

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 19557 of 2013

M.Sampath

... Petitioner

Vs

1. The Chairman cum Managing Director,
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.

2.The Chief Engineer (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
CEDC/TNEB /Chengalpattu,
Chengalpattu.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the third respondent, vide Memo No.10455/546/Ni.Pi.2/U1/File No.10/2005 dated 27.09.2005 and the order passed by the second respondent in the appeal against the same and finally the order passed by the first respondent in the mercy petition and quash the same and consequently direct the second respondent to pay the back-wages and to initiate the process of the petitioner's promotion.

For Petitioner : M/s. G.Suresh Kumar
for Mr.P.Magesh

For Respondents: Mr.P.R.Dilip Kumar for R1 to R3

O R D E R

The instant writ petition for Certiorarified Mandamus has been filed for calling for records relating to the proceedings of the Superintending Engineer, CEDC /TNEB / Chengalpattu, vide Memo No.10455/546/Ni.Pi.2/U1/File No.10/2005 dated 27.09.2005 and the order dated

27.10.2005 passed by the Chief Engineer, Personnel, TANGEDCO, during the appeal and final order of the Chairman cum Managing Director, TANGEDCO dated 09.09.2007 rejecting the mercy petition of the petitioner and direct the respondents to pay the back-wages and to initiate the process of promotion.

2. The petitioner joined services of the first respondent as Junior Assistant. He filed a suit in O.S.No.266 of 1998 before the Additional District Munsif, Kancheepuram for a declaration that the marriage with his wife Shanthi is null and void. The petitioner's wife filed a complaint at All Women Police Station, Kancheepuram stating he had subjected her to cruelty. A complaint in Cr.No.9 of 1997 under Section 498(A) of IPC was registered. Charge sheet was filed. The petitioner was convicted for an offense under Section 498(A) of IPC by an order dated 04.08.2000 and was sentenced under go rigorous imprisonment for one year.

3. It is pertinent to mention here that the petitioner was arrested and he was on suspension. Departmental proceedings were initiated against the petitioner. The Enquiry Officer by submitted his report on 04.12.2004 holding the charges against him were proved. The 3rd respondent / the Superintending Engineer, CEDC, TNEB, Chengalpattu, by an order dated 27.09.2005 imposed the punishment of withholding of increment with cumulative effect from 01.01.2006 to 31.12.2006. The petitioner filed an appeal before the Chief Engineer, Personnel, TANGEDCO. The Appellate Authority vide order dated 27.09.2005 dismissed the appeal.

4. In the meantime, there was reconciliation between the husband and wife and in Criminal Revision Petition No.864 of 2003, this Court by an order dated 09.04.2007 passed the following order:-

"9. A joint affidavit of the accused and the defacto-complainant has been filed before this court stating that all differences between the husband and wife has been resolved amicably and both have assured before this Court that they will lead a happy life hereafter and that the accused has given an undertaking that he will not cause any problem to his wife Santhi. The defacto-complainant, wife Santhi, has also stated that in view of the present position, she is not interested to pursue the case further. In the common affidavit both would state that the common affidavit has been filed without any external pressure, but with the consent

of both the parties.

10. In fine, the revision petition is disposed of in the following manner. As far the conviction aspect is concerned, the judgment of the learned first appellate court in C.A. No.69 of 2000 is confirmed with the following modifications in the sentence. The accused is released under section 3 of the Probation of Offenders Act, 1958 on admonition instead of one year R.I and a fine of Rs.1,500/- with default sentence. The fine is to be returned to the accused. It is represented by the learned counsel that the accused is working as Junior Assistant in TNEB. The sentence under section 3 of the Probation of Offenders Act imposed on the accused in this revision will not a disqualification for his Government Service as contemplated under section 12 of the Probation of Offenders Act."

5. Contending that he has paid a fine and everything was sorted out. The petitioner filed a mercy petition before the Chairman cum Managing Director, TANGEDCO to rollback the punishment imposed on him and to promote him to the post of Assistant with back-wages. The respondent No.1 by proceedings dated 08.10.2012 dismissed the mercy petition. The same has been challenged in the instant writ petition.

6. Heard the learned counsel for the parties.

7. The learned counsel for the petitioner would say that the case should be considered sympathetically and that the first respondent should have accepted the mercy petition. The contention of the learned counsel for the petitioner does not merit acceptance. The petitioner has been convicted for an offense under Section 498(A) of IPC.

8. Material on record discloses that the petitioner has been given the benefit of Probation of Offenders Act, 1956 and the petitioner was released under Section 3 of Probation of Offenders Act, 1956 with admonition instead of undergoing the sentence of rigorous imprisonment of one year.

9. Subjecting wife to extreme cruelty and being punished by a criminal Court for the offense is a conduct unbecoming of a civil servant. The conviction stands and

the petitioner was given benefit of Probation Offenders Act only because of the benevolence shown on the petitioner's wife. Departmental proceedings has also confirmed the guilt of the petitioner. Nothing special has been shown as to why benevolence or mercy must be extended to the petitioner. The petitioner has been given the punishment withholding the increment of one month with cumulative effect. The petitioner cannot be permitted to go scot-free. There is no merit in the writ petition. The writ petition stands dismissed. No Costs.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsp/Pkn

To

1. The Chairman cum Managing Director,
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer, (Personnel),
TANGEDCO,
No.144, Anna Salai,
Chennai - 600 002.
- 3.The Superintending Engineer,
CEDC/TNEB /Chengalpattu,
Chengalpattu.

+1cc to Mr.P.Magesh , Advocate SR.No. 4465

+1cc to Mr.P.R.Dilip Kumar , Advocate SR.No. 3929

W.P.No. 19557 of 2013

A.SK (08/02/2019)

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