

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 36459 of 2004 and W.P. No. 33223 of 2007
and
W.M.P. No. 43785 of 2004 and W.M.P. No. 1 of 2007

G.Radha

... Petitioner
in both W.Ps

-vs-

1. The Superintending Engineer,
Chennai Electricity Distribution
Circle (North),
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.

2. Executive Engineer,
(Operation and Maintenance),
Tamil Nadu Electricity Board,
75, Paper Mills Salai,
Perambur, Chennai - 11.

... Respondents
in both W.Ps

PRAYER in W.P. No. 36459 of 2004: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records relating to the proceedings of the first respondent made in Ku.No.Me.Po/Che.Mi.Pa.Va /Va /Ni.Pi.2 /Udhavi.4 /O.Na.94/2004 dated 16.07.2004 quash the same.

PRAYER in W.P. No. 33223 of 2007: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents to release the petitioner's retirement benefits namely gratuity, G.P.F., F.B.F., F.S.F.S., and monthly pension payable on attaining the superannuation from 01.09.2007 with interest calculated @ 12% upto the date of payment and as such claimed in the petitioner's representation dated 10.09.2007 irrespective of the punishment of

proceedings dated 30.07.2007 as confirmed by appellate authority in memo dated 22.05.2004 and also the charge memo dated 16.07.2004 being challenged and pending in Writ Petitions filed by the petitioner.

For Petitioner
in both W.Ps : Mr.S.Elamurugan

For Respondents : Mr.Dhilip Kumar
in both W.Ps Standing counsel

C O M M O N O R D E R

Since the issue raised in both the Writ Petitions is by the same petitioner which are interconnected, therefore, with the consent of the learned counsel appearing for both sides, both the Writ Petitions have been heard together and are being disposed of by this common order.

2. The petitioner was working as Line Inspector at the respondents organization, i.e., erstwhile Tamil Nadu Electricity Board presently TANGEDCO. While so, a disciplinary proceedings was initiated against the petitioner by issuance of charge memo dated 16.07.2004. The said charge memo has been challenged in the Writ Petition in W.P. No. 36459 of 2004. While the said Writ Petition was pending, the petitioner reached superannuation by 31.08.2007, accordingly, the petitioner was permitted to retire from service without any remarks. In this context, it is to be noted that, the respondents TANGEDCO issued a relieving report by 31.08.2007 with following effect:

TAMIL NADU ELECTRICITY BOARD RELIEVING REPORT

1. Name of the employee : G.Radha L.I
2. Designation : Line Inspector
3. Headquarters : Gummidipoondi
4. Section : JE/Mtc/110/33-11 kv
SSI/GPI
5. Sub Division : AEE/D&M/GRP
- 6.Division : EE/O&M/PONERI
7. Reference to (1) CE's orders
(2) EE's order : Memo No.6098/AADO/Adm/A2
F.Superannuation / 07
dated 31.08.2007
8. Date of relief
(FN or AN to be specifically : 31.08.2007 a.n.
noted)

9. Retirement : On 31.08.2007
Transfer (a) in the same cadre
(b) on promotion
10. Proceeding on / returning from :
leave (with nature of leave)
11. Section from which transferred
in the case of transfer on
appointment or promotion :
12. Character :
13. Signature of the employee : sd/- G.Radha

3. Though the petitioner was retired peacefully on attaining superannuation on 31.08.2007, his retirement and pensionable benefits has not been disbursed or released by the respondents. Therefore, seeking for a mandamus to give a direction to the respondents to release the retirement and pensionable benefits, the petitioner has filed the second Writ Petition, i.e., W.P. No. 33223 of 2007, that is how, both these Writ Petitions were filed by the petitioner with the respective prayers as aforesaid.

4. Heard Mr.S.Elamurugan, learned counsel appearing for the petitioner who would submit that, no doubt, the disciplinary proceedings was initiated against the petitioner, where, charge memo dated 16.07.2004 was issued, in response to the same, the petitioner has also given explanation, but pursuant to the explanation, since the charge memo was not dropped and was proceeded to conduct an enquiry, the petitioner has approached this Court by filing the Writ Petition in W.P. No. 36459 of 2004 challenging the very charge memo itself and during the pendency of the Writ Petition, where, disciplinary proceedings were not conducted or proceeded further or could not be completed, the petitioner reached superannuation on 31.08.2007 and on that day, the petitioner had been permitted to retire from service peacefully without any remarks and in this regard, the relieving report as referred above has also been issued by the respondents.

5. Having permitted the petitioner to retire from service peacefully and a relieving report to that effect since has been issued by the respondents, the retiral benefits payable to the petitioner should have also been calculated and paid, however, since the same has not been paid and it has been withheld by the petitioner, the petitioner has filed the second Writ Petition.

