

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15244 of 2009

D.Vasanthakumar

...Petitioner

Vs

1. Anna University,
Chennai-600 025
rep. by the Registrar
2. The Tamil Nadu Electricity Board,
Anna Salai, Chennai-2
rep. by its Chairman
3. The Chief Engineer,
Non-conventional Energy Sources,
Office of the Chief Engineer,
Tamil Nadu Electricity Board
(Technical Branch),
Chennai-2.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 3rd respondent in Memo No.002427/565/N.10/N.101/2009 dated 23.07.2009, quash the same and direct the respondents 1 and 2 to pay the arrears of salary due to the petitioner, settle the petitioner's terminal benefits giving the petitioner appropriate scale of pay, granting the petitioner promotion to which the petitioner was eligible.

For Petitioner : Mr.V.Selvaraj

For Respondents : Mr.V.Govardhanan
for M/s.Row and Reddy for R1
Mr.P.R.Dhilipkumar,
Standing Counsel for R2 and 3

O R D E R

This Writ Petition has been filed by Mr.Vasanth Kumar, who was deputed to Anna University on Foreign Service terms on 14.06.1986 while serving as Additional Divisional Engineer in the Tamil Nadu Electricity Board, challenging the impugned Proceedings issued by the Chief Engineer, Non-Conventional

Energy Sources, Tamil Nadu Electricity Board, Chennai-2, the 3rd respondent herein in Memo No. 002427/565/N.10/N.101/2009 dated 23.07.2009, to quash the same and for further direction, directing the respondents 1 and 2 to pay the arrears of salary due to him, settle his terminal benefits, give him appropriate scale of pay and also grant promotion to which he was eligible.

2. Mr.Selvaraj, learned Counsel appearing for the petitioner assailing the impugned order submitted that the petitioner was initially joined the Tamil Nadu Electricity Board as Assistant Engineer in the year 1972. After 14 years, he was promoted as Assistant Divisional Engineer in the year 1986. At the request of Anna University, he was deputed to Anna University on foreign service terms on 04.06.1986. Subsequently, his deputation was also extended by the Tamil Nadu Electricity Board. During his course of employment with the Anna University, for certain charges, he was placed under suspension and the Vice Chancellor of the Anna University also lodged an F.I.R. against the petitioner that he has committed certain irregularities. In view of his suspension order dated 22.11.1991 passed by the Anna University, till the date of his reaching the age of superannuation, he was not even permitted to work.

3. Adding further, the learned Counsel for the petitioner submitted that when the charge memo alleging various irregularities was properly demonstrated as false by giving explanation and then participating in the enquiry, the Enquiry Officer, who was a Retired District Judge, accepted his explanation and on completion of the enquiry, submitted a report holding him not guilty under any charge. The said report was placed before the appropriate authority nominated by the Anna University, the 1st respondent herein. The Syndicate Sub-Committee, after going through the detailed report submitted by the Enquiry Officer, differing from the report of the Enquiry Officer, sent the papers to the Tamil Nadu Electricity Board Parent Department violating Regulation 10(b) of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations. As per Regulation 10(b), if a Board employee is on foreign service, the foreign employer shall not impose any punishment on him without the concurrence of the Board and if any of the major punishments of reduction, compulsory retirement, removal or dismissal is to be imposed, the foreign employer shall conduct the necessary enquiry, sent the complaint papers to the Board and also revert the employee concerned to the Board's service for such action as it is considered necessary by the Board against him.

