



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.18501 of 2016

and

W.M.P (MD) No.13392 of 2016

G.Jawahar

... Petitioner

vs.

1.The Chairman,

TANGED-Co,

No.800, Anna Salai,

Chennai-600 002.

2.The Chief Engineer (Personnel),

TANGED-Co,

No.800, Anna Salai,

Chennai-600 002.

3.The Chief Engineer,

Tamilnadu Electricity Board, (TANGED-CO),

Distribution, Madurai Region,

K.Pudu, Madurai.

4.The Superintending Engineer,

Tamilnadu Electricity Board, (TANGED-CO),

Theni Electricity Distribution Circle,

Theni District.

5.The Executive Engineer,

Tamilnadu Electricity Board (TANGED-CO),

Distribution, Periyakulam,

Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus, to call for the records pertaining to the impugned order Ref.Ku.A.No.04047/MePo/Theni/Ni A/Ni B 1/Vu 3/Ko/2016-1 dated 05.05.2016 on the file of the respondent No.4 and quash the same as illegal in so far as the dismissal period from 26.08.2011 to 28.01.2016 has been treated as Leave on Loss of Pay and consequently to direct the respondent No.4 to regularise the period from 26.08.2011 to 28.01.2016 as one spent on duty with all consequential benefits.



For Petitioner : Mr.T.Aswin Rajasimman

For Respondents : Mr.T.Sakthikumaran
Standing Counsel

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O R D E R

Citing the pendency of the criminal proceedings against the petitioner herein, who was employed as Foreman Grade-I with the respondent Board, the petitioner's service was suspended on 18.05.2007. The criminal case against the petitioner in Special Case No.02 of 2008 ended up in a conviction on 06.05.2011 by a judgment passed by the learned Chief Judicial Magistrate, Theni. Consequently, on 26.08.2011, the petitioner's service came to be terminated. Thereafter, the petitioner had preferred an appeal against the conviction in Crl.A.No.147 of 2011 before this Court and by a judgment dated 05.03.2015 the appeal came to be allowed and the petitioner was acquitted from the charges. In view of the acquittal, the petitioner came to be reinstated in service with effect from 29.01.2016 onwards. Thereafter, the petitioner made a representation seeking for regularization of his suspension period as well as subsequent termination period till the date of reinstatement and by impugned order dated 05.05.2016 the petitioner suspension period between 19.05.2007 to 25.08.2011 was treated as duty period and the period of his termination between 26.08.2011 to 28.01.2016 was treated as leave without pay. Challenging the same, the present writ petition is filed.

2.The learned counsel appearing for the petitioner would rely upon Rule 9(b) of the Tamil Nadu Electricity Board Service Regularization and submit that since the original termination order was not passed on the basis of the disciplinary proceedings, he would be entitled for full pay and allowances for both the suspension period as well as the termination period. In support of his contention, the learned counsel relied upon few decisions of this Court.

3.The learned Standing Counsel appearing for the respondents had relied upon a decision of the Hon'ble Apex Court reported in **(1996) 11 SCC 603** in the case of **Ranchhodji Chaturji Thakore Vs. Superintendent Engineer** and a decision of the Hon'ble Division Bench of this Court in the case of **TNEB (Now TANGEDCO) Vs. R.Pandian** passed in W.A (MD) No.440 of 2017 dated 10.08.2017 and submitted that though the petitioner would be entitled for regularization during the period of suspension, he would not be entitled for any other benefits including the monetary benefits.

4.I have given a careful consideration to the submissions made by the respective counsel.

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5. For the sake of convenience, Rule 9(b) of the Tamil Nadu Electricity Board Service and Regularization, is extracted hereunder:-

9. Where a Board employee is-

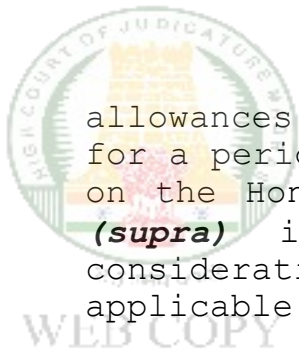
(a) Placed under Suspension in view of the fact that a complaint against him of any criminal offence is under investigation or trial; or

(b) dismissed or removed from service or compulsorily retired on the ground of conduct which had led to his conviction on a criminal charge and-

-the Board employee is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefits of doubt or on any other technical ground or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service.