6. The learned counsel appearing for the petitioner would further contend that, there could be no clutch on the petitioner by the respondents and hence, they cannot further proceed with the charge memo dated 16.07.2004, based on which, the respondents cannot impose any punishment on the petitioner or they cannot retain the retirement benefits payable to the

petitioner. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court in respect of the respective prayers sought for in both the Writ Petitions.

7. Per contra, Mr. Dhilip Kumar, learned Standing counsel appearing for the respondents would submit that, the charge memo dated 16.07.2004 framed against the petitioner is serious in nature, as he having suppressed the house constructed by him, once again applied for a loan to be sanctioned in favour of him and accordingly, obtained the loan and he utilized the money for some other purpose. Therefore, the violation on the part of the petitioner is against the code of conduct and the relevant regulation to that effect, therefore, the disciplinary proceedings was initiated against him by framing definite charges dated 16.07.2004 and when the enquiry was commenced, the petitioner had approached this Court and has filed the first Writ Petition. Because of the Writ Petition that was filed and was pending before this Court, the respondents could not proceed further and in the meanwhile, since the petitioner superannuated on 31.08.2007 without prejudice to the enquiry which was pending against him, he was permitted to retire from service and therefore, after his retirement, the charge memo can very well be proceeded. Hence, anticipating the outcome of the disciplinary proceedings, the retirement benefits of the petitioner was not paid or it has been with held. Therefore, the action taken in this regard by the respondents are fully justifiable. Hence, the petitioner is not entitled to get any relief as sought for in these Writ Petitions, he contended.

8. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9. No doubt, on 16.07.2004, definite charges were framed against the petitioner and disciplinary proceedings has been initiated, subsequently, when enquiry was commenced, the petitioner had approached this Court and filed the first Writ Petition challenging the charge memo itself and during the pendency of the Writ Petition, the petitioner reached superannuation on 31.08.2007.

10. At that juncture, if at all, the respondents wanted to continue the disciplinary proceedings against the petitioner either during the pendency of the Writ Petition or after disposing of the same, the service of the petitioner could have very well been retained. However, the respondents had not chosen to retain the service of the petitioner and they in fact permitted the petitioner to retire from service without any remarks.

11. In this context, the relieving report of retirement of the petitioner dated 31.08.2007 has made it clear that, without any condition or clutch over the petitioner, unconditionally the petitioner had been permitted to retire from service with effect from 31.08.2007.

12. Once the petitioner had been permitted to retire and he had accordingly retired from service, certainly, the employee and employer relationship for the purpose of proceeding against the petitioner by way of disciplinary proceedings has been severed.

13. It is a settled legal proposition that, once the employee - employer relationship severed by virtue of the clear permission given by the employer to the employee to retire from service without retaining his or her service for the purpose of disciplinary proceedings which was already initiated and pending on the date of superannuation, the natural corollary would be that, the employer would lose the chance of continuing the disciplinary proceedings against such employee and in that case, whatever be the retirement or remaining benefits including the pensionary benefits payable to the employee shall be calculated and be paid or disbursed.

14. In this case, exactly the aforesaid position can be noticed, where, admittedly the petitioner had been permitted to retire from service on 31.08.2007, i.e., on the date of superannuation, without any condition. Therefore, beyond which, the respondents cannot have any clutch over the petitioner to proceed further in the departmental proceedings which were already initiated of course pursuant to the impugned charge memo dated 16.07.2004. Therefore, the said charge memo cannot be further proceeded after the petitioner retired from service with effect from 31.08.2007. सत्यमेव जयते

15. Once the impugned charge memo dated 16.07.2004 become ineffective and it cannot be proceeded further against the petitioner, automatically the petitioner shall be entitled to get the retirement benefits including the pensionable benefits, if any, payable to the petitioner. Therefore, this Court feels that the prayer sought for by the petitioner in both the Writ Petitions can be accepted.

16. In that view of the matter, this Court is inclined to dispose of these Writ Petitions with the following orders:

"(i) That the impugned order (charge memo) dated 16.07.2004 become inoperative or

incapable to be proceeded further against the petitioner. Therefore, whatever the subsequent developments, pursuant to the impugned charge memo dated 16.07.2004 is held to be invalid.

(ii) In view of the above, the petitioner shall be entitled to get retirement and pensionable benefits which shall be calculated and disbursed to the petitioner within a period of three months from the date of receipt of a copy of this order."

17. With these directions, both these Writ Petitions are ordered. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vji
To

1. The Superintending Engineer,
Chennai Electricity Distribution
Circle (North),
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.
2. The Executive Engineer,
(Operation and Maintenance),
Tamil Nadu Electricity Board,
75, Paper Mills Salai,
Perambur, Chennai - 11.

+lcc to Mr.P.R.Dhilip Kumar, Advocate Sr.20751
+lcc to Mr.S.Elamurugan, Advocate Sr.20465

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srg 30/06/2021