4. The learned Counsel for the petitioner also submitted that in the present case, the Enquiry Officer appointed by the Anna University went into the charges and after enquiry,

submitted a report holding the petitioner not guilty of the charges and this was differed by the Syndicate Sub-Committee. Sadly, the 1st respondent University has taken 13 long years to differ from the report of the Enquiry Officer. Finally, on 23.07.2009, the petitioner was issued with a Show Cause Notice by the Tamil Nadu Electricity Board, calling upon him to submit his explanation on the differing note of the Syndicate Sub-Committee within 7 days. In the meanwhile, the Criminal Court, namely, XI Metropolitan Magistrate, Chennai, also finding that the charges levelled against the petitioner were not established, acquitted the petitioner by its judgment dated 21.04.2008. When the Enquiry Officer, who was a Retired District Judge found him not guilty under any of the charges and consequently, the learned XI Metropolitan Magistrate also in his judgment dated 21.4.2008, dismissed the criminal complaint by acquitting the petitioner from the criminal charges, the 3rd respondent, namely, the Chief Engineer, cannot serve the impugned Communication dated 23.07.2009 further alleging that the petitioner had misappropriated a sum of Rs.70,00,000/- and that the Syndicate Sub-Committee failed to agree with the findings of the Enquiry Officer dated 15.04.1996. When the allegation shown in the communication dated 23.07.2009 issued by the 3rd respondent that the petitioner had misappropriated a sum of Rs.70,00,000/- and the same had not formed part of the Charge Memo, which was enquired into by the Enquiry Officer who gave a finding that he was not guilty of any charge, it is not open to the 3rd respondent to issue a Communication dated 23.07.2009, that too, after 13 long years from the date of filing of the Enquiry Report dated 15.4.1996. Moreover, when the enquiry was pending for long time, the petitioner was under compulsion to approach this Court with W.P.No.19349/1994 seeking expeditious disposal of the enquiry. This Court, by an order dated 11.01.1995, while disposing of the said writ petition, taking note of the fact that the enquiry was pending for several years and the order of suspension has not been revoked, making an observation that it is unfortunate that the petitioner had to remain under suspension for such a long period of four years, directed the respondents to complete the enquiry expeditiously, in any case, within a period of four months after the final explanation or reply is filed by the petitioner.

5. While so, in the present case, when the petitioner, on receipt of the charge memo, submitted his explanation on 16.02.1995, in all fairness, the Disciplinary Authority as per the mandate given by this Court in W.P.No.19349/1994 dated 11.01.1995 should have completed the entire enquiry by passing an appropriate final order within the time limit fixed by this Court. But, unfortunately, in this case, the learned Counsel for the petitioner submitted that in spite of the direction given by this Court to complete the enquiry within four months, when the Enquiry Officer also submitted his Enquiry Report on

15.4.1996, unnecessarily and wantonly, they kept the entire matter in a cold storage and with a huge delay of 13 years, without even completing the enquiry by the foreign Department as per Regulation 10(b), violating the said provision, forwarded the papers to the 3rd respondent Parent Department with the finding that the petitioner was guilty of charges, that too, on the charge that was not even served upon the petitioner. Therefore, for all the illegalities and irregularities committed by the respondents, the impugned proceedings issued against the petitioner is liable to be quashed.

6. Again referring to one another Communication issued by the Assistant Personnel Officer/Unit-II for Chief Engineer, Non-Conventional Energy Sources, Tamil Nadu Electricity Board, Chennai dated 23.10.2008, the learned Counsel for the petitioner stated that the respondent TNEB authorities have issued a Communication to the Registrar, Anna University, making it clear that the petitioner retired from the Board's service on 31.3.2008 A.N., although he reached the age of superannuation on 28.02.2003. Therefore, when the report of the Enquiry Officer clearly and categorically holds that the petitioner was not guilty of any charge, consequently, when the learned XI Metropolitan Magistrate, Chennai in his judgment made in C.C.No.2185/2001 dated 21.04.2008 has categorically held that no criminal charge was maintainable and consequently, the petitioner was acquitted and thirdly, when this Court also in its order dated 11.01.1995 made in W.P.No.19349/1994 taking into account that the petitioner had to remain under suspension for such a long period of four years, directed to complete the enquiry expeditiously, in any case, within a period of four months after the final explanation or reply is filed by the petitioner, they have not complied with the mandamus. Moreover, the Regulation 10(b) was not even complied with, therefore, the entire proceedings issued against the petitioner is liable to be quashed.

