution Circle (Central).

16. Mr.P.R.Dhilipkumar, learned counsel for the appellants submitted that consequent to the acquittal of the respondent from the Criminal Proceedings, it is the duty of the appellants, to regularise the period spent on suspension, but there cannot be a direction to the appellants to consider regularization, as per Ruling 9, r/w Rule 57(B) of the Fundamental Rules and placed reliance on the judgment referred to above, prayed that portion of the orders, be quashed/set aside. Ruling 9, r/w Rule 57(B) extracted supra, applies to the respondent. Subsequent orders of inclusion in the panel, placing the respondent at the appropriate seniority and promotion effected, all go to show that the appellants have treated the period spent on suspension as duty, and accordingly promoted him.

17. Though the respondent has been acquitted on benefit of doubt, vide order, dated 10.02.2016, in Special Case No.14 of 2006, on the file of the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, no departmental Proceedings have been initiated. Having ordered promotion by implementing the directions of the Writ Court, at this stage, it is not open to contend that, the department, had the rights to proceed departmentally, against the respondent, though acquitted on the benefit of doubt. Contentions on the merits of the criminal case, for disallowing monitory benefits cannot be accepted, in the ruling No. 9, r/w Rule 57(B) of TNEB Service Regulations, applicable to the case of the respondent.

18. As rightly pointed out by Mr.V.Ajay Khose, learned counsel for the respondent, now the point to be considered by the appellants is, as to how the period of suspension between 28.01.2003 to 11.04.2006, has to be regulated, as stated supra, the appellants have complied with the order dated 01.06.2017, made in W.P.No.11304 of 2017, except the above.

When ruling No.9, r/w Rule 57(B) of TNEB Service Regulations, is applicable to the case of the respondent, direction issued by the Writ Court, to take note of the same, while considering the representation of the petitioner, cannot be said to be manifestly illegal, warranting interference. Order made in W.P.No.11304 of 2017 dated 01.06.2017, is sustained. Appellants are directed to pass order on the aspect of pay and allowance, within a period of four weeks from the date of receipt of a copy of this order.

19. With the above directions, instant writ appeal is disposed of. No Costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dm

+1cc to Mr.P.R.Dhilipkumar, Advocate SR.NO.46342

+1cc to Mr.V.Ajoykhose, Advocate SR.NO.46106

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W.A.No.1434 of 2018

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