



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.15848 of 2019

WEB COPY

K.Kanthavel

... Petitioner

vs.

The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Ramanathapuram - 623 503,
Ramanathapuram District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ka.EN.004459/Ni-A/NiBi1/002/Ko.NeethiMandraValakku/2019, dated .07.2019, on the file of the respondent, quash the same as illegal and consequently, to direct the respondent as per TNEB Standing Orders Clerical Cadre Rules 20(2)(c) and 20(2)(d) and the Constitution of India Article 311.N.21 to regularise the suspension period from 19.04.2011 to 08.10.2013 treated as duty period, within a time limit to be fixed by this Court.

For Petitioner	: Mr.K.Kanthavel Party-in-Person
For Respondent	: Mr.S.Dhalayan Government Advocate

ORDER

This Writ Petition has been filed seeking to quash the impugned order of the respondent in Ka.EN.004459/Ni-A/NiBi1/002/Ko.NeethiMandraValakku/2019, dated .07.2019 and a consequential direction to the respondent to regularise the suspension period from 19.04.2011 to 08.10.2013 as duty period.

2.According to the petitioner, while he was working as Assessor in Muthukulathur Section, Ramanathapuram District, a criminal case was registered against him. Pursuant to the same, the petitioner was suspended from service, vide order dated 21.04.2011 with effect from 18.04.2011 retrospectively. In the false criminal case, the petitioner was acquitted by the learned Judicial Magistrate, Muthukulathur, vide judgment dated 29.04.2013. The petitioner produced the copy of the said judgment to the respondent. However, the respondent did not allow the petitioner to join duty in Muthukulathur and he was informed that he was transferred to Kamuthi. The petitioner had preferred an appeal to the Chief Engineer (Personnel), Chennai, for cancellation of transfer order.



The Chief Engineer (Personnel) had sent a letter dated 21.08.2013, to cancel the transfer order of the petitioner. Based on the ante-dated reply given by the Chief Engineer, Madurai Region, the Chief Engineer (Personnel) had sent another letter dated 28.09.2013, directing the petitioner to join duty in Kamuthi. The petitioner has joined duty in Kamuthi on 09.10.2013 and gave a representation to regularise the period of suspension.

3. According to the petitioner, the respondent, by the impugned order dated 02.07.2019, treated the period from 18.04.2011 to 21.10.2011 as duty period, from 22.10.2011 to 10.11.2011 as compulsory wait and from 11.11.2011 to 08.10.2013 as leave on loss of pay. Challenging the said order, the petitioner has come up with the present Writ Petition.

4. The petitioner/party-in-person submitted that as per Rule 20 (2)(c) of the Tamil Nadu Electricity Board Standing Orders Clerical Cadre Rules, the respondent has to regularize the suspension period as duty period and prayed for allowing the present Writ Petition.

5. The learned Standing Counsel appearing for the respondent contended that after the transfer, the petitioner did not join duty and absented himself. As per the Standing Orders, the petitioner is not entitled to get the suspension period as duty period. The impugned order is valid and prayed for dismissal of the Writ Petition.

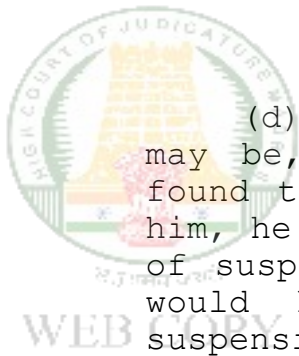
6. I have heard K.Kanthavel, Party-in-Person and Mr.S.Dhayalan, learned Standing Counsel appearing for the respondent.

7. From the materials on record, it is seen that the petitioner is claiming the relief as per Rule 20(2)(c) and (d) of the Tamil Nadu Electricity Board Standing Orders Clerical Cadre Rules. Rule 20 (ii) (c), the relevant Proviso to Rule 20(ii)(c) and Rule 20(ii)(d) of the said Rules read as under:-

'20(ii)(c) If on the conclusion of the enquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed that an order imposing any of the punishments mentioned in clause (1) above would meet the ends of justice, the competent authority shall pass an order accordingly:

.....

Provided also that when an order imposing any other punishments mentioned in clause (1) above is passed, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such



(d) If on the conclusion of the enquiry, or as the case may be, of the criminal proceedings, the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.''

8.From the Proviso to Rule 20(2)(c) and Rule 20(2)(d) of the said Rules, it is seen that when a workman is acquitted or given lesser punishment than the dismissal from service, he is entitled to the same wages, as he would have received if he had not been placed under suspension. In the present case, the petitioner was acquitted from the criminal case and in the disciplinary proceedings, he was imposed with a punishment of stoppage of increment for three years with cumulative effect and he retired from service on 31.05.2016. In view of the same, the impugned order of the respondent, dated 02.07.2019, is quashed and the respondent is directed to regularize the suspension period viz., from 19.04.2011 to 08.10.2013 as duty period, within a period of eight weeks from the date of receipt of a copy of this order.

9.This Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Ramanathapuram - 623 503,
Ramanathapuram District.

+1 CC to Mr.K.KANTHAVEL, Party-in-Person (SR-86818[F] dated 16/09/2019)

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