

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.34679 of 2012

R.Ganesan

... Petitioner

Versus

1) The Chief Engineer, Personnel,
Tamil Nadu Electricity Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai,
Chennai - 600 002.

2) The Additional Chief Engineer,
Salem Electricity Distribution Circle,
TamilNadu Electricity Generation and Distribution
Corporation Ltd.,
Salem.

3) The Executive Engineer,
Operation & Maintenance, South,
Salem Electricity Distribution Circle,
Tamil Nadu Electricity Generation and Distribution
Corporation Ltd.,
Salem - 2.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records relating to the 2nd respondent's proceedings made in Proceeding No.: ACE/SEDC/ADM III/ A.4/F DKT / C. No.1141 / 2012, dated 29.09.2012 and quash the same as illegal and consequently direct the 1st and 2nd respondents to disburse the monetary benefitis from 13.08.02 to 28.02.2011 to the petitioner with in time frame

For Petitioner : Mr.P.Arumugarajan
For Respondents : Mr.P.R. Dilipkumar

ORDER

The petitioner has approached this Court seeking the following prayer :

To issue Writ of Certiorarified Mandamus
calling for the records relating to the 2nd

respondent's proceedings made in Proceeding No.: ACE/SEDC/ADM III/ A.4/F DKT / C. No.1141 / 2012, dated 29.09.2012 and quash the same as illegal and consequently direct the 1st and 2nd respondents to disburse the monetary benefit from 13.08.02 to 28.02.2011 to the petitioner.

2. The petitioner was appointed as Helper in the respondent - Board on 17.07.1987. Thereafter, he was promoted to the post of Commercial Assistant and further he was holding the post of Foreman Special grade. While, he was working as Commercial Inspector, on 13.08.2002, he was implicated in the criminal case under Section 7 of the Prevention of Corruption Act. He was therefore placed under suspension on 13.08.2002 by the respondent - Board. The criminal trial ended in Conviction and the same was challenged before this Court in Criminal Appeal No.405 of 2007. This Court by judgment dated 17.02.2010 allowed the appeal and set aside the conviction and sentence imposed by the trial court. Thereafter, the petitioner submitted a representation on 19.03.2010 to the second respondent requesting to re-instate him into service, since he was originally dismissed from service on 04.06.2007, on the basis of trial Court conviction, which was set aside by the appellate Court. However, his request was not considered and therefore, the petitioner was constrained to approach this Court in W.P. No.8370 of 2010. This Court disposed of the writ petition on 30.04.2010 directing the second respondent to pass orders on the representation of the petitioner dated 19.03.2010. Thereafter, in pursuance of the directions of this Court on the aforesaid writ petition, the petitioner was re-instated into service as Commercial Inspector by Order dated 28.02.2011. Consequently, the third respondent by order dated 22.07.2011 has regularised the service of the petitioner from the date of suspension from 13.08.2002 F.N. to 05.01.2006 F.N. and from the date of dismissal, dated 04.06.2007 F.N. to 28.02.2011 F.N., even though service has been regularised, no monetary benefits have been paid. This order of the 3rd respondent was passed purported to be in pursuance of the Regulation 9 of Tamil Nadu Electricity Board Service Regulations. The relevant portion of the Regulations is produced 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.

3. In spite of the order of payment of all entire monetary benefits during the period of suspension and from the date of dismissal till the date of re-instatement, no monetary benefits have been paid to the petitioner. Therefore, the petitioner was once again constrained to file W.P. No.10338 of 2012 seeking direction to disburse the monetary benefits due from 13.08.2002 to 28.02.2011. The writ petition was disposed of on 04.06.2012, directing the authority to consider his representation. However, the direction was not complied with and consequently a Contempt application was filed in Contempt Petition No.1454 of 2012. When the Contempt petition was taken up for hearing, the Court was informed that an order was passed in compliance with the direction, on 29.09.2012 and a copy of which would be communicated to the petitioner in due course. Recording the said submission, the Contempt Petition is stated to be closed.

4. While matters thus, the second respondent has passed an impugned order, on 29.09.2012, stating that the petitioner was not entitled to monetary benefits for the relevant period as originally ordered by the 3rd respondent vide proceedings dated 22.07.2011. The said proceedings is put to challenge in this Writ Petition.

