



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.5671 of 2014

and

MP (MD) No.1 of 2014

WEB COPY

N.Somasundaram

... Petitioner

-Vs-

1.The Superintending Engineer,
Dindigul Electricity Board Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Palani Bye Pass Road,
Meenakshi Naickenpatti,
Dindigul.

2.The Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Palani Bye Pass Road,
Ottanchathiram,
Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the Executive Engineer, Tamil Nadu Generation and Distribution Corporation Limited, Ottanchathiram, Dindigul District, the second respondent herein made in Ku.No.030/27/Nee.P/Nee.2/Ko.a.3/13, dated 19.03.2013 quash the same and consequently, direct the respondents herein to disburse all the attendant service and monetary benefits due to the petitioner from the date of suspension namely, 01.12.1998 to till date of reinstatement in service on 27.04.2010 as Junior Engineer Gr.II with the consequential promotion on par with his immediate Junior and disburse all the arrears due to the petitioner within a shor date that may be fixed by this Court.

For Petitioner

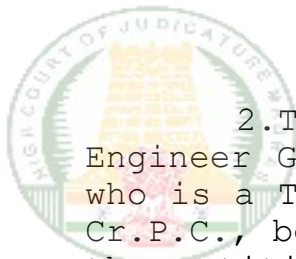
: Mr.T.Thirumurugan

For Respondents

: Mr.T.Sakthikumaran
Standing Counsel

ORDER

The relief sought for in the present writ petition is to grant back wages for the non-employment period more specifically, the period of suspension and dismissal from service and other consequential benefits. The claim of the writ petitioner was rejected.



2.The petitioner states that he was working as Junior Engineer Gr.II in the respondent Board. One, Smt.Devi Jansi Rani, who is a Teacher at Palani has lodged a complaint under Section 200 Cr.P.C., before the Judicial Magistrate Court, Palani, alleging that the petitioner has married her on 28.11.1990 and on enquiry, the complainant found that the petitioner has already married one Smt.Kasthuri and out of that wedlock, he has got children also. The complaint was taken on file as C.C.No.139 of 1996 by the Judicial Magistrate Court, Palani. The criminal case ended with an order of conviction and the punishment of two years rigorous imprisonment was imposed. The petitioner preferred Criminal Appeal No.55 of 1999 and the appellate Court, by order dated 29.10.2009, acquitted the petitioner. The petitioner was placed under suspension and thereafter, based on the order of conviction, he was dismissed from service in memo, dated 10.03.2000. Thus, he was not working in the respondent Board during the period of suspension as well as during the period of dismissal from service.

3.Based on the order of acquittal in Criminal Appeal No.55 of 1999, the petitioner made a representation to reinstate him with all consequential benefits. Accordingly, the petitioner was reinstated into service in proceedings, dated 23.04.2010. The petitioner joined duty on 28.04.2010. The period of suspension from 01.12.1998 to 21.10.1999 and the period from 22.10.1999 to 27.04.2010 i.e. the date of dismissal, which is, prior to the date of joining duty on reinstatement. The services of the petitioner was regularised without back wages and with continuity of service by the order of the second respondent, dated 25.11.2010. This apart, the pay of the petitioner was notionally fixed from 01.10.1999 onwards.

4.This Court is of the considered opinion that mere acquittal in a criminal case would not be a bar for the disciplinary authority to continue the disciplinary proceedings. To convict a person, high standard of proof is required. However, to punish an employee under the Discipline and Appeal Rules, no such strict proof is required. Preponderance of probabilities are sufficient to punish an employee. The allegation against the petitioner was that he married one Smt.Devi Jansi Rani, who is a Teacher, by suppressing his earlier marriage and she lodged a complaint. Thus, contracting for a second marriage by the Board employee itself is a misconduct. In spite of all these aspects, the Board has not continued the proceedings for the reasons best known to them. However, the order of dismissal was issued based on the order of conviction and on receipt of the order of acquittal, the petitioner was reinstated into service.

5.Under these circumstances, the petitioner is claiming back wages. As per the counter affidavit filed by the respondents, all the consequential benefits are granted in favour of the petitioner except the back wages. The period of suspension as well as the



period, in which, the petitioner was under dismissal from service were regularised and pay was also fixed notionally with retrospective effect and continuity of service was also granted in his favour. However, back wages alone is denied.

6.This Court is of the considered opinion that the principles of "no work no pay" is to be applied in this case, as the petitioner was not working during the period of suspension as well as during the period of dismissal from service. During the period of suspension, he would have earned subsistence allowance. The period of dismissal was already regularised and pay was also fixed notionally. Thus, by applying the principles of "no work no pay", the petitioner cannot claim back wages for the period, in which, he was not served in the Board. Thus, the continuity of service as well as the regularisation of the period, in which, the petitioner was not working, was done in his favour and the pay was also fixed. Under these circumstances, this Court is of the firm opinion that the petitioner is not entitled for the back wages as such sought for in the present writ petition.

7.Accordingly, the impugned order is issued inconsonance with the settled principles and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

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/ /2020

Sub Assistant Registrar(CS)

sjj

+1 CC to M/s.T.THIRUMURUGAN, Advocate (SR-25950[F] dated 17/12/2020)

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-25954[F] dated 17/12/2020)

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PK (CO)
KB(28.12.2020) 3P 3C