

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.01.2018

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.9495 of 2011

&

M.P.No.1 of 2011

V.N.Easwaran

.. Petitioner

versus

The Superintending Engineer,
Tamil Nadu Electricity Board,
Coimbatore Electricity Distribution Circle (North),
Coimbatore-12. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings Ku.Aa.No.015278/222/ Ni.Pi.1 / U.3 / Ko. O. Na / 2007, dated 28.05.2007 and quash the same and consequently direct the respondent to pay the backwages for the period from the date of suspension i.e., on 11.06.2004 to the date of retirement 31.08.2005 for the period 447 days.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.P.R.Dhilip Kumar

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings Ku.Aa.No.015278/222/ Ni.Pi.1 / U.3 / Ko. O. Na / 2007, dated 28.05.2007 and quash the same and consequently direct the respondent to pay the backwages for the period from the date of suspension i.e., on 11.06.2004 to the date of retirement 31.08.2005 for the period 447 days."

2. The petitioner was working as Assistant (Accounts) in the respondent Board. While he was working as Assistant, a private complaint was lodged against the petitioner under Section 138 of Negotiable Instrument Act, before the learned Judicial Magistrate VI, Coimbatore in C.C.No.772 of 2000. After the trial, the petitioner was sentenced to undergo six months simple imprisonment and Rs.30,000/- was awarded as compensation. Aggrieved by the said order, the petitioner has preferred an appeal in C.A.No.300 of 2002 and the same was confirmed before the Sessions Court. On confirmation by the appellate Court, the petitioner was terminated from service on 12.10.2004.

3. Against the order of criminal appeal, a criminal revision petition was filed before this Court in CrI.R.C.No.1303 of 2004 and this Court, on 05.03.2007, was pleased to set aside the conviction and compensation ordered by the trial Court, as confirmed by the appellate Court. Therefore, a representation was made for reinstatement and accordingly, the termination order was set aside on 28.05.2007. However, in the mean while, the petitioner had attained the age of superannuation on 31.08.2005. Therefore, he could not join the duty. Thereafter, the period of suspension/non-employment from 11.06.2004 to the date of retirement on 31.08.2005 (for a period of 447 days) was treated as leave without backwages.

4. The learned counsel for the petitioner would submit that the suspension was initiated on account of the fact that the petitioner was convicted by the trial Court and the conviction was confirmed by the Sessions Court. However, ultimately in CrI.R.C.No.1303 of 2004, this Court set aside the conviction and compensation awarded by the trial Court by order dated 05.03.2007 and thereupon, the termination order was also set aside. The learned counsel would draw the attention of this Court to clause 9 of the Board Regulations which provide for regulation of the period of suspension on the employee being acquitted by the Criminal Court. The said regulation reads as follows:

"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."

5.From the above regulation, the petitioner is entitled to monetary benefits for the period of suspension and therefore, the denial of the same is contrary to the regulation and therefore, cannot be sustainable in law.

6.In the circumstances, the denial of monetary benefits for the said period from 11.06.2004 till his date of retirement i.e.31.08.2005, is put to challenge in the present writ petition.

7.Upon notice, Mr.P.R.Dhilip Kumar, the learned Standing Counsel entered appearance for the respondent and made his submissions.

8.However, as regards the applicability of Regulation 9 in the case of the petitioner cannot be disputed. In fact, the learned counsel for the petitioner would draw the attention of this Court to the order passed by the learned Single Judge of this Court in W.P.(MD).No.18764 of 2016 dated 30.09.2016, on the basis of regulation - 9 of the Service Regulations and directing the respondents to consider the representation of the petitioner therein in the light of the said regulation.

9.Even this Court has recently passed order on similar issue allowing the said claim in other writ petition.

10.Therefore, the issue raised in the writ petition is squarely covered by the above said regulation for which, learned counsel for the respondent cannot have any objection. In the said circumstances, the impugned proceedings in Ku.Aa.No.015278/222/ Ni.Pi.1 / U.3 / Ko. O. Na / 2007, dated 28.05.2007 of the respondent is set aside in so far as it denies the monetary benefits for the period of suspension. The respondent is directed to pass orders regulating the period of suspension by granting full monetary benefits in terms of Regulation 9 stated supra. The said order is directed to be passed by the respondent within a period of eight weeks from the

date of receipt of a copy of this order.

11.With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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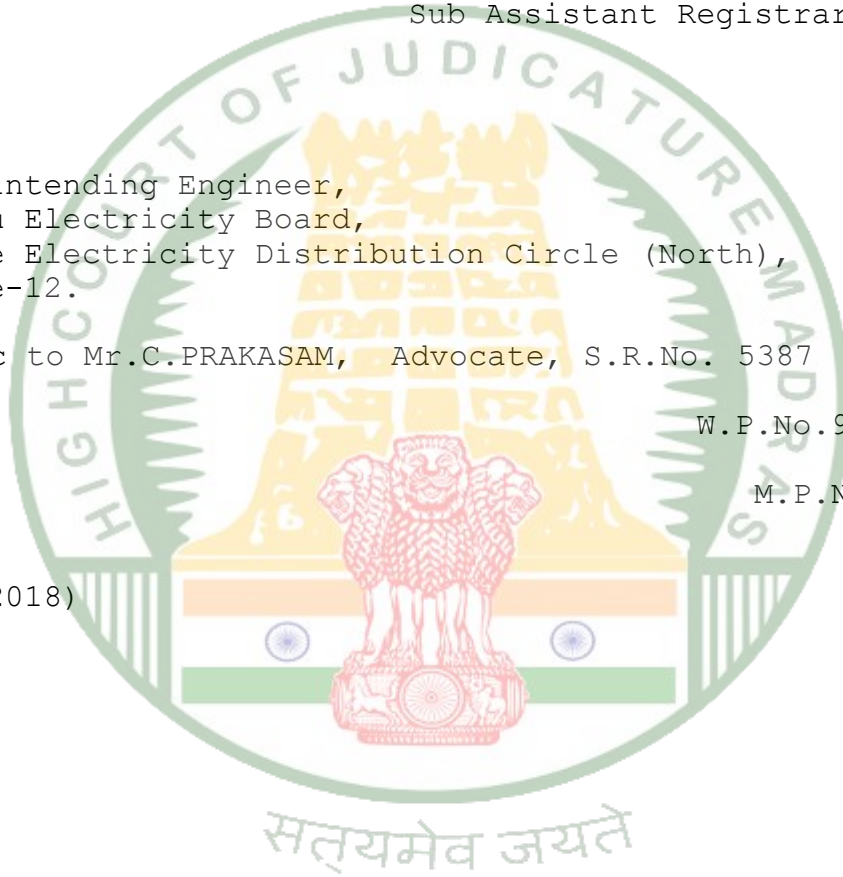
To

The Superintending Engineer,
Tamil Nadu Electricity Board,
Coimbatore Electricity Distribution Circle (North),
Coimbatore-12.

+1cc to Mr.C.PRAKASAM, Advocate, S.R.No. 5387

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KAN(CO)
TR(02/02/2018)



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