

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.11552 of 2007

T.P.Krishnan

... Petitioner

Vs

Tamil Nadu Electricity Board
rep. by the Superintending Engineer,
Vellore Electricity Distribution Circle,
Vellore-6.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to pay the petitioner Rs.1,63,312/- being interest at 12% p.a. for the belated payment of Gratuity and Provident Fund payable from 30.4.1998 to September, 2006 when the amounts were actually paid together with 12% interest p.a. from September, 2006 till the date of actual payment.

For Petitioner : Mr.Ram Siddhartha
for M/s.Row & Reddy

For Respondent: Mr.M.Fakkir Mohideen

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondent to pay the petitioner Rs.1,63,312/- being interest at 12% p.a. for the belated payment of Gratuity and Provident Fund payable from 30.4.1998 to September, 2006 when the amounts were actually paid together with 12% interest p.a. from September, 2006 till the date of actual payment.

2. Learned Counsel appearing for the petitioner submitted that the petitioner joined the respondent Board on 17.01.1965 and retired from service as Store Keeper Grade I on 30.04.1998. Since a theft had taken place on 05.07.1983 at Stores Godown at Udumalpet, when the petitioner was in-charge, the stocks were weighed and found a shortage of 3756.5 kilos of materials worth Rs.34,000/-. It is stated that though the petitioner came to

know about the incident on the next day, however, he informed the same to the Stores Officer immediately. Only on his information, the Stores Officer, lodged a police complaint. But, a charge sheet has been issued to the petitioner on 3.4.1984 followed by additional charge sheet dated 4.7.1984 regarding the shortage of goods for which the petitioner also was subjected to face a disciplinary proceedings. Finally, the disciplinary authority, on completion of the enquiry, found him guilty under the following charges:

Charge No.B :

That the petitioner has failed to make frequent periodical verification of the materials entrusted to him as per Board's instructions and if frequent periodical verification has been done, the loss would have been brought to notice earlier and the loss could have been avoided;

Charge No.C :

That the petitioner has failed to maintain the tally register for the materials indicating the number of coils, their weight, source of receipt and date of receipt etc. as per Board's instructions issued from time to time relating to the loss of materials (Standing Order 19(ix); and

Charge No.E :

That the petitioner has failed to properly maintain the yard materials register and failed to conduct daily verification of the materials stores in the out door yard resulting in the loss of the Board.

However, he was found not guilty of Charges A, D, F and G. But the Disciplinary Authority, taking note of various aspects, namely, charge sheet, explanation offered by the petitioner, the finding of the Enquiry Officer, disagreed with the finding of the Enquiry Officer and finally imposed a punishment order to recover of a sum of Rs.87,846.20 from the pay and other dues of the petitioner and subsequently, they have also recovered a sum of Rs.27,000/-.

3. The learned Counsel for the petitioner further submitted that the petitioner finding infirmity in passing the order of recovery that no notice was issued while differing from the report of the Enquiry Officer filed a Writ Petition in W.P.No.14204/1991 challenging the order of punishment and also for refund of Rs.27,000/- already recovered from him. The petitioner also filed a Writ Petition in W.P.No.10117/1992 with a prayer for granting interim injunction to include his name in the promotional panel for the year 1990. On 09.10.1991, while admitting the writ petition, an order of injunction restraining the respondents from recovering the amount from his salary was granted and subsequently the writ petition was allowed by order dated 4.1.2000 on the ground that the respondents failed to issue any notice before disagreement with the findings of the Enquiry Officer and remanded the matter back to the appellate

authority for reconsidering the matter afresh after affording an opportunity to the petitioner.

4. The learned Counsel for the petitioner also submitted that the petitioner again filed W.A.No.1583/2000 questioning the correctness of the order dated 04.01.2000, remanding the matter back in W.P.No.14204/1991. When the Writ Appeal was taken up on 26.6.2006, a Division Bench of this Court, after taking note of the fact that the petitioner retired from service on 30.04.1998 on reaching the age of superannuation, further, he was not issued with a notice while the disciplinary authority differed from the report of the Enquiry Officer and a recovery of a sum of Rs.27,000/- from the petitioner, has directed the respondent Electricity Board not to recover any further amount from the appellant/petitioner herein as a sum of Rs.27,000/- has already been recovered from him towards the alleged loss suffered by the Board, also directed to pay all the terminal benefits within a period of eight weeks. Accordingly, the respondent Board has settled the retiral benefits amounting to Rs.1,60,109/- on 13.09.2006. However, according to the petitioner, since as per the payment of Gratuity Act, any belated payment of Gratuity would attract interest, the respondent Board is liable to pay interest at 12% p.a. Hence the present Writ Petition.

5. A counter affidavit has been filed by the respondent.

6. Mr.M.Fakkir Mohideen, learned Standing Counsel for the respondent submitted that since the order made in W.A.No.1583/2000 dated 26.06.2006 does not stipulate any payment of interest and the same is also not pleaded by the petitioner, he is estopped from claiming interest. Further, B.P. (Ch). No.11, Secretariat Branch dated 22.1.1990 disables the petitioner from making any claim of interest since departmental proceedings were initiated against him by the Board besides the writ petitions filed by him were also pending before this Court. Therefore, the writ petition is liable to be dismissed, it is pleaded.

