

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26887 of 2013 and

M.P.Nos.1 to 3 of 2013

K.S.M.Ravichandran

... Petitioner

-vs-

Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. by its Chairman-cum-Managing Director,
Secretariat Branch,
144, Anna Salai,
Chennai-600 002.

... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records from the respondent in connection with the proceedings of the impugned suspension issued by the respondent bearing Ref.Memorandum No.5005/A5/A51/2013-2 dated 24.01.2013 and the resultant charge memo issued by the respondent bearing No.5005/A5/A51/2013-2 dated 22.06.2013 and quash the same and pass such further or other orders or directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.V.Prakash, Senior Counsel

For Mr.K.Krishnamoorthy

For Respondent : Mr.P.R.Dhilip Kumar

O R D E R

The petitioner has come forward with the present writ petition, challenging both the impugned suspension order dated 24.01.2013 issued in Ref.Memorandum No.5005/A5/A51/2013-2 and the consequential Charge Memo issued by the respondent bearing No.5005/A5/A51/2013-2 dated 22.06.2013.

2. The case of the Petitioner is that pursuant to the enquiry process, he was placed under suspension and thereafter, an enquiry was conducted, conclusion of which had resulted in imposition of punishment of "Censure" on the petitioner. It is the grievance of the Petitioner that though the Tamil Nadu Electricity Board's Service Regulations and Rulings contemplate as to how the period of suspension has got to be treated, the Respondent did not pass any specific order in terms of Regulations 57(5), which reads as under:

"57(5) In a case falling under sub-regulation (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall

not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the employee so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the employee."

3. The Petitioner drew the attention of this Court to the Ruling 11 of the TNEB, which inter alia stipulates as follows:

"11. When a Board employee is placed under suspension where enquiry into grave charges against him is pending or contemplated and criminal proceedings are also instituted simultaneously in respect of the same charges and subsequently he is reinstated into service, the period of suspension shall be:

(i) treated as duty, if there is a specific order or direction or a Court of competent jurisdiction to this effect notwithstanding the fact that a penalty has been imposed in the departmental inquiry."

4. Though the petitioner has challenged both the suspension order and the charge memo, in view of the fact that after enquiry, the Respondent has passed an order, imposing a punishment of "Censure" on the petitioner, this Court is constrained to decide as to whether the Petitioner is entitled to subsistence allowance and other benefits for the period of suspension in question.

5. It is seen that in terms of the aforesaid Regulation, the petitioner would not be entitled to any benefits for the suspension period and the period of suspension would be treated in the manner as mentioned supra. Admittedly, there was no whisper in the impugned orders with regard to treating the suspension period of the petitioner and by means of counter, an argument was put forth on the side of the respondent that they are entitled to treat the period of suspension either as full pay and allowances or the period be converted into leave of any kind due and admissible to the employee.

6. It is true that after the punishment is imposed, it is at the reasonable discretion of the concerned Authority to decide the manner in which the period of suspension of a delinquent has to be treated. In the present case on hand, though the Respondent has passed an order of "Censure", the order did not specify the manner in which the period of suspension has to be treated and in such an event, for the period of suspension, the

petitioner is entitled to wages, especially when the Petitioner was imposed a minor punishment of "Censure" for his misconduct.

7. This Court, while dealing with the similar circumstances in the case of S.Chandrasekaran vs. The Joint Director of Agriculture, Tiruchirapalli and another [W.P.No.6836 of 2007] decided on 03.12.2014, had rendered a finding in favour of the petitioner therein by relying upon a judgment of Andhra Pradesh High Court. For the sake of convenience, the relevant paragraph of the judgment of this Court is extracted below:

"16. Likewise, the judgment of the Andhra Pradesh High Court in A.V.Vinod Kumar's case (cited supra) is directly on the point. Paragraph 18 of the said judgment is extracted in this regard:-

"18.....While holding so, treating the period of suspension as 'not on duty' cannot be said to have been done in good faith and good conscience. The censure itself is a punishment of a minor nature. To treat the period of suspension as not on duty is a severe punishment, by which the petitioner is denied continuity of service for the purpose of seniority, promotion etc. Therefore, though the disciplinary authority has got power, such power, in this case, was not exercised reasonably and no reasonable person could have treated the period of suspension as not on duty while imposing the minor punishment of Censure."

8. In view of the above and for all the aforesaid reasons, this Court is of the view that the Petitioner is entitled to the wages and other benefits for the period of suspension. Accordingly, the Respondent is directed to pay the balance subsistence allowance and other benefits due to the petitioner for the period of suspension within a period of 45 days from the date of receipt of a copy of this order, failing which, the same will carry 12% interest and the same has to be recovered from the personal fund of the respondent, as the amount of the State Exchequer cannot be permitted to be utilized for the default committed by the Respondent.

9. The Writ Petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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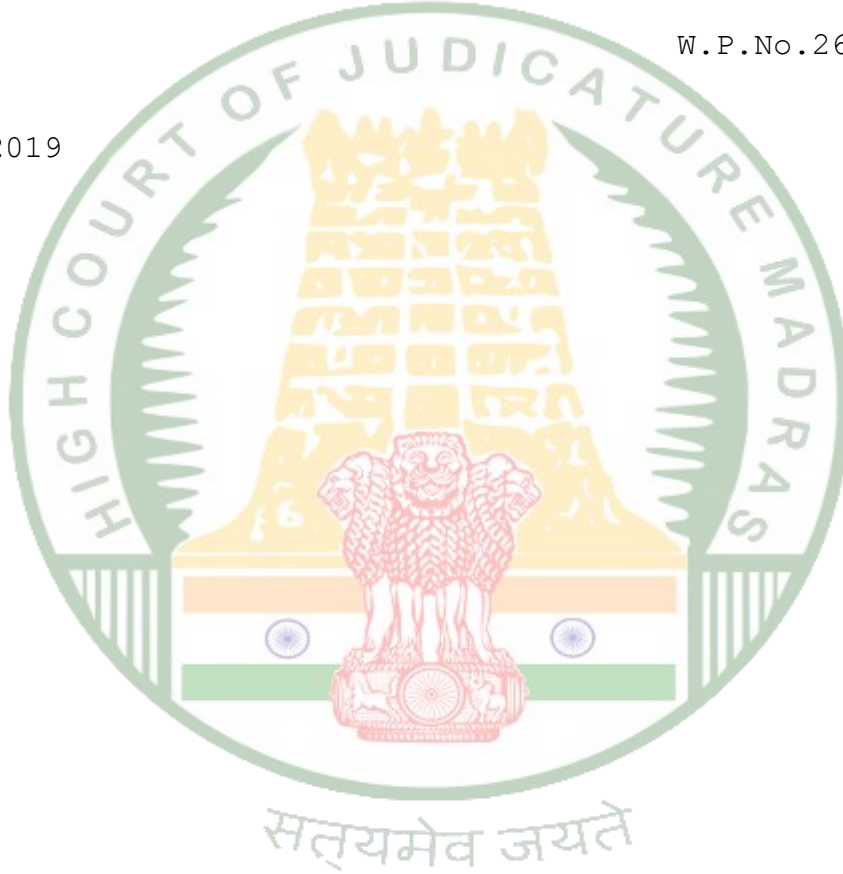
TO:

The Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Secretariat Branch,
144, Anna Salai,
Chennai-600 002.

+lcc to Mr.K.Krishnamoorthy, Advocate sr.50746
+lcc to Mr.P.R.Dhilipkumar, Advocate sr.50910

W.P.No.26887 of 2013

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