



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 1959 of 2019

E.Venkatesan

... Petitioner

-vs-

1. The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution Corporation Ltd.,
No. 144, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer (P&A),
North Chennai Thermal Power Station/Stage - I,
TANGEDCO,
Chennai - 600 120.

3. The Superintending Engineer,
Chennai Electricity Distribution Circle/Central,
TANGEDCO,
Chennai - 600 034.

... Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the Second Respondent vide Memo. No. 7343/May.Po/Ko&Nir/Ni.Pe.1/Ni.U.1/Ko.Pa.May/2016 dated 23.08.2016 and quash the same and consequently direct the Respondents to regularize the period from 16.10.2015 to 21.02.2016 as duty period and pay all consequential benefits.

For Petitioner : Mr. R.D.Ashok Kumar

For Respondents: Mr. P.Subramanian, Standing Counsel

O R D E R

Heard Mr. R.D.Ashok Kumar, Learned Counsel for the Petitioner and Mr. P.Subramanian, Learned Standing Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Stores Supervisor in North Chennai Thermal Power Station/Stage - I, had been transferred to Chennai Electricity Distribution Circle/Central by Memo No. 066446/654/G.34/G.341/2015-9 dated 12.10.2015 passed by the First Respondent, which was challenged by him in W.P. No.



33353 of 2015 before the Court. When that Writ Petition came up for admission on 14.10.2015, the Court had passed the following self-explanatory order:-

" Notice of Motion returnable on 04.11.2015.
Private Notice is also permitted.

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2. Mr. S.N.Ravichandran, Learned Counsel appearing for the Petitioner would submit that the Petitioner was working as Stores Custodian Grade-II and was promoted as Stores Supervisor and posted at North Chennai Thermal Power Station/Stage-I on 04.09.2015 and he also joined in the said post on 08.09.2015 and within a period of one month, he has been transferred to CEDC-Central on administrative grounds and it is done only with a view to accommodate Mr.S.Murugesan, who was promoted as Stores Supervisor, vide order dated 04.09.2015. The Learned Counsel appearing for the Petitioner would further submit that the Petitioner has four daughters and his third daughter is studying +1 at St.Mary's Matric Higher Secondary School at Minjur and his fourth daughter was also studying 10th std. In the same school and he is also residing at No.22, Jeevanandam Street, Minjur, Chennai - 601203 and if the transfer order is given effect to, the petitioner has to shift his residence to Chennai, which may cause grave hardship and difficulty and prays for interim orders. The Learned Counsel appearing for the Petitioner also submitted that as on today, the Petitioner is on medical leave and he is yet to receive the transfer order.

3. Heard the submissions of Mrs.R.Varalakshmi, Learned Counsel who accepts notice on behalf of the Respondents.

4. In the light of the submissions made by the Learned Counsel appearing for the Petitioner and on going through the materials placed, this Court is of the view that a prima facie case is made out for grant of interim orders. Hence, there shall be an order of Status Quo as exists today till 04.11.2015.

Call on 04.11.2015."

The Petitioner had thereafter reported for duty at the North Chennai Thermal Power Station/Stage - I on 16.10.2015 enclosing the copy of his Medical Fitness Certificate and the interim order dated 14.10.2015 in that Writ Petition passed by the Court. The Stores Controller, Central Store, North Chennai Thermal Power Station by proceedings dated 16.10.2015 acknowledged and forwarded the same to the higher officials.



