

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.1645 of 2018

ORDER :

Heard the counsel for petitioner, and Sri M. Ravindra, learned Standing Counsel for Andhra Pradesh Eastern Power Distribution Company Limited (A.P.E.P.D.C.L.), for respondents.

2. In this Writ Petition the petitioner has assailed proceedings dt.07.08.2015 of the 2nd respondent.

3. It is not in dispute that disciplinary proceedings were initiated against petitioner in the year 2001 when he was working as Assistant Lineman, and initially the 3rd respondent imposed punishment of stoppage of increments with cumulative effect on the petitioner.

4. The petitioner questioned the same by way of departmental appeal before the 2nd respondent.

5. The 2nd respondent passed order on 05.07.2003 appointing a fresh enquiry officer to inquire into the allegations leveled against the petitioner. Thus, by implication, the 2nd respondent is deemed to have set aside the order dt.16.08.2002 of the 3rd respondent.

6. The petitioner assailed the said order dt.05.07.2003 of the 2nd respondent in WP.No.25738 of 2003 before this court.

7. The said Writ Petition was allowed on 22.04.2010, and the order dt.05.07.2003 of the 2nd respondent was set aside; and taking

note of the fact that the petitioner retired from service on 31.03.2009, this Court directed that petitioner be paid retirement benefits.

8. Thereafter, the petitioner's retirement benefits were settled.

9. Thereupon, when petitioner approached the 3rd respondent for release of the four increments which had been withheld pursuant to the earlier order of the 3rd respondent on 16.08.2002, an order was passed on 28.09.2013 by the 3rd respondent releasing the said increments.

10. However, the 2nd respondent passed the impugned order on 07.08.2015 setting aside the order dt.28.09.2013 on the ground that the 3rd respondent cannot review his earlier order, and that the petitioner cannot claim advantage of irregular orders issued by the 3rd respondent.

11. Assailing the same, the present Writ Petition is filed.

12. The counsel for petitioner contended that petitioner preferred an appeal before the 2nd respondent challenging the order dt.16.08.2002 of 3rd respondent, and the 2nd respondent had appointed afresh an enquiry officer on 05.07.2003 thereby setting aside the order of 3rd respondent dt.16.08.2002; and once the said order is set aside *in toto* by this Court in WP.No.25738 of 2003 on 22.04.2010, the four increments which had been withheld earlier ought to be released to him and were rightly released by the 3rd respondent in his order dt.28.09.2013; but the 2nd respondent on a wrong application of law

had refused to grant such relief by setting aside the order dt.28.09.2013 of the 3rd respondent.

13. It is the contention of the counsel for petitioner that there was a merger of the original order dt.16.08.2002 of the 3rd respondent with the order dt.05.07.2003 of the 2nd respondent; and once the order dt.05.07.2003 of the 2nd respondent has been set aside *in toto* by this Court, the order dt.16.08.2002 of the 3rd respondent is also deemed to be set aside, and petitioner would be entitled to four increments which had been withheld earlier.

14. Sri M. Ravindra, learned Standing Counsel for Andhra Pradesh Eastern Power Distribution Company Limited (A.P.E.P.D.C.L.), for respondents, however contended that though the order dt.05.07.2003 of the 2nd respondent has been set aside by this Court in WP.No.25738 of 2003, the order dt.16.08.2002 of the 3rd respondent has not been set aside by this Court, and consequently the order dt.16.08.2002 imposing punishment of withholding four increments on petitioner continues to be in force. He also contended that there is no merger of the order dt.16.08.2002 passed by the 3rd respondent with the order dt.05.07.2003 of the 2nd respondent.

15. Another plea taken is that there are laches on the part of petitioner in having approached this Court six years after the order was passed on 28.09.2013 by the 3rd respondent. It is further contended that 3rd respondent had acted in violation of Regulation 20

of the Discipline and Appeal Regulations of the A.P.S.E.B., and adopted by the 1st respondent since the 3rd respondent had no power of review.

16. I have noted the contentions of both sides.

17. Admittedly, an order dt.16.08.2002 passed by 3rd respondent imposing punishment of withholding four increments on petitioner. This was challenged by petitioner by way of appeal before the 2nd respondent; and the 2nd respondent then passed the order on 05.07.2003 appointing another enquiry officer to conduct the enquiry. By doing so, the 2nd respondent is deemed to have impliedly set aside the order dt.16.08.2002 of the 3rd respondent. Also, there would be a merger of the order dt.16.08.2002 passed by 3rd respondent with the order dt.05.07.2003 of the 2nd respondent.

18. When the order dt.05.07.2003 passed by 2nd respondent was questioned in this Court, this Court set aside the order dt.05.07.2003 *in toto*. There was no remand to the 2nd respondent again to pass a fresh order. So, once the order dt.05.07.2003 was set aside by this Court, not only the said order but the earlier order dt.16.08.2002 of the 3rd respondent, is also deemed to be set aside. The order dt.16.08.2002 cannot be said to have survived.

19. The counsel for respondents however contended that the petitioner had himself pleaded that he was punished once in the order dt.16.08.2002 of the 3rd respondent and took a plea that a second

enquiry cannot be done, and therefore, he is precluded from seeking the four increments which were withheld in the order dt.16.08.2002, passed by the 3rd respondent.

20. I am unable to accede to this contention for the reason that in WP.No.25738 of 2003 this Court had set aside the order dt.05.07.2003 passed by the 2nd respondent.

21. Since the order dt.16.08.2002 merged in the earlier order dt.05.07.2003, both of them are deemed to be set aside when the said Writ Petition No.25738 of 2003 was allowed. The respondents have not assailed the order passed on 22.04.2010 in WP.No.25738 of 2003, and have accepted it. This being the position, the respondents are not entitled to contend that petitioner should be denied four increments which were earlier withheld pursuant to the order dt.16.08.2002.

22. Coming to the question of laches, admittedly the Writ Petition No.25738 of 2003, filed by petitioner against the order dt.05.07.2003 of the 2nd respondent, came to be decided on 22.04.2010. Only after the said judgment was passed, the cause of action accrued to petitioner to seek the four increments which were withheld. It was only thereafter that petitioner approached the 3rd respondent seeking release of the four increments which have been withheld, and on 28.09.2013 the 3rd respondent accepted his plea.

23. In my opinion, the 3rd respondent was correct in holding that the petitioner is entitled to four increments which had been withheld and

is entitled to the same. The 2nd respondent however set aside the order of the 3rd respondent on 07.08.2015 wrongly holding that the 3rd respondent was reviewing his earlier order.

24. Also, in my opinion, there is no review power being exercised by the 3rd respondent since the original order passed by the 3rd respondent already stood set aside not only in the order dt.05.07.2003, passed by the 2nd respondent, but also by the order dt.22.04.2010 passed in WP.No.25738 of 2003.

25. In this view of the matter, the Writ Petition is allowed. The order dt.07.08.2015, passed by the 2nd respondent, is set aside. The respondents are directed to implement the order dt.28.09.2013 of the 3rd respondent within a period of three (03) weeks from the date of receipt of copy of the order. No order as to costs.

26. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.03.2018

Ndr/*