

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 02.11.2018

Order Pronounced On : 05.04.2019

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.8520 of 2009

N.Rathinam

... Petitioner

Vs.

1.Tamil Nadu Electricity Board,
rep. by its Chairman,
800, Anna Salai, Chennai - 2.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri 636 705.

3. The Chief Engineer,
Distribution,
Tamil Nadu Electricity Board,
Vellore Region, Vellore - 6.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the first respondent made in his letter No.069187/G6/G62/2005-3, dated 09.03.2009 as communicated by the Chief Engineer, personnel confirming the proceedings of 2nd respondent made in Ku.A.No.1713/Ni.Pi.5/U1/O.Na.37/2000-3 dated 05.09.2002 as confirmed by 3rd respondent in Memo No.000991 Nir AA 2/283 dated 11.02.2003, quash the order dated 09.03.2009 and

direct the respondents to revise and enhance the pension as payable to the petitioner.

For Petitioner : Mr.Y.Ramanaiah

For Respondents: Mr.M.Fakkir Mohideen
for R1 to R3

ORDER

The instant writ petition has been filed to quash the order dated 09.03.2009 and direct the respondents to revise and enhance the pension as payable to the petitioner.

2. The writ petitioner joined Tamil Nadu Electricity Board as a casual labourer and he was absorbed as Technical Assistant on 03.05.1972. He was then promoted as Junior Engineer Grade-II in 1982, on acquiring his Engineering degree. The petitioner was selected as Assistant Engineer. While working as an Assistant Engineer, disciplinary proceedings were initiated against the writ petitioner on the ground that he had issued a false certificate on 07.09.1995, to one S.Saravanan, who worked as a contract labourer. A charge sheet was issued on 30.11.2000. After conducting an enquiry, the petitioner was awarded with a punishment of stoppage of increment for a period of two years with cumulative effect by the Superintending Engineer, Tamil Nadu Electricity Board, Dharmapuri Electricity Distribution Circle, Dharmapuri on 05.09.2002.

3. A criminal case was also initiated against the writ petitioner. The criminal case ended in acquittal. The petitioner was filed a representation to reconsider the punishment which was imposed upon him by the order dated 05.09.2002, on the ground he had been acquitted in the criminal case. The petitioner attained superannuation on 24.01.2005. The representation of the writ petitioner was not considered. The petitioner therefore, filed Writ Petition No.10421 of 2007, before this Court which was disposed of on 23.01.2007, directing the respondent to consider the representation of the writ petitioner in accordance with law and on its own merits. The representation was dismissed by an order dated 09.03.2009, on the ground that the petitioner had violated the Board circular memo wherein, specific instructions had been issued to all the officials of the Board not to issue any employment or service certificate to contract labourers. Challenging the order dated 09.03.2009, the instant writ petition has been filed.

4. Heard both the counsel for the parties.

5. The counsel for the writ petitioner vehemently contended that the criminal case and civil case being completely identical, acquittal in

the criminal case should automatically result in exoneration in the departmental proceeding also. According to the writ petitioner, the punishment imposed on the petitioner of stoppage of increment for a period of two years with cumulative effect could not continue after exoneration in the criminal case. On the other hand, the counsel for the Board would contend that, the criminal case and the civil case are independent of each other and each has to be decided on its own merits.

6. Disciplinary proceedings were initiated against the writ petitioner on the ground that, he had issued a false certificate to one S.Saravanan, who worked as a contract labourer. Criminal case and civil case are decided on the materials produced in the respective proceedings. Standard of proof in both the cases are different. The decision in a criminal case is based on proof beyond reasonable doubt, on the other hand, in disciplinary proceeding, punishment can be imposed on preponderance of probabilities. Since the nature of proof required in the two proceedings are entirely different, the fact that the writ petitioner has been exonerated in the criminal case cannot *ipso facto* result in exoneration in the disciplinary proceedings also.

7. The punishment has been imposed against the petitioner by an order dated 05.09.2002. An appeal before the Disciplinary Authority was dismissed on 11.02.2003. Representation has been given by the writ petitioner only on 20.05.2005, despite the fact that, no further appeal or review is maintainable against the order of dismissal of appeal. The petitioner gave the representation on 20.05.2005, for reconsideration of the punishment imposed on him on the basis of his acquittal in the criminal case which was not maintainable.

8. Nevertheless, this Court in WP.No.10421 of 2007 by an order dated 23.01.2007, directed the respondent to consider the representation of the writ petitioner once again. It was complied with and it has been found as under:-

"4. While the factual position and the rule position stands thus, you had filed the said WP.No.10421 of 2007 by suppressing the fact of disposal of your representation, dated 24.01.2005 in Chief Engineer/Personnel letter, dated 12.01.2006 and obtained the orders directing the first respondent to dispose of your representation, dated 24.01.2005, which would obviously amount to abuse of the process of the Court.

5. It is also stated in this connection that in Board's Circular Memo.No.49818/564/I.R.I(1)/Adm.Br./87-1 dated 12.06.1987 specific instructions have been issued to all

officers of the Board not to issue any Employment / Service certificate to contract labourers . Your action, among other things, is also against the said specific instructions issued by the Board, Hence, on merit also, your request to set aside the punishment is not feasible of compliance."

9. The Hon'ble Supreme Court of India in the case of **Govind Das Vs. State of Bihar & Others**, reported in **(1997) 11 SCC 361**, held as follows:-

"2. The only ground which has been urged by the learned counsel for the appellant in support of this appeal is that since the appellant has been acquitted in the criminal case, the order for termination of his services should have been set aside. The learned counsel has placed before us a copy of the judgment of the criminal court whereby the appellant was acquitted. We have gone through the said judgment. We find that the acquittal of the appellant is based on the view that the charges are not proved beyond reasonable doubt. Since the standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that required to prove a criminal charge, the acquittal of the appellant in the criminal case, in these circumstances, could not, in our opinion, be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings on the basis of evidence adduced in the departmental inquiry conducted in the charges levelled against the appellant. We, therefore, find no merit in this appeal and the same is accordingly dismissed. No orders as to costs."

10. There is no infirmity in the order. The reason given by the respondent does not warrant any interference under Article 226 of the Constitution of India. The petitioner has not given any material to show that the Board circular on Memo. No. 49818 / 564 / I.R.I(1) / Adm.Br./87-1 dated 12.06.1987, has not been violated. In the result, the writ petitioner is dismissed. No Costs.

05.04.2019

Pkn

Internet : Yes / No

Index : Yes / No

Speaking / Non speaking Order

To

1.The Chairman.

Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.

2.The Superintending Engineer,

Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri 636 705.

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Vellore Region, Vellore - 6.

SUBRAMONIUM PRASAD, J.

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