



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD)No.9069 of 2010

and

M.P (MD)No.1 of 2010

V.S.Narayanan

... Petitioner

vs.

The Tamil Nadu Electricity Board
represented by Superintending Engineering,
Theni Electricity Distribution Circle,
Theni.

... Respondent

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Ku.No.May.Po/Theni/U.Ne.A./Ni.Pi.3/Udavi.3/Ko.Marai/No.317/2000 dated 31.10.2000 issued by the respondent in so far as it affects the petitioner's pension fixation and quash the same and consequently direct the respondent to revise the petitioner's pension appropriately with all benefits.

For Petitioner

: Mr.Anwar Sameem

For Respondents

: Mr.T.Sakthi Kumaran

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Ku.No.May.Po/Theni/U.Ne.A./Ni.Pi.3/Udavi.3/Ko.Marai/No.317/2000, dated 31.10.2000 issued by the respondent in so far as it affects the petitioner's pension fixation and quash the same and consequently, direct the respondent to revise the petitioner's pension appropriately with all benefits.

2. The learned counsel appearing for the petitioner would submit that the Assistant Executive Engineer, Uthamapalayam issued a notice, dated 08.05.2000 calling upon the petitioner to explain as to why he had given service connection for a consumer which was cut due to non-payment of dues (charges) even though the request to that effect was made after expiry of 180 days from the date of expiry of

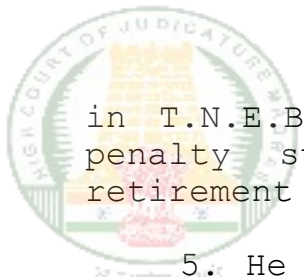


the agreement. The said cancellation of agreement was informed by sending Registered notice to the consumer on 10.02.1999 which was also affirmed by the petitioner by his notice which is false as the said notice was received by the consumer on 30.01.1999 itself. He had submitted a reply on 02.06.2000. The respondent by communication, dated 23.09.2000 called upon the petitioner to submit his explanation as to why punishment of stoppage of increment for a period of one year could not be imposed on him. He had submitted a reply, dated 11.10.2000 as to why the punishment should not be imposed on him. Not being satisfied with his explanation, the respondent passed an impugned order, dated 31.10.2000 imposing penalty of postponement of one increment with cumulative effect. The petitioner was under the impression that the penalty imposed on him would not have any adverse effect on his pension, because the proceedings commenced and concluded under Regulation 8B. The regulation 8A pertains to minor penalty proceedings. Regulation 8B pertains to major penalty proceedings. In the present case, mere show cause notice was issued and after getting the petitioner's explanation, penalty was imposed on him by the disciplinary authority and no enquiry was held against him.

3. He further submitted that the petitioner has submitted a review petition against the order of penalty. By order, dated 29.05.2004, the respondent had rejected his application. He reached the age of superannuation on 31.05.2006. Only when the pension was fixed, the effect came to be actually felt by the petitioner. Even today, the petitioner facing adverse effect by this punishment that was imposed on him. In view of the revision of pay following the latest wage revision, the difference in pension is almost more than Rs.500/- per month. Therefore, the petitioner was constrained to file this Writ Petition.

4. The learned counsel appearing for the respondent would submit that the petitioner, then Junior Engineer Grade-I, K.K.Patty during his service was in-charge of the Section Town/Uthamapalayam as additional charge during the period from 28.04.1999 to 27.05.1999. In this period charges were framed against him for his lapses. In this connection, a Show Cause notice was issued as per T.N.E.B., Disciplinary and Appeal Regulations under 8(a) vide Memo.No.SE/TNI/A.Ad.O/Adm.3/A3/F.Conf./No.289/2000, dated 23.09.2000 by the Superintending Engineer, Theni intimating him the nature of punishment of "withholding of his next Annual Increment for one year with cumulative effect" and request him to offer his explanation that why such punishment should not be imposed on him within a period of seven days from the date of receipt of such Show Cause Notice, dated 23.09.2000. He had submitted his explanation in time on 11.10.2000 and this explanation given by the petitioner was not accepted and the punishment shown in the Show Cause notice, dated 23.09.2000 was confirmed and a final order was issued on 31.10.2000. The final order was issued as per T.N.E.B., Discipline and Appeal 8 (a) which pertains to minor penalty whereas Disciplinary action

<https://hccases.courts.gov.in/cases/>



in T.N.E.B., Discipline and Appeal Regulation 8(b) pertain major penalty such as removal from service, dismissal, compulsory retirement etc.,

5. He further submitted that the petitioner was given a chance to prefer an appeal, if any, within a period of 30 days from the date of receipt of final order to the Chief Engineer/Distribution/Madurai through proper channel. But, he has not filed any appeal. The punishment was imposed on the petitioner by stopping his next Annual increment from 01.10.2001 FN for a period of one year with Cumulative effect which also ended on 30.09.2000 AN. The petitioner, after three years, had made a representation on 14.06.2004 to the respondent to reconsider the nature of punishment. The said representation was rejected by the respondent on the ground that he had not preferred an appeal to the higher authority. Since the lapses committed by the petitioner was totally against Board's Rules and Regulations and it was all based on recordal evidences, a show cause notice was issued on him to offer his explanation but since his explanation was not enough to defend him against the disciplinary action, the final order was issued confirming the same punishment shown in the show cause notice. The review petition submitted by the petitioner belatedly was rejected on 29.05.2004. The petitioner himself admitted that he is agreed by the punishment of withholding of increment for one year.

