

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No. 49 of 2013
and
M.P. No. 1 of 2013

C.P. Subburathinam ... Appellant/ Petitioner

Vs

1. Tamil Nadu Electricity Board,
Rep. By its Chairman,
N.P.K.R.R. Malaigai
800 Anna Salai,
Chennai - 600 002.

2. Tamil Nadu Electricity Board,
Rep. By its Secretary,
N.P.K.R.R. Malaigai
800 Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
South T.N.E.B.
Coimbatore.

... Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 27.07.2012 passed in W.P.No. 19836 of 2012.

Prayer in W.P.No.19836 of 2012: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in Proceedings No.27 dated 5.5.2012 and quash the same and further direct the respondents herein to disburse the service benefits of Late K.Ponnuswamy with all attended benefits till the date of superannuation and further direct the respondent to pay the pensionary benefits to this petitioner

For Appellant .. Mr.K. V. Sajeev Kumar
for M/s.Royal Law Associates

For Respondents.. Mr. P.R. Dhilipkumar

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This writ appeal is directed against the order of the learned single Judge dated 27.07.2012 made in W.P.No.19836 of 2012.

2. Pursuant to the two charges framed against the husband of the appellant in demanding illegal gratification, an order of punishment of dismissal from service was passed. It was concurred with by the appellate authority. A challenge was made before this Court on the earlier occasion. This Court, after holding that a reasoned order is the heart and soul of a decision made involving civil consequence, set aside the appellate authority's order and remitted it back to him. The following is the operative portion of the order passed in W.P.No.5656 of 2000 dated 15.12.2009:

25. The question as to whether the proceedings initiated against the petitioner was on the basis of sufficient materials was the principal issue before the Appellate Authority. The said authority being the statutory authority empowered to hear the appeal, was expected to consider the contentions raised by the petitioner point by point and was obliged to give independent findings with reasons. Unfortunately no such attempt was made by the Appellate Authority.

26. The punishment imposed on the petitioner was the maximum punishment. The petitioner was in the service of the Electricity Board for a period of 35 years as on the date on which he was removed from service. He was having only 4½ years of remaining service. The petitioner was not involved in any other misconduct earlier and his service record was perfect. Even according to the respondents, the petitioner was having a clear record. When misconduct was alleged against such an employee, the Disciplinary Authority as well as the Appellate Authority were bound to consider the entire facts. The regulation clearly provides for considering the gravity of the misconduct, the past record of the delinquent and any other extenuating or aggravating circumstances. When the Disciplinary Authority failed to consider such basic facts, the burden was all the more on the Appellate Authority. However, the appeal was rejected in a simple manner without conducting an exercise in the matter to find out as to whether there were

materials to support the finding, and as to whether the punishment was proportionate to the charges framed against the petitioner. Therefore, I am of the view that the matter requires fresh consideration by the Appellate Authority.

27. In the result, the impugned order dated 12.11.1999 is set aside and the matter is remitted to the Appellate Authority for fresh consideration. The Appellate Authority is directed to give an opportunity of hearing to the petitioner and to pass appropriate orders on merits and as per law and in the light of the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this Order.

28. The writ petition is allowed as indicated above. No costs.

3. In the meanwhile, the appellant's husband died. In fact, he died even at the time of passing the order referred supra by the learned single Judge. The appellate authority once again reiterated the earlier order without keeping in mind the observations made by the learned single Judge in the order referred supra. Therefore, the order passed was neither a reasoned one nor the doctrine of proportionality in the light of the regulation was considered. The charges themselves would indicate that there was a demand but not receipt. Challenging the same, another writ petition was filed. The learned single Judge dismissed the writ petition and hence the appeal.

4. Learned counsel appearing for the appellant submits that the learned single Judge was wrong in not holding that the appellate authority did not carry out the directions issued on the earlier occasion, which is binding on the parties. Neither any personal hearing was given nor a reasoned order was passed while taking into consideration the relevant materials including the doctrine of proportionality which should be done by taking into consideration the past conduct. Therefore, the order of the learned single Judge requires interference.

5. Learned counsel appearing for respondents 1 to 3 submits that inasmuch as the finding having been rendered on facts, no interference is required.

6. We find some force in the submission made by the learned counsel appearing for the appellant. The appellant merely seeks to substitute herself in the place of her deceased husband. Therefore, the appellate authority ought to have issued notice

to the appellant, hear her part of the case and thereafter pass a reasoned order. It has been indicated already that the appellate authority while exercising statutory power has to give reasons. Unfortunately, it was not done so.

7. In such view of the matter, we are inclined to set aside the order of the appellate authority and the order of the learned single Judge. Consequently, the order of the appellate authority is set aside and the matter is remitted back to him for fresh consideration. The appellate authority will have to issue fresh notice to the appellant, hear her case and thereafter pass a reasoned order in the light of the earlier order passed in W.P.No.5656 of 2000 dated 15.12.2009, which has become final as against respondents 1 to 3. Needful will have to be done within a period of twelve weeks from the date of receipt of a copy of this order.

8. The writ appeal is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R. Malaigai
800 Anna Salai,
Chennai - 600 002.
2. The Secretary,
Tamil Nadu Electricity Board,
N.P.K.R.R. Malaigai, 800 Anna Salai,
Chennai - 600 002.
3. The Superintendent Engineer,
South T.N.E.B.
Coimbatore.

+1 cc to M/s.Royan Law Associates, Advocate, S.R.No.2997

W.A.No. 49 of 2013

MR(CO)
SSM(13/02/2019).