7. Concluding his arguments, the learned Counsel for the petitioner submitted that in any event, when the Enquiry Officer found the petitioner not guilty way back in the year 1996 in his report dated 15.4.1996 and the learned XI Metropolitan Magistrate, Chennai also in his judgment dated 21.04.2008 acquitted the petitioner from all the criminal charges, after 13 years from the date of report of the Enquiry Officer, the respondents cannot call for further explanation to the Disagreement Note, more particularly, when the allegation mentioned in the impugned notice has not formed part of the charge memo that was held against the respondents and in favour of the petitioner.

8. A detailed counter affidavit has been filed by the 1st respondent Anna University.

9. Mr. Govardhanan, learned Counsel appearing for the 1st respondent submitted that the delay has occurred only due to the pendency of the writ petition filed by the petitioner. Therefore, the prayer made by the petitioner to quash the impugned proceedings on the ground of delay cannot be accepted by this Court. Continuing his argument, he further submitted that when the petitioner was employed in the Tamil Nadu Electricity Board, he was placed under suspension for serious allegation of misappropriation of large sums of money at the Audio Visual Research Centre (AVRC) and was in charge of procurement of various equipments. When the petitioner was placed under suspension, he approached this Court by filing successive writs at every stage of the proceedings, challenging the authority of the University to suspend and hold enquiry with the sole aim of stalling the disciplinary proceedings, but he was unsuccessful as it is evident from the judgment of this Court in W.P.No.19349/1994 dated 11.1.1995 wherein this Court has upheld the authority of the University with a direction to complete the enquiry expeditiously within four months. In any case, Clause (c) of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulation also invests the borrowing authority the power to suspend the delinquent employee, therefore, the petitioner was rightly placed under suspension.

10. The learned Counsel for the 1st respondent further submitted that although, the Enquiry Officer appointed by the University absolved the petitioner of all the charges, the Syndicate as the Disciplinary Authority, appointed a Sub-Committee to study the enquiry report along with the documentary and oral evidence and submit its findings and recommendations. The Syndicate Sub-Committee, after going into the entire records relating to the enquiry, disagreed with the findings of the Enquiry Officer. Since the petitioner was a deputationist from the 2nd respondent under Foreign Service terms and conditions, the University by their letter dated 24.9.1996 while enclosing the entire records relating to the disciplinary proceedings including the findings of the Enquiry Officer and the decision of the Syndicate Sub-Committee disagreeing with the conclusions of the Enquiry Officer and the Resolution of the Syndicate thereon, sought for an order of reversion of the petitioner to the services of the Board for taking a final decision in the matter as per Regulation 10(b) of the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations. As there was no response from the Board for quite some time, the University by its Proceedings dated 5.12.1996, while extending the deputation period further from 06.06.1966 till the end of disciplinary proceedings, sought for early orders of reversion. Therefore, it is only open to the petitioner to approach the Board for a copy of the Syndicate Sub Committee Report

recommending a major penalty and submit his representations/objections to the Board against the Syndicate Sub-Committee recommendation, as the Board is the Disciplinary Authority under the Regulations. In any case, it is not open to the petitioner to allege for the first time that he was not supplied with a copy of the recommendations of the Syndicate Sub Committee by the University.

11. In reply to the arguments advanced by Mr.Selvaraj, on the Regulation 10(b), learned Counsel for the University pleaded that firstly, the 1st respondent University is bound to complete the enquiry, only then, it could send the complete papers to the Board, again, the learned Counsel for the 1st respondent submitted that a reading of the Regulation 10(b) does not say that Syndicate after disagreeing with the report of the Enquiry Officer should not place the entire papers for further consideration by the Disciplinary Authority, namely, the 2nd respondent Tamil Nadu Electricity Board and as the 1st respondent University is a foreign employer, if any of the major punishments of reduction, compulsory retirement, removal or dismissal is to be imposed, only the foreign employer shall conduct the necessary enquiry, and that enquiry was conducted properly, after conducting the enquiry, differing from the report of the Enquiry Officer, the University has forwarded the Differing Note of the Syndicate Sub-Committee for further course of action to be taken by the Parent Department. Therefore, the petitioner cannot be found fault with that. In any event, if this Court finds that the Regulation 10(b) was not followed, the matter may be remanded again back to the University to complete the entire enquiry and after completion of the enquiry, the complete papers relating to the Disciplinary Proceedings may be forwarded to the Electricity Board within a reasonable time to be fixed by this Court, the same can be ordered.

