



WEB COPY

REV.APLC(MD) No.15 of 2019
in W.A.(MD) No.440 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

REV.APLC(MD) No.15 of 2019
in
W.A.(MD) No.440 of 2017

R.Pandian ... Review Petitioner/Respondent/Petitioner

-vs-

1. The Tamilnadu Electricity Board,
Now called as Tamil Nadu Generation &
Distribution Corporation Ltd.,
Rep. by its Chief Engineer (Personnel),
Anna Salai, Chennai-600 002.
2. The Divisional Engineer,
The Tamilnadu Electricity Board,
Now called as Tamil Nadu Generation &
Distribution Corporation Ltd.,
Thirumayam, Pudukkottai,
Formerly called as Managing Director of
Thirumayam Rural Electric Cooperation Society (PA.63),
Thirumayam, Pudukkottai District.
3. The Superintending Engineer,
The Tamilnadu Electricity Board,
Now called as Tamil Nadu Generation &
Distribution Corporation Ltd.,
Pudukkottai. ... Respondents/Appellants/Respondents

Prayer: Review Application is filed under Order 41 Rule 27 of CPC to reconsider and review the order dated 10.08.2017 made in W.A.(MD) No.440 of 2017 insofar as disentitling the petitioner to any other benefits for the period from the date of suspension dated 29.10.1999 till 29.01.2016 and direct the respondents to disburse all the monetary and attendant benefits accrued to the service of the petitioner during the period of suspension and allow this Review Application as prayed for.



PRAYER IN WA(MD).440 OF 2017:

This Writ Appeal is filed under Clause 15 of Letters Patent Act, praying this Hon'ble Court to set aside the order dated 21.06.2016 made in WP(MD)No.2603 of 2013.

Prayer in WP(MD). 2603 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first Respondent passed in Memo No.062787/CC/G.44/G.441/2002-2, dated 05.03.2008 and the impugned order of the second Respondent passed in Rc.No.3614/99/A2(1), dated 29.10.1999 and quash the same and consequently directing the Respondents to reinstate the Petitioner will all monetary and attendant and monetary benefits and also to regularize the period of suspension as duty.

For Applicant	: Mr.Veerakathiravan, Senior Counsel For M/s.Veera Associates
For Respondents	: Mr.Anand Gopalan For M/s.Gopalan & Co.

O R D E R

S.VAIDYANATHAN, J.,
AND
G.R.SWAMINATHAN., , ,

Heard the learned Senior Counsel for the Applicant and the learned Standing Counsel for the respondents.

2. The Review Applicant was working as an Assistant Engineer in Thirumayam Rural Electric Cooperative Society and he was suspended on 29.10.1999, on the ground that he was involved in a vigilance case. Subsequently, the said Society was taken over by the Tamil Nadu Electricity Board (TNEB) on 06.04.2002 and the petitioner's suspension continued and TNEB continued to pay him the subsistence allowance.

3. In the Vigilance case, the petitioner was acquitted on 29.01.2016 and the petitioner's grievance was that even thereafter, he was not reinstated. Therefore, he filed a Writ Petition in W.P. (MD) No.2603 of 2013 and the learned Single Judge, by an order dated 21.06.2016 allowed the Writ Petition, setting aside the order of suspension and directed the TNEB to reinstate the petitioner into service with all attendant and monetary benefits. Aggrieved by the same, the TNEB filed W.A.(MD) No.440 of 2017 before the Division Bench and the Division Bench, vide order dated 10.08.2017 partly allowed the said Writ Appeal in the following terms:

<https://hcservices.ecourts.gov.in/hcservices/>



"5. The appellants are directed to regularize the period of suspension in view of the judgment of acquittal. However, it is made clear that the appellant will not be entitled to any other benefits for the period from the date of suspension when he was under suspension from service till 29.01.2016. This Writ Appeal is partly allowed..."

Aggrieved by the same, the present Review Application has been filed.

4. Learned Senior Counsel appearing for the Review Applicant drew out attention to the Regulation No.9 of the Service Regulation of the Tamil Nadu Electricity Board and the said Regulation No.9 reads as under:

"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 has 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 benefit 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."

5. Learned Senior Counsel would further contend that when an employee is acquitted, he ought to have been reinstated in service with all consequential benefits. His contention is that the Division Bench was not right in giving an observation that the Review Applicant will not be entitled to any other monetary benefits during the period of suspension upto 29.01.2016.

6. We find some considerable force in the said contention of the learned Senior Counsel for the Review Applicant. It is not in dispute that the Society in which the Applicant was originally employed, was subsequently taken over by the TNEB and the



relationship of employer and employee had continued. Admittedly, TNEB has been paying the subsistence allowance to the Review Applicant. It is seen that the Review Applicant was paid subsistence allowance on some terms, which he was paid when he was an employee in the Society. When the Society was taken over by TNEB on 06.04.2002, the petitioner was placed in the cadre of Assistant Engineer and therefore, the pay and allowances applicable to an Assistant Engineer working under TNEB ought to be paid to the Review Applicant also. It is seen that the Review Applicant was suspended from service on 29.10.1999. The Review Applicant is entitled to 50% of the wages for the first 90 days; 75% of the wages between 91st and 180 days and after 180 days, he is entitled to 100% of the wages. In this case, the fact, that the Review Applicant has been paid 100% wages after 180 days, is not disputed by the learned Senior Counsel for the Review Applicant.

7. With the above observation and direction, the Review Application is allowed and the Tamil Nadu Electricity Board (TNEB) is directed to re-work the entitlement of the Review Applicant as mentioned above and pay him the balance amount and the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

S. VAIDYANATHAN, J.

8. Before parting with this order, I want to emphasize that the Regulation No.9 of the TNEB is highly a dangerous provision, inasmuch as the Regulation grants extension of monetary benefits to an employee on acquittal even on the ground benefit of doubt. Unless or otherwise, an employee is acquitted on merits honourably and there is a finding to that effect by the Criminal Court, the extension of monetary benefits to an employee involved in cases of bribery, misappropriation of funds, etc., who has been acquitted on technical ground by giving the benefit of doubt, will encourage him to get involved in such activities even after reinstatement, in order to lead a sophisticated life. In that case, the employee would be getting benefits twice, firstly, he will be getting wages on the ground of acquittal on benefit of doubt and secondly, he will be enjoying with the money looted, in addition to the benefits being extended by way of arrears by the TNEB.

9. It is relevant to point out here that in case of amendment in Regulation No.9 in future, the accused and the Lawyer representing him/her must seek for honourable acquittal in the Criminal Court by quoting the amended provision for getting the benefits. In case they fail to do so before the Criminal Court, the accused / employee cannot take a plea thereafter that he must be paid all the allowances. However, it is for the Court to decide whether it is a honourable acquittal or acquittal by giving the



WEB COPY

**REV.APLC(MD) No.15 of 2019
in W.A.(MD) No.440 of 2017**

benefit of doubt, as the Criminal Law is silent about the honourable acquittal.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ar

+1 CC to Mr.P.MALINI, Advocate SR.No. 26438

**REV.APLC(MD) No.15 of 2019
in W.A. (MD) No.440 of 2017
17.12.2020**

—
SR(CO)
TR(22.01.2021) 5P 2C