

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28854 of 2019
and
W.M.P.No.28597 of 2019

N.Boopalan

.. Petitioner

Vs.

1.The Chairman
Tamil Nadu Electricity Board
No.144, Anna salai
Chennai.

2.The Additional Chief Engineer
TNEB/TANGEDCO
CEDC/South-I
K.K.Nagar, Chennai-600 078.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Memo.No.001269/AdmI./A.3/F.V&AC-SUS/2019-1, dated 06.02.2019, quash the same and consequently, permit the petitioner to rejoin duty/service as Assistant Engineer with all attendant/consequential benefits.

For Petitioner : Mr.Vijayan Subramanian

For Respondents : Mr.P.R.Dilip Kumar

सत्यमेव जयते
O R D E R

Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Memo.No.001269/AdmI./A.3/F.V&AC-SUS/2019-1, dated 06.02.2019, quash the same and consequently, permit the petitioner to rejoin duty/service as Assistant Engineer with all attendant/consequential benefits.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3.The case of the petitioner is that he joined the respondents Board as Technical Assistant in Cuddalore Electricity Distribution Circle during 2009. Subsequently, the petitioner was promoted as Junior Engineer (2nd Grade) and was posted in Sozhinganallur (Sub-Station, Chennai Electricity Distribution Circle) during 2015. The petitioner was subsequently promoted as Assistant Engineer in K.K.Nagar, West Section, CEDC South-I and joined duty on 21.09.2016. While he was in service, the petitioner received a phone call from the Deputy Superintendent of Police, Vigilance Department and they requested the petitioner to come to their office. The petitioner immediately went to the Vigilance office and he was arrested by the Vigilance Department on 04.02.2019 stating that the petitioner requested bribe from the complainant viz., B.Prasad. But no phenolphthalein test was conducted to the petitioner. The petitioner was kept in judicial custody for a period of 13 days, after which, he was released on bail. Immediately, the petitioner was served with an order of suspension on 06.02.2019 by the proceedings of the 2nd respondent with effect from 04.02.2019. Subsequently, the petitioner requested the respondents Board to revoke the suspension order and allow him to join duty. However, till date, the respondents have not revoked the order of suspension. Hence, the present writ petition.

4.The learned counsel appearing for the petitioner submitted that though the order of suspension has been passed on 06.02.2019, there has been no review. The prolonged suspension cannot be allowed to continue for a long time. He has drawn attention of this Court to the judgment of the Hon'ble Apex Court reported in (2015) 7 SCC 291 (Ajay Kumar Choudhary v. Union of India), in which, it is held that suspension must necessarily be for a short duration. The suspension order should not extend beyond three months, if no charge memo/charge sheet is issued within three months time. He further submitted that no charge sheet has been filed against the petitioner within three months from the date of suspension as held in the above said judgment. Therefore, he prayed for quashing the impugned order passed by the 2nd respondent.

5. A perusal of the records, it reveals that the petitioner was involved in a criminal case and he was sent to judicial custody and kept in the judicial custody for a period of 13 days. This Court is unable to go into the merits of the allegations made by the petitioner. So long

as the power of suspension is available with the respondents and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

6. The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

7. Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does

not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

8. In the light of the above judgments, the writ petition filed by the petitioner is misconceived and deserves to be dismissed. Accordingly, the writ petition shall stand dismissed. However, it is open to the petitioner to seek a review of the order of suspension by making a representation before the competent authorities and if such a representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(Cj conf)

//True Copy//

Sub Assistant Registrar

kj

To

1.The Chairman
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Chennai.

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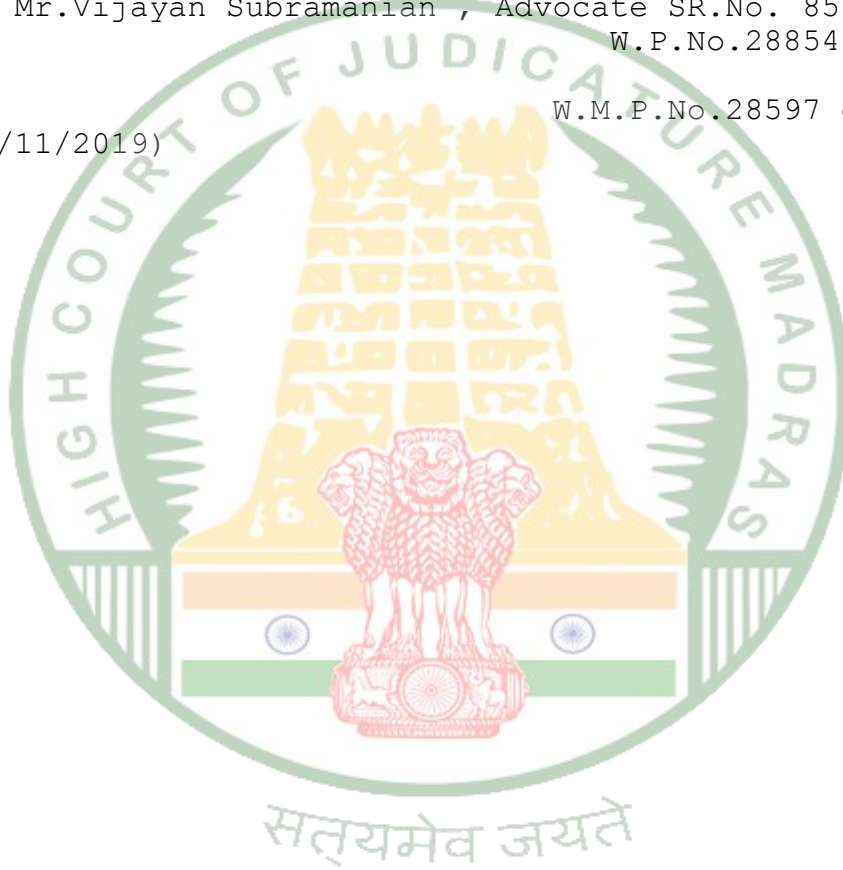
+1cc to Mr.Vijayan Subramanian , Advocate SR.No. 85167

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A.SK(06/11/2019)



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