12. Again replying to the arguments advanced by the learned Counsel for the petitioner on the impugned proceedings dated 23.07.2009, calling upon the petitioner to submit his explanation for the Differing Note made by the Syndicate Sub-Committee, the learned Counsel for the 1st respondent submitted that when the University and the Syndicate Sub-Committee have analysed the entire files and found that the Enquiry Officer has not gone into the vital area of Rs.70,00,000/- that has been misappropriated by the petitioner, the Syndicate Sub-Committee finding fault with the Enquiry Officer's report, came to the conclusion that the petitioner has misappropriated a sum of Rs.70,00,000/- and this was also communicated to the petitioner for his explanation. Therefore, there is nothing on the part of the petitioner to reply to the said Show Cause Notice dated 23.07.2009. But without giving explanation to the same, the petitioner has come to this Court challenging the said Notice dated 23.7.2009. Therefore, the same has to be dismissed.

13. In support of his submission, referring to an order passed by this Court on 30.09.2009 in W.P.No.8744/2005 (K.P.Perumal vs. The Tamil Nadu Industrial Investment Corporation Limited rep. by its Chairman, 692, Anna Salai, Nandanam, Chennai-35 and another), the learned Counsel for the 1st respondent further argued that the writ petition, challenging only the Show Cause Notice calling for his explanation, should be dismissed. Again taking support from another judgment of this Court in K.Jayachandran, Deputy Inspector of Survey & Land Records, Velachery Town Survey Office, Mambalam-Guindy Taluk, Chennai vs. State of Tamil Nadu rep. by its Secretary, Revenue Department, Fort St. George, Chennai-9 and 3 others reported in 2008 (3) CTC 465 submitted that this Court, in the said judgment, has held that quashing of charge memo on the ground of belated initiation of disciplinary proceedings is impermissible in law and the reason being, in the present case, the petitioner has filed the Writ Petition only in 2009 and from the date of filing of the writ petition, till now, the respondents were unable to take any decision on the pending disciplinary proceedings, therefore, the Writ Petition should not be entertained, he pleaded.

14. A detailed counter affidavit has been filed by the Tamil Nadu Electricity Board.

15. Mr.P.R.Dhilipkumar, learned Standing Counsel for the respondents 2 and 3 submitted that after the enquiry was over, taking long time, the matter was placed before the Syndicate Sub-Committee by the 1st respondent University. After going through the report of the Enquiry Officer found him not guilty, the Syndicate Sub-Committee differed from the report of the Enquiry Officer and independently came to the conclusion that the petitioner has misappropriated huge money. It is, at this stage, the papers related to the entire enquiry conducted against the petitioner was placed before the Tamil Nadu Electricity Board. On receipt of the same, being the parent department, as per Regulation 10(b) has issued the impugned notice calling upon the petitioner to submit his explanation, but, instead of submitting his explanation denying the charges and taking support from the Enquiry Officer's Report, the petitioner has wrongly come to this Court. Therefore, at the stage of second Show Cause Notice given by the respondent Board, the Writ Petition filed challenging the same shall not be entertained.

16. Heard the learned Counsel on either side and I have also carefully gone through the records. But this Court is unable to find any merit or justification whatsoever on the arguments of the learned Counsel for the 1st respondent for the following reasons.

