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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.NO. 4384 OF 2022

AND

WMP.NO.4507 OF 2022

G.Tamiziniyan

..Petitioner

Vs.

1. The Chairman
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TNGEDCO), NPKRR Maaligai,
No. 144, Anna Salai,
Chennai - 600002.
2. The Chief Engineer - Distribution,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TNGEDCO),
Villupuram Region, Villupuram.
3. The Superintending Engineer,
O/o. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Capper Hills, Cuddalore - 4.
4. The Assistant Engineer,
Operation & Maintenance,
Lalpet - 608 303
Cuddalore District.

.. Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned Letter No. 025116/ SE/ CEDC/ Cud/ Adm.1/ A3/ F.Sus/ 2019-1 dated 18.05.2020 issued by the 3rd respondent and quash the same as illegal and consequently direct the 3rd respondent to re-instate the petitioner in service as commercial Assistant with all attendant /consequential benefits.



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For Petitioner : Mr. R.Mohammed Ashish
For Mr.D.Murugan

For Respondents : Mr.P.Subramanian, Standing Counsel

ORDER

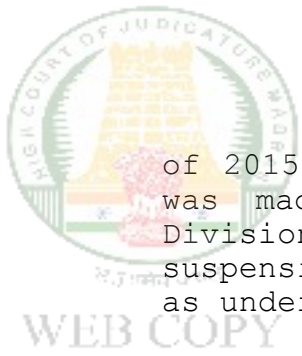
The relief sought for in the writ petition is to call for the records pertaining to impugned Letter No. 025116/ SE/ CEDC/ Cud/ Adm.1/ A3/ F.Sus/ 2019-1 dated 18.05.2020 issued by the 3rd respondent and quash the same as illegal and consequently direct the 3rd respondent to re-instate the petitioner in service as commercial Assistant with all attendant / consequential benefits.

2. The case of the petitioner is that the petitioner was appointed as Helper in the year 2009 and subsequently promoted as Commercial Assistant and has been working in the 4th respondent Board from 10.02.2014. Based on the complaint made by one R.Ilanjzhiyan, the petitioner was trapped and arrested by DVAC authorities for the offences under Section 7,11 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and a FIR was registered in Crime No. 5/2018/C/CUD, dated 12.07.2018. Based on the same, the petitioner was suspended from service by proceedings of the 3rd respondent dated 15.07.2018. The petitioner has made representation dated 26.08.2019 for revocation of suspension. The said request was rejected without giving any reason. Challenging the same, the present writ petition is filed.

3. Mr. P. Subramanian, learned Standing Counsel takes notice on behalf of the respondents. Despite time granted to file counter affidavit, no steps have been taken by the respondents, hence based on the available materials, the following order is passed.

4. The contention of the learned counsel for the petitioner is that based on the FIR, a Criminal Case has been registered as Spl.C.C.No. 16 of 2018 on the file of the Chief Judicial Magistrate-cum-Special Judge, Cuddalore and the trial has not been commenced till date. Mere suspension is indirectly imposing as punishment cannot be accepted and the continuation of suspension is against the judicial principles as laid down by the Hon'ble Apex Court in the case of Ajay Kumar Choudary Vs. Union of India, reported 201597) SCC 291.

5. In this context, it is pertinent to rely upon the judgment of the Hon'ble Full Bench of this Court in W.P.Nos.2165



of 2015 and 21628 of 2018 dated 15.03.2022, wherein a reference was made to the two conflicting judgments rendered by the Division Benches of this Court on a challenge to the order of suspension, the Hon'ble Full Bench of this Court, has answered as under:

(i) The judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges / charge-sheet has not been served within three months, or if memorandum of charges/charge -sheet is served without reasoned order of extension.

(ii) The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.

(iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.

(iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet.

6. Considering the fact that the petitioner was placed under suspension for more than 15 months and the trial in the criminal case has also not been commenced, it would be appropriate for this Court to direct the respondent to consider the representation made by the petitioner in the light of the decision of the Hon'ble Full Bench of this Court. It is made clear that this Court is not inclined to interfere with the charges framed on the petitioner, it is for the authorities concerned to take appropriate action.

7. Further, on perusal of impugned order would disclose that the respondent had rejected the petitioner's request without stating any reason. Therefore, on this ground, the impugned order is liable to be rejected.

8. In the light of the foregoing discussions and the decision of the Hon'ble Full Bench of this Court, this Court without any hesitation is inclined to quash the impugned order as the same