5. Upon notice, Mr.P.R.Dilipkumar, learned counsel entered appearance and filed counter affidavit.

6. The learned counsel appearing for the petitioner would submit that Regulation 9 as extracted above is very clear that if an employee is acquitted in a Criminal case and the period of non employment has to be regulated with full monetary benefits, as provided for in the said regulation. He would draw the attention of this Court, wherein similar circumstances, one employee Saravanan, who was identically placed was granted full

monetary benefits, as being stated vide the Board proceedings dated 09.03.2007. He would also draw the attention of this Court to the decision of the learned Single Judge passed in W.P. No.18764 of 2016, dated 30.09.2016, in which the Court had relied upon the same Regulation 9 and directed the authority to dispose of the representation of the petitioner therein, in terms of the said Regulation. The learned counsel would therefore contend that the claim of the petitioner was rightly recognised and an order was also passed by the 3rd respondent on 22.07.2011, but unfortunately, the same was revised by the

2nd respondent vide impugned proceedings without reference to the Regulation 9 of the Tamil Nadu Electricity Board Service Regulations.

7. This Court, after due consideration of the circumstances, is in agreement with the contentions raised on behalf of the petitioner that the issue on hand was fully covered under Regulation 9, which is extracted supra. The petitioner having been acquitted in the Criminal Appeal by this Court, is entitled to the benefit of Regulation 9 and this was recognised and orders were passed on 22.07.2011 by granting all monetary benefits. While so, this Court does not understand as to the basis of the impugned order passed by the second respondent revising the order passed by the 3rd respondent to the detriment of the writ petitioner. When the regulation as such is very clear and which regulation has been implemented in respect of similarly placed claimants, there cannot be any justification for depriving the benefits to the petitioners herein.

8. In the said circumstances, the petitioner has made out a clear case for grant of relief. Therefore, the impugned order proceedings in ACE/SEDC/ADM III/A.4/F.DKT/C. No.1141 of 2012, dated 29.09.2012 is set aside and the respondents are directed to give effect to the order passed by the 3rd respondent on 22.07.2011, within a period of eight weeks from the date of receipt of the copy of this order. With these directions, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi2

To :

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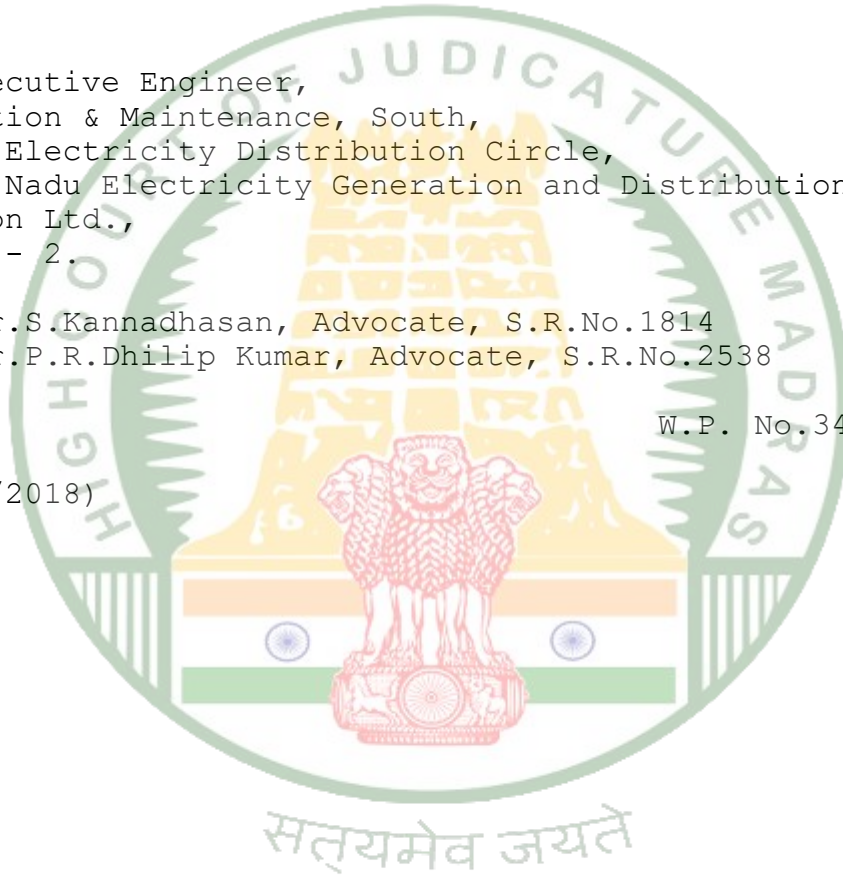
+1cc to Mr.S.Kannadhasan, Advocate, S.R.No.1814

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No.2538

W.P. No.34679 of 2012

NM(CO)

RRK(31/01/2018)



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