17. At the outset, it is an admitted fact that the petitioner has been deputed by the Tamil Nadu Electricity Board to the service of the Anna University while serving as Additional Divisional Engineer on 14.06.1986 on foreign service terms and conditions and after completion of some time, his deputation was also extended by the Tamil Nadu Electricity Board, however, finding fault with his discharge of duties, the Vice Chancellor of the Anna University has lodged an F.I.R. against the petitioner on 07.10.1991 charging that the petitioner has committed certain irregularities and followed by the registration of the F.I.R., he was also placed under suspension by order dated 22.11.1991 from the service of the Anna University. Thereafter, it is seen that when the petitioner was issued with the Charge Memo, he has submitted a detailed explanation, refuting all the charges. However, since the Disciplinary Authority found that the explanation given by the petitioner was not satisfactory, appointed a retired District Judge as an Enquiry Officer to go into the correctness of the charges levelled against the petitioner. The Enquiry Officer, after following the rules and regulations completed the enquiry and finally submitted his report on 15.04.1996 holding that the none of the charges levelled against the petitioner was established. This is also not disputed.

18. While so, firstly, the petitioner being aggrieved by the delay caused by the respondents in placing him under suspension for over a period of four years and also further delay caused in completing the enquiry, came to this Court with W.P.No. 19349/1994 for expeditious completion and disposal of the pending enquiry. Satisfied with the claim made by the petitioner that he was placed under suspension for a period of four long years that has caused huge hardships to the petitioner and the reason for the delay cannot be one attributable to the petitioner, this Court by its order dated 11.01.1995 directed the respondents to complete the enquiry within four months after the final explanation or reply is filed by the petitioner. It is necessary to extract the relevant portion here under :

'11. The petitioner claims that the documents required for submitting his full explanation have not been made available to him. The respondents shall make the relevant documents available to the petitioner on his inspection within a period of two weeks from today, so that the petitioner can file his further explanation within two weeks thereafter. The enquiry shall be completed expeditiously, in any case, within four months after the final explanation or reply is filed by the petitioner. If the enquiry is not completed within four months, the matter relating to the suspension of the petitioner and also the subsistence allowance payable to him shall be reviewed by the

authorities...''

19. In the light of the above, the case of both sides was examined. Having submitted his explanation to the Charge Memo, from the date of submission of the explanation, the respondents should have completed the enquiry within four months after the final explanation or reply is filed by the petitioner, whereas contrary thereto, it is not in dispute that the Enquiry Officer, a retired District Judge, though submitted his report on 15.04.1996, after submission of the report of the Enquiry Officer, for the first time, the respondents have taken unusually 13 long years, differing from the report of the Enquiry Officer, thereupon called upon the petitioner to submit his further explanation, therefore, this Court finds no justification at all for such a long delay of thirteen long years from the date of submission of the report of the Enquiry Officer, that too, holding the petitioner not guilty of any charge, not passing any order by the Disciplinary Authority, on this score of huge delay contributed by the respondents, this Court is of the view that the impugned notice is liable to be quashed.

20. Secondly, when the report of the Enquiry Officer was submitted on 15.04.1996 holding the petitioner not guilty on all the charges, setting aside all the charges levelled against him that the petitioner was also able to succeed before the criminal court, namely, learned XI Metropolitan Magistrate, Chennai and got an order of acquittal in C.C.No.2185/2001 dated 21.4.2008 and that when the petitioner was able to vindicate his stand both before the departmental proceedings and also before the criminal court, there cannot be any justification for the respondents in not passing the final order, even after a huge delay of thirteen years from the date of report of the Enquiry Officer.

21. Thirdly, the mandatory conditions mentioned in Regulation 10(b) has not been complied with by the 1st respondent University. It is relevant to extract Regulation 10(b) hereunder :

''10(b) if a Board employee is on foreign service, the foreign employer shall not impose any punishment on him without the concurrence of the Board and if any of the major punishments of reduction, compulsory retirement, removal or dismissal is to be imposed, the foreign employer shall conduct the necessary enquiry, sent the complaint papers to the Board and also revert the employee concerned to the Board's service for such action as it is considered necessary by the Board against him.''

