

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24206 of 2007

P.Mahendran

... Petitioner

Vs.

1.The Chief Engineer
North Chennai Thermal Power Station
Tamil Nadu Electricity Board
Chennai-600 120.

2.The Superintending Engineer (P & A)
North Chennai Thermal Power Station
Tamil Nadu Electricity Board
Chennai-600 120.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records made in the impugned order in Memo No.4621/Ni.Pe3/Ni.U.(1)/Ko.Kattu/2004-5 dated 25.06.2007 passed by the 1st respondent and to quash the same and to direct the respondents to pay the balance of wages to the petitioner for the period under suspension and refund the amount of Rs.9,400/- to the petitioner recovered from the salary.

For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mr.P.R.Dhilip Kumar

O R D E R

The petitioner has filed the present writ petition challenging the impugned order, dated 25.06.2007 passed by the 1st respondent, wherein and whereby the subsistence allowance paid to the petitioner from 19.02.2000 and 12.03.2001 was ordered to be recovered.

2. The case of the petitioner is that he studied upto 8th standard. He was appointed as Helper in Regular Work Establishment with effect from 27.10.1999. Subsequently, the petitioner was asked to produce the certificate with

regard to his educational qualification. Accordingly, the petitioner produced his record sheet dated 09.09.1999 issued by the Headmaster, Government Welfare Middle School Vilangadupakka, Chennai. However, on verification, the authorities came to know that the certificate produced by the petitioner is bogus certificate, disciplinary proceedings was initiated against the petitioner and he was placed under suspension from 19.02.2000. The petitioner gave his explanation. Thereafter, the petitioner was dismissed from service on 13.03.2001 by the 2nd respondent. Challenging the dismissal order, the petitioner had earlier filed a writ petition in W.P.No.6932 of 2002 and this Court by order dated 20.06.2003 allowed the said writ petition and the order of dismissal passed by the respondents was set aside by this Court. Pursuant to the same, the petitioner was reinstated into service on 11.08.2003. Thereafter, the impugned recovery order has been passed by the respondents. Aggrieved over the same, the present writ petition has been filed by the petitioner.

3. Heard both sides and perused the materials available on record.

4. It is seen that the petitioner was placed under suspension from service from 19.02.2000 and 12.03.2001. Thereafter, the enquiry was conducted and the petitioner was dismissed from service on 12.03.2001 by the respondents. Earlier, the petitioner had filed a Writ Petition, challenging the order of dismissal passed by the first respondent before this Court by way of filing W.P.No. 6932 of 2002. This Court by its order dated 20.06.2003, allowed the said writ petition. Pursuant to the same, the petitioner was reinstated into service with effect from 11.08.2003. However, thereafter the impugned order dated 25.06.2007 has been passed by the 1st respondent for recovery of the subsistence allowance paid to the petitioner during his suspension period.

It is useful to refer the order of this Court in W.P.No.6932 of 2002 as follows:

"13. For the aforesaid reasons, while quashing the order of dismissal, it is observed that in case it is felt necessary for the Board, further enquiry can be held by examining the Headmaster and calling upon the school authorities to produce all the relevant documents. The respondents are directed to reinstate the petitioner in service. Entire period should be counted towards service and seniority, etc. However, in the peculiar circumstances of the case,

back wages shall not be paid to the petitioner for the period during which he has not worked. The petitioner should be reinstated in service within a period of thirty days from the date of communication of this order."

5. It is seen that this Court while allowing the writ petition in W.P.No.6932 of 2002, by order dated 20.06.2003, has made it clear that the backwages alone shall not be paid to the petitioner for the period during which he has not worked. This Court in its order had not observed anything with regard to the payment of subsistence allowance to the petitioner. Under such circumstance, the impugned recovery order passed by the 1st respondent cannot be sustained. The petitioner is entitled to the subsistence allowance during the period of suspension, under Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act. The impugned recovery order is liable set aside.

6. With the above observations, this writ petition is allowed and the impugned order is set aside. The amount recovered from the petitioner towards subsistence allowance, shall be refunded to him within a period of six weeks from the date of receipt of a copy of this order. No costs.

gmd

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Engineer
North Chennai Thermal Power Station
Tamil Nadu Electricity Board
Chennai-600 120.

2.The Superintending Engineer (P & A)
North Chennai Thermal Power Station
Tamil Nadu Electricity Board
Chennai-600 120.

+1 cc to Mr.S.N.RAVICHANDRAN Advocate SR.NO. 46741

+1 CC TO MR.P.R.DHILIPKUMAR Advocate SR.NO. 47026

W.P.No.24206 of 2007

PVS (CO)

ASK(21/08/2018)