6. A reading of the aforesaid regulation makes it clear to the effect that, when a Board employee, who is reinstated in service consequent to an acquittal order passed by a criminal Court, he would be entitled for full pay and allowances by treating him to have been prevented from discharging his duty during the period of his absence, which includes the suspension period. When the Board Regulation itself in categorical terms provides for payment of all the benefits on the ground that the petitioner, who has not been subjected any disciplinary proceedings has been kept under suspension and subsequently terminated, could only be construed that he was prevented from discharging his duties without subjecting him to any disciplinary action and therefore, he will be entitled to all the pay and allowances for his absent during such period.

7. The learned Standing Counsel appearing for the respondents would rely upon the aforesaid decision in the case of **Ranchhodji Chaturji Thakore (supra)** for the proposition that when an employee is involved in a criminal case, he would not be entitled for payment of backwages. The said case is not applicable to the case on hand for the simple reason that the regulation 9(b) of the Tamil Nadu Electricity Board Service Regulations in the decision in **Ranchhodji Chaturji Thakore (supra)** has also been observed that each case requires to be considered in its own backdrop. In view of the fact that Regulation 9(b) of the Tamilnadu Electricity Board Service Regulations, was not the subject matter before the Hon'ble Apex Court, the board Regulation itself provides for full pay and



allowances for the person who has been kept away from the service for a period owing to his involvement in criminal case, the reliance on the Hon'ble Apex Court decision in **Ranchhodji Chaturji Thakore (supra)** in which case, this aspect was not taken up for consideration, such an observation made in the decision, may not be applicable to the petitioner's case.

8.The learned Standing Counsel appearing for the respondents had also relied upon the decision of the Hon'ble Division Bench of this Court for the same proposition in the case of **TNEB (Now TANGEDCO) Vs. R.Pandian (Supra)**. A reading of the said decision also does not lay down the law to the effect that all the employees who were kept under suspension on their involvement in a criminal case, will not be entitled for benefits after acquittal. As a matter of fact, the Hon'ble Apex Court in the decision in **Ranchhodji Chaturji Thakore (supra)** has also observed that each case requires to be considered in its own backdrop. In view of regulation 9(b) of the TamilNadu Electricity Board Service Regulations, which specifically enables the petitioner to claim full pay and allowances during the period when he was kept away from service by the respondent and such an aspect having not been considered in the aforesaid two decisions, the reliance on the same may not be appropriate.

9.The learned counsel for the petitioner would also rely upon the decision of the Hon'ble Division Bench of this Court in the case of **TANGEDCO Vs A.Karthikeyan** dated 13.07.2018 passed in W.A.No.1434 of 2018, wherein the Hon'ble Division Bench had considered the decision relied upon by the learned Standing Counsel for the respondents in **Ranchhodji Chaturji Thakore (supra)** as well as the other decisions of the Hon'ble Apex Court and had come to the conclusion that in view of Rule 9(b) of the Tamilnadu Electricity Board Service Regularizations, the petitioner therein would be entitled to the benefits during his period of suspension in view of such ruling. As a matter of fact, Ruling 9 (b) of the Fundamental Rule 57(B) is also in *pari materia* to Rule 9 of the Tamil Nadu Electricity Board Service Regulations.

10.For all the aforesaid reasons, this Court is of the view that the impugned order denying the petitioner for full pay and allowances for the period between 26.08.2011 to 28.01.2016 cannot be sustained. Accordingly, the portion of the impugned order dated 05.05.2016 insofar as it denies the benefits to the petitioner from 26.08.2011 to 28.01.2016 is set aside. Consequently the fourth respondent shall regularize the period from 26.08.2011 to 28.01.2016 as duty period and disburse all the consequential service and monetary benefits to the petitioner, which exercise shall be done at least within a period of eight weeks from the date of receipt of a copy of this order.



11. With the above directions, this Writ Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

To:-

1. The Chairman,
TANGED-Co,
No.800, Anna Salai,
Chennai-600 002.
2. The Chief Engineer (Personnel),
TANGED-Co,
No.800, Anna Salai,
Chennai-600 002.
3. The Chief Engineer,
Tamilnadu Electricity Board, (TANGED-CO),
Distribution, Madurai Region,
K.Pudu, Madurai.
4. The Superintending Engineer,
Tamilnadu Electricity Board, (TANGED-CO),
Theni Electricity Distribution Circle,
Theni District.
5. The Executive Engineer,
Tamilnadu Electricity Board (TANGED-CO),
Distribution, Periyakulam,
Theni District.

+1 CC to M/s.M/S.T.SAKTHI KUMARAN, Advocate (SR-105173[F]16/12/2019)
+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-105411[F] 17/12/2019)

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