A mere reading of the above Regulation 10(b) shows that if a Board employee sent on foreign service to another department faces any departmental proceedings during his foreign service, the foreign employer shall conduct the necessary enquiry and then send complaint papers to the Board for action to be taken by the Board for imposition of any punishment. In the present case, in spite of a mandamus issued by this Court on 11.01.1995 passed in W.P.No.19349 of 1994 to complete the enquiry within four months after the final explanation or reply filed by the petitioner, the respondents have failed to complete the enquiry within such time limit fixed by this Court. Moreover, before the completion of the enquiry, the petitioner should not have been reverted back to the Board's service, because, once he is reverted to the Board's service, the enquiry initiated by the foreign employer for the alleged irregularities during his foreign service would be disturbed.

22. As per Regulation 10(a), on completion of the enquiry, the matter was placed before the Syndicate Sub-Committee for their perusal. The Syndicate Sub-Committee after going through the report of the Enquiry Officer and the explanation offered by the petitioner to the charge memo, without giving any findings, wrongly referring to a fresh charge which was not even forming part of the first charge shown in the Charge Memo, differed from the report of the Enquiry Officer giving a finding that the petitioner has misappropriated Rs.70,00,000/-. Ironically, the petitioner was not put on notice on the said charge. Moreover, when the Syndicate Sub Committee has submitted its report as per Regulation 10(b), the petitioner should have been issued with the second show cause notice along with the copy of the Differing Note of the Syndicate Sub-Committee calling upon him to submit his further representation. Only on receipt of the representation from the petitioner by the 1st respondent, a final report could have been given to the Tamil Nadu Electricity Board, the 2nd respondent herein. That vital aspect has been completely overlooked. Therefore, when the Regulation 10(b) mandates that the foreign employer should complete the enquiry and only after completion of the necessary enquiry, should send the complete papers to the Board, for further action, in the present case, without completing the enquiry, recording the Differing Note by the Syndicate Sub-Committee, the 1st respondent/University sent a report to the 2nd respondent holding that the petitioner was found guilty.

23. It is well settled legal position that if the disciplinary authority differs from the report of the Enquiry Officer before passing the final order, the delinquent should be afforded with an opportunity to show cause why the report of the enquiry officer should not be disagreed. In Punjab National Bank v. Kunj Behari Misra reported in 1998 (7) SCC 84, the Supreme Court held that Article 311(2) of the Constitution of

India mandates the Disciplinary Authority to give an opportunity of representation to the charged employee on the findings. While explaining the principles laid down in Managing Director, ECIL v.B.Karnakar reported in 1993 (4) SCC 727, on the aspect of principles of natural justice, in furnishing a copy of the enquiry officer's report, with an opportunity to the delinquent officer to submit his further representation on the report and in the case of disagreement with the enquiry officer's report, the Supreme Court, at Paragraphs 18 and 19, held as follows:

"18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar's case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer

an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

In my considered view, the third respondent while passing the impugned order has completely violated the above said dictum laid down by the Hon'ble Apex Court, hence, on this count also, the impugned order is liable to be set aside.

24. Fourthly, the Tamil Nadu Electricity Board, Technical Branch, the Chief Engineer, Non-Conventional Energy Sources, Anna Salai, Chennai, addressed the Registrar, Anna University, Chennai, making it clear that the petitioner retired from service on 31.3.2008, although the petitioner reached the age of superannuation on 28.02.2003. It shows that they have decided to retire the petitioner w.e.f. 31.3.2008 A.N. from the Board service for the reason that the learned XI Metropolitan Magistrate acquitted the petitioner from the criminal case filed by the C.B.C.I.D., Chennai with regard to the allegation, which is extracted here under :

"From

Er.T.Jeyaseelan,B.E.,
Chief Engineer,
Non Conventional Energy Sources,
2nd Floor, Eastern Wing,
144, NPKRR Maaligai,
Anna Salai, Chennai-2.