Thereafter, the First Respondent by Letter No. 06646/654/G.34/G.341/2015-14 dated 30.10.2015 required the Third Respondent to relieve one S.Murugesan, who had joined duty in that place so as to enable the Petitioner to work at the North Chennai Thermal Power Station/Stage - I in terms of the interim order dated 14.10.2015 in that Writ Petition passed by the Court. The said Writ Petition was ultimately dismissed by order dated 08.01.2016 passed by this Court with an observation that if the Petitioner has already joined duty at the North Chennai Thermal Power Station/Stage -I in view of the interim order dated 14.10.2015 in that Writ Petition passed by the Court, he is permitted to work in the same place till the end of that academic year. The Petitioner preferred an appeal in W.A. No. 119 of 2016 before the Division Bench of this Court in which an interim order dated 15.02.2016 was passed directing the Petitioner to join the place of posting recording the submission made on behalf of the Respondents that posting order would be issued to the Petitioner on 16.02.2016. In furtherance thereto, the Stores Controller, Stores, North Chennai Thermal Power Station/Stage - I had issued posting order in Memo No. St.Cont/CSO/WH/ NCTPS/SS/F.1/D.2065/2016 dated 19.02.2016 (Friday) and he reported for duty on 22.02.2016 (Monday). In the interregnum, the Petitioner had filed the Contempt Petition No. 2581 of 2015 alleging violation of the interim order dated 14.10.2015 in W.P. No. 33353 of 2015 and the Court while closing the same, had permitted the Petitioner to make a representation to the Respondents for regularization of the period from 16.10.2015 to 22.02.2016. It is stated that the Petitioner made a representation dated 10.06.2016, which was disposed by Order in Ku. No. 7343/Me.Po/Ko(Ma)Nir/Ni.Pi.1/Ko.Pa.Me/2016 dated 23.08.2016 passed by the Third Respondent informing that he would be entitled to Medical Leave of 15 days and the remaining 117 days had been treated as leave on loss of pay. The appeal in W.A. No. 119 of 2016 preferred by the Petitioner was disposed by this Court on 25.10.2016 with an observation, which reads as follows:-

"6. If the Appellants have gone on Medical Leave, and if the leave is available to their credit, salary payable for the said period cannot be denied, however, if the leave is not on their credit, the same can be treated as Leave Without Pay."

The Petitioner assails the order dated 23.08.2016 passed by the Third Respondent in which the 117 days had been treated as leave on loss of pay, in this Writ Petition.

3. Learned Standing Counsel appearing for the Respondents justifies the impugned order by contending that on the date of passing the interim order dated 14.10.2015 in W.P. No. 33353 of 2015, this Court had not stayed the order of transfer and had merely directed the status quo to be maintained. In this regard,



he points out that the said S.Murugesan, who had been transferred to the North Chennai Thermal Powers Station/Stage - I, had already joined duty on 13.10.2016 and as such, it would not be possible to accommodate two persons at the same place. Though the said submission appears to be attractive, it is not possible to countenance the same in view of the fact that the authorities have also understood the interim order dated 14.10.2015 in W.P. No. 33353 of 2015 as permitting the Petitioner to join duty at the North Chennai Thermal Power Station/Stage - I as reflected from the Letter No. 066446/654/G.34/ G.341/2015-14 dated 30.10.2015 of the First Respondent. It also requires to be noticed here that after obtaining the interim order on 14.10.2015, the Petitioner had reported for duty on 16.10.2015 and he was required to await orders of the higher officials as stated in the note dated 16.10.2015 from the Stores Controller, Central Store, North Chennai Thermal Power Station, Chennai. Moreover, even when W.A. No. 119 of 2016 was taken up for admission, specific submission made on behalf of the Respondents that posting orders would be issued to the Petitioner, which has been recorded, meaning thereby that the Respondents were conscious of the fact that the Petitioner was still working at the North Chennai Thermal Power Station/Stage - I and not at the Chennai Electricity Distribution Circle/Central. Viewed from this perspective, it is not possible to accept the contention of the Respondents that the period from 16.10.2015 till 21.02.2016 cannot be regularized and has to be treated as leave on loss of pay. The Petitioner cannot be faulted after reporting for duty on 16.10.2015 and it was incumbent upon the Respondents to extract work from him at the North Chennai Thermal Power Station/Stage - I in view of the interim order dated 14.10.2015 in W.P. No. 33353 of 2015 passed by the Court. In such circumstances, the impugned order dated 23.08.2016 passed by the Third Respondent, which cannot be sustained, set aside. The concerned authority shall pass reasoned orders for regularizing the services of the Petitioner during the period from 16.10.2015 to 22.02.2016 taking into account the aforesaid observations, in accordance with law, on or before 31.07.2022 and communicate the decision taken to the Petitioner under written acknowledgment.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar



vjt

To

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1. The Chief Engineer/Personnel,
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TANGEDCO,
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3. The Superintending Engineer,
Chennai Electricity Distribution Circle/Central,
TANGEDCO,
Chennai - 600 034.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.21228

+1cc to Mr.P.Subramanian, Advocate, S.R.No.21195

W.P. No. 1959 of 2019

VBM(CO)
KM(09/06/2022)