

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-03-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 15844 & 15845 of 2018
W.M.P.Nos.18845 & 18846 of 2018

1. T.K.Govindan ... Petitioner in W.P.No.15844 of 2018
2. K.Sampath Kumar ...Petitioner in W.P.No.15845 of 2018

Vs

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
NPKRR Maaligai,
144, AnnaSalai,
Chennai-600 002.
2. The Chief Engineer,
Chennai Region-South,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
NPKRR Maaligai,
144, AnnaSalai,
Chennai-600 002.
3. The Chief Engineer -Personnel,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
NPKRR Maaligai,
144, AnnaSalai,
Chennai-600 002.
4. The Superintending Engineer,
CEDC (South-I),
110/33 KVSS Complex,
K.K.Nagar,
Chennai-600 078. ...Respondents in both W.Ps

PRAYER IN W.P.No.15844 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 4th

respondent in Memo No.020643/1022/Adm 1/A4/P/DVAC-Sus/2010 dated 13-12-2010 and quash the same and consequently directing the respondent to permit the petitioner to rejoin duty/service as Foreman I Grade with all attendant/consequential benefits.

PRAYER IN W.P.No.15845 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 4th respondent in Memo No.015973/453/Adm 1/A4/P/DVAC-Sus/2009 dated 21-8-2009 and quash the same and consequently directing the respondent to permit the petitioner to rejoin duty/service as Commercial Inspector with all attendant/consequential benefits.

For Petitioner : Mr.M.Ganesan

For Respondents : Mr.P.R.Dhilip Kumar

C O M M O N O R D E R

Since the issue involved in both the writ petitions are one and the same, they are taken up together for hearing and are disposed of by the following common order.

2. The orders of suspension dated 13.12.2010 and 21.08.2009 are respectively under challenge in these present writ petitions.

3. Undoubtedly, the writ petitioners were placed under suspension based on the trap arranged by the Department of Vigilance and Anti-Corruption Special Investigation Cell. Criminal cases were registered against the writ petitioners and the same is still pending. However, keeping the writ petitioners under suspension without any review for an unspecified period, is certainly not preferable. Allegations of corruption should not be viewed leniently and the respondents are also at liberty to proceed with the departmental disciplinary proceedings if the files/relevant records are available. In other words, there is no bar for continuation of disciplinary proceedings during the pendency of the criminal case. Under these circumstances, keeping an employee under suspension for a prolonged period is certainly bad in law and the competent authorities have either to continue with the department disciplinary proceedings or keep the disciplinary proceedings in abeyance till the conclusion of the criminal case. The decision is to be taken based on the fact whether the materials are available on record to proceed with the disciplinary proceedings. In the event of availability of connected records, the disciplinary authority shall proceed with the disciplinary proceedings and conclude the same and pass final orders.

3. Prolonged suspension is bad in law. On initiation of disciplinary proceedings, undoubtedly an employee shall be placed under suspension by the Competent Authority. However, the authorities competent must ensure that the departmental disciplinary proceedings initiated against the employees are concluded within a reasonable period of time. In the event of an enormous delay in concluding the departmental disciplinary proceedings, then the authorities competent must review the order of suspension for its revocation. If it is not possible for the authorities to conclude the departmental disciplinary proceedings, then the order of suspension can be revoked and the employees shall be reinstated into service and post in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him. Contrarily, an employee cannot be kept under suspension for years together without any progress in departmental disciplinary proceedings.

4. Undoubtedly, disposal of the criminal case may take long years by the Competent Court of law. However, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings even during the pendency of the criminal case. In other words, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the files, materials and other records are available with the authorities competent, then they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass final orders pending disposal of the criminal case.

5. If an employee after departmental disciplinary proceedings is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

6. In the case on hand, the orders of suspension were issued longback and the writ petitioners are under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal cases.

7. In view of the fact that the writ petitioners are under continued suspension for 8 years, the following order is passed:

(i) The impugned orders of suspension issued by the 4th respondent in memo No.020643/1022/Adm1/A4/P/DVAC-SuS/2010 dated 13.12.2010 and in memo No.015973/453/Adm 1/A4/P/DVAC/SuS/2009 dated 21-8-2009 are quashed.

(ii) The respondents are directed to reinstate the petitioners into service.

(iii) The respondents are directed to post the writ petitioners in any one of the non sensitive posts till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him.

8. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

ssb

To

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
NPKRR Maaligai,
144, AnnaSalai,
Chennai-600 002.

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2. The Chief Engineer,
Chennai Region-South,
Tamil Nadu Generation and Distribution
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3. The Chief Engineer -Personnel,
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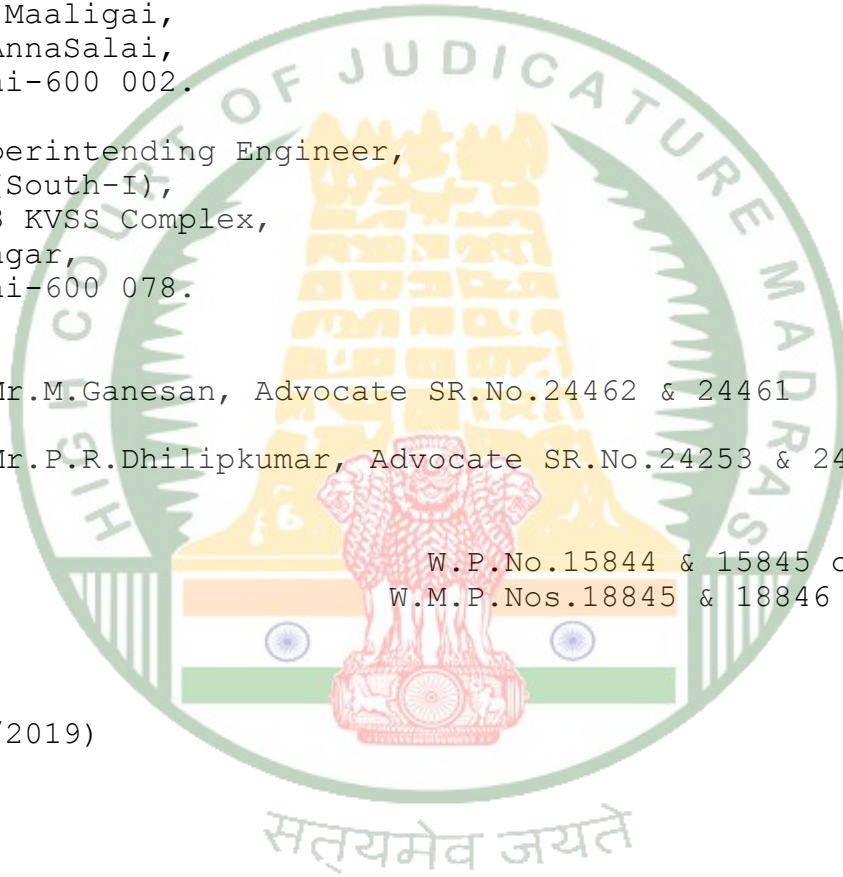
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K.K.Nagar,
Chennai-600 078.

+2ccs to Mr.M.Ganesan, Advocate SR.No.24462 & 24461

+2ccs to Mr.P.R.Dhilipkumar, Advocate SR.No.24253 & 24254

W.P.No.15844 & 15845 of 2018
W.M.P.Nos.18845 & 18846 of 2019

CP(CO)
GMY(10/04/2019)



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