To
The Registrar,
Anna University,
Chennai.

Letter No.3496/1315/N.10/N.101/2008, dated 23.10.2008

Sir,

Sub : Establishment-Class II Service - Thiru D.Vasanthakumar, Assistant Executive Engineer/Electrical - Deputed to Anna University - Reverted back - Now retired from Board's service - Last Pay Certificate called for.

Ref: 1.This office letter No. 3496/1315/N10/
N.101/2003 dated 24.03.2003.
2. Your letter No.27740/PR32/2008
dated 22.05.2008.

In continuation of this office letter 1st cited, I am to request you to send the Last Pay Certificate in respect of Thiru D.Vasanthakumar, Assistant Executive Engineer/Electrical deputed to your organisation and subsequently reverted back to Tamil Nadu Electricity Board on 31.12.1996. Now he has retired from Board's service on 31.03.2008 Afternoon.

In the meanwhile the Honourable Metropolitan Magistrate/Saidapet Court have acquitted the above officer from the criminal case filed by the CBCID/Chennai regarding some allegations were made during the deputation period at your end.

Hence, I also request you to look into the matter personally and arrange to send the Last Pay Certificate together with General Provident Fund (GPF) recovery particulars immediately, since the terminal benefits are to be paid to the above individual as early as possible.

Yours faithfully,
Sd/- (S.Sorimuthu)

Assistant Personnel Officer/Unit-II,
for Chief Engineer,
Non Conventional Energy Sources.

Copy to : The Chief Engineer/Personnel-for information.'

The above letter also shows that the petitioner retired from service on 31.3.2008 A.N. Therefore, once the Electricity Board has come to the conclusion that the petitioner has retired from service from 31.3.2008 A.N., the respondents cannot issue the second show cause notice, for, the master and servant relationship ceased to exist and they cannot retain the petitioner. Moreover, no order retaining the petitioner in service has been passed by any competent authority.

25. Moreover as I have mentioned above, when there was a specific and categorical direction given by this Court in W.P.No.19349/1994 dated 11.1.1995 filed by the petitioner for

expeditious completion of the enquiry within four months after the final explanation or reply was filed by the petitioner, the Disciplinary Authority, either the 2nd respondent or the 3rd respondent should have completed the enquiry within the four months time as ordered by this Court. Surprisingly, when the report of the Enquiry Officer was placed on record on 15.4.1996, both the University and the Electricity Board has unusually taken huge and unexplained delay of 13 long years in issuing the Second Show cause Notice. In a similar circumstance, the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs. T.Ranganathan [(2010) 3 MLJ 265], held that once a competent Court fixes an outer time limit to complete the enquiry and pass orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order and it is further held that when there is a default, it is open to the party to the proceedings to approach the very same Court seeking extension of time to comply with the order by stating sufficient reasons, failing which they cannot proceed further. Following the said ratio, I have also passed an order in W.P.No.37073 of 2016, dated 27.03.2018 (N.Sivalingam Vs. The State of Tamil Nadu and another) and for better appreciation, paragraph No.9 thereof is extracted below:-

'9. In yet another decision, when an identical issue came up before this Court in the decision dated 21.09.2011 passed in W.P.No.24489 of 2004 (M.P.Sundararajan (deceased) v. Secretary to Government), following the Division Bench Judgment in T.Ranganathan case (cited supra) holding that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order, this Court, finding that the direction passed by this Court has not been complied with within the outer time limit, has quashed the impugned proceedings.'

26. In the present case, as against the specific time limit of four months granted by this Court to complete the enquiry and pass orders, the respondents have unreasonably kept the entire case in cold storage for more than 13 long years even for issuing second show cause notice. In such circumstances, deprecating such a long delay in completing the enquiry by the Disciplinary Authority, the Supreme Court in a decision in Appeal (Civil) No.4901 of 2005 (P.V.Mahadevan vs. M.D. Tamil Nadu Housing Board dated 8.08.2005) has held that the delay in completing the disciplinary proceedings would definitely cause not only prejudice to the delinquent but also to the Department. The relevant portion is given as under :

'Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time

will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs.'