7. Under this background, now the question before this Court is whether the respondent Electricity Board is liable to pay interest on the belated payment of Rs.1,60,109/- or not.

8. Admittedly, when the case of the petitioner was considered by the Division Bench of this Court in W.A.No.1583/2000 on 26.6.2006, it was held that ends of justice would be met if respondent Board is directed not to recover any further amount from the appellant as a sum of Rs.27,000/- has already been recovered from him towards the alleged loss suffered by the Board. Consequently, further direction was also issued to the respondent Electricity Board to settle the entire

pensionary benefits of the appellant within a period of eight weeks from the date of receipt of a copy of that order. So, as on the date of passing the order, namely, on 26.6.2006, the respondent Electricity Board had to pay a sum of Rs.1,60,109/- to the petitioner. Therefore, after deducting a sum of Rs.27,000/-, the balance amount should have been paid. Accordingly, the respondent Board has paid the entire retiral benefits within a period of eight weeks.

9. Now the grievance of the petitioner is that the amount liable to be recovered from the petitioner as on the date of retirement i.e. on 30.4.1998 was only Rs.60,846/- as though the recovery order directed recovery of Rs.87,846/- but they had wrongly retained more than Rs.60846/- namely, Rs.99,263/-. Therefore, this Court finds no hesitation to state that the Respondent Board has wrongly retained Rs.99,263/- for a period of 8 ½ years. Hence, interest at the rate of 12% at Rs.99,263/- shall be calculated and paid. In this regard, a memo of calculation filed by the petitioner shows as follows:

Date of Retirement	: 30.04.1998
Terminal benefits due on that date	: Rs.1,60,109
Amount to be recovered	: Rs. 87,846
Amount recovered as on that date	: Rs. 27,000
Balance amount to be recovered	: Rs. 60,846
Amount to be paid	: Rs. 99,263
(Rs.1,60,109/- - Rs.60,846/-)	
Interest for Rs.99,263/-	: Rs.1,01,248.26p
(Rs.99,236 x 12/100 x 8.5)	

10. Therefore, the respondent Electricity Board is directed to pay a sum of Rs.1,01,248.26p (Rupees One Lakh One Thousand Two Hundred and Forty Eight and paise Twenty Six Ony) to the petitioner, within a period of four weeks from the date of receipt of a copy of this Order, failing which, the respondent Board has to pay the interest at the rate of 18% p.a. till the date of payment.

11. With the above observation and direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

tsi

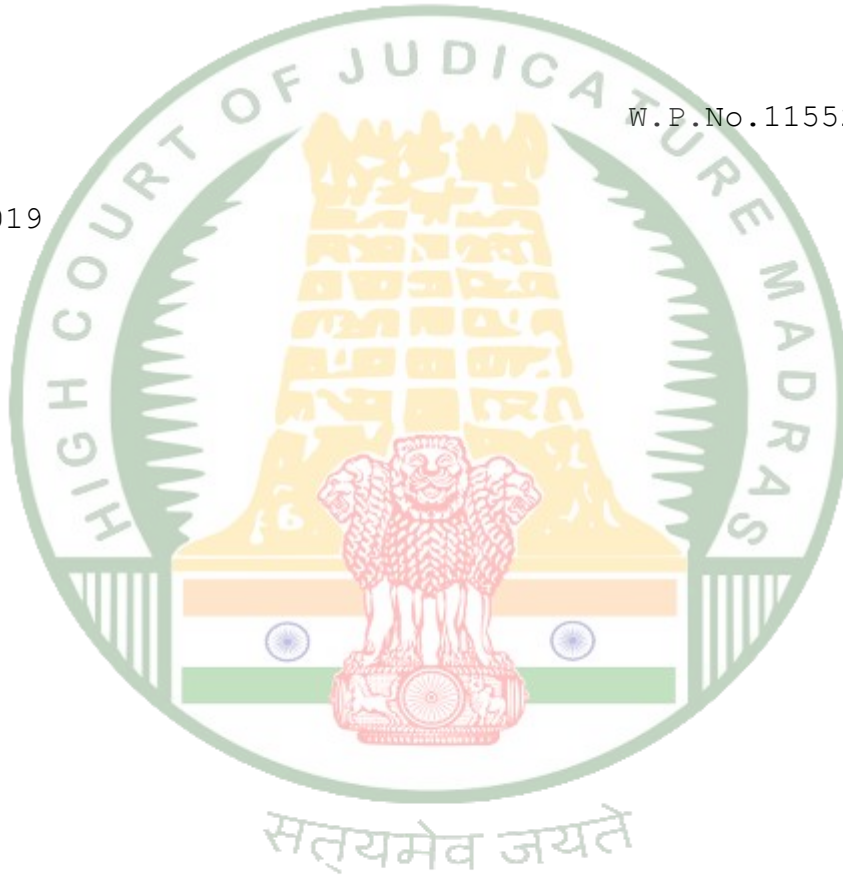
To

The Superintending Engineer,
Tamil Nadu Electricity Board
Vellore Electricity Distribution Circle,
Vellore-6.

+lcc to Mr.M.Fakkir Mohideen, Advocate Sr.31502
+lcc to M/S.Row & Reddy, Advocate Sr.31566

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