6. Heard the learned counsel appearing for the petitioner as well as the respondent.

7. On a perusal of the records and hearing the counsel for the petitioner and the respondent, it is clear that one V.S.Narayanan, who was a Junior Engineer Grade-I in K.K.Patty, Theni District, during his service was in-charge of the Section Town/Uthamapalayam as additional charge for the period from 28.04.1999 to 27.05.1999. He was given the following charges for the lapses:-

(i) Reconnection of Agricultural Service Connection No.257 even after lapse of Agreement period (ie) violation of Boards Rules and Regulations.

(ii) Acted in favour of consumer deliberately against board's Rules and Regulations.

Thereafter, he has issued with Show Cause notice as per Tamil Nadu Electricity Board Disciplinary and Appeal Regulations under 8(a) vide Memo.No.SE/TNI/A.Ad.O/Adm.3/A3/F.Conf./No.289/2000, dated 23.09.2000 by the Superintending Engineer, Theni stating that the punishment of "withholding of his next Annual Increment for one year with cumulative effect" and requested him to offer his explanation that why such punishment should not be imposed on him within a period of seven days from the date of receipt of such show cause notice, dated 23.09.2000 and the same was acknowledged by him on 05.10.2000 and the petitioner herein submitted his explanation on

<https://hcservicescourts001.in/hcservices> The respondent after going through the materials

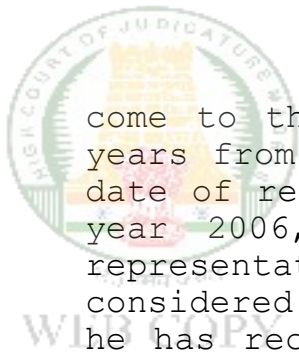


available on record and the proceedings initiated against him, has imposed a punishment as his explanation were not acceptable, the estimated punishment shown in the show cause notice dated 23.09.2000 was confirmed and a final order was issued to that effect on 31.10.2000.

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8. As per the said final order, which was issued under the Tamil Nadu Electricity Board Discipline and Appeal Rules 8(a) is only a minor penalty, whereas, Disciplinary action under the Tamil Nadu Electricity Board Discipline and Appeal Regulations 8(b) pertain major penalty such as removal from service, dismissal, compulsory retirement etc., It is clear that the said punishment was a minor punishment as its only stopping of annual increment for one year with cumulative effect. Even in the said impugned order, it is made clear that the petitioner was given a alternative remedy to prefer an appeal, if any, within a period of 30 days from the date of receipt of the final order to the next higher authority, ie., Chief Engineer/Distribution/Madurai through proper channel. But, it is seen from the petition that instead of approaching the appellate authority, the petitioner herein had kept quite for nearly 10 years and he has also attained the age of superannuation on 31.05.2006 and all his pension papers were made ready and only in the year 2010, he has chosen to file the present writ petition challenging the order of punishment, dated 31.01.2000. As it is seen that the punishment was imposed from 01.10.2001 FN to till 30.09.2002 AN, the petitioner had submitted a representation only on 14.06.2004 to re-consider the nature of punishment after a lapse of three years. The said representation was rejected by the authorities on the ground that he has not preferred any appeal to the next higher authorities in time through proper channel. The said representation was not acted upon as per Clause 8(a) of the Tamil Nadu Electricity Board Discipline and Appeal Regulations. The lapses committed by the petitioner was against the Board Rules and Regulations, which is based on the documentary evidence. The explanation submitted by the petitioner was not considered as it was not found to be a reasonable and convincing, the Disciplinary Authority has passed the final order confirming the punishment of 'stoppage of annual increment for one year with cumulative effect'. Immediately, the petitioner ought to have preferred an appeal to the Chief Engineer/Distribution/Madurai with convincing reason for modification of order or setting aside the said punishment. But, he kept quite for nearly 6 years till the date of his retirement and immediately, after that, he has not approached the authorities, but he approached this Court in the year 2010 challenging the said order of punishment. His pensionary papers were sanctioned by the concerned Accountant Officer and he is also receiving the said pension from 2010 till date.

9. Therefore, this Court is of the considered opinion that the petitioner, if he has really aggrieved by the said order, ought to have approached the authorities concerned immediately and cannot



come to this Court by filing a writ petition after a lapse of 10 years from the date of passing of the order and four years from the date of retirement. Even though, the petitioner was retired in the year 2006, he has not chosen to verify what happened to the representation sent by him in the year 2004, whether the same was considered or not and now after 10 years he cannot raise the same as he has received all his pension and other benefits being paid all these years which he has received without any protest. When an alternative remedy of appeal was available to the petitioner he has not availed such remedy within the time period prescribed and filing a writ belatedly is not maintainable.

10. With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

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/ /2020

Sub Assistant Registrar(CS)

Am

To

The Superintending Engineering,
Tamil Nadu Electricity Board
Theni Electricity Distribution Circle,
Theni.

+1 CC to Mr.T.SAKTHIKUMARAN, Advocate (SR-9467[F] dated 02/03/2020)

+1 CC to Mr.I.IRULAPPAN, Advocate (SR-9494[F] dated 02/03/2020)

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MK (17.03.2020) 5P 4C