27. In view of all the above reasons, the impugned proceedings of the 3rd respondent in Memo No.002427/565/N.10/N.101/2009 dated 23.07.2009 is hereby quashed. Though the petitioner has reached the age of superannuation on 28.02.2003, till now, for the past 16 years, he has not been paid with regular pension. Therefore, the Tamil Nadu Electricity Board is directed to disburse the retiral benefits to the petitioner, within a period of six weeks from the date of receipt of a copy of this Order.

28. With the above observation and direction, the Writ Petition stands allowed. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

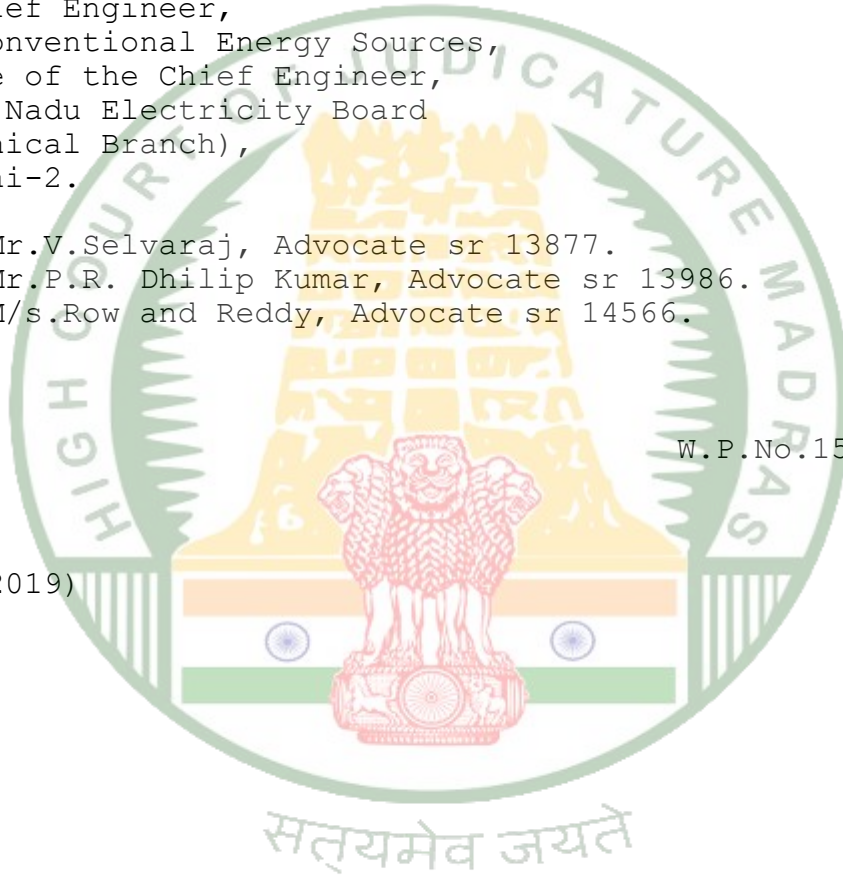
tsi

To

1. The Registrar
Anna University,
Chennai-600 025.
 2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-2
 3. The Chief Engineer,
Non-conventional Energy Sources,
Office of the Chief Engineer,
Tamil Nadu Electricity Board
(Technical Branch),
Chennai-2.
- +1 CC to Mr.V.Selvaraj, Advocate sr 13877.
+1 CC to Mr.P.R. Dhilip Kumar, Advocate sr 13986.
+1 CC to M/s.Row and Reddy, Advocate sr 14566.

W.P.No.15244 of 2009

KJ(CO)
SP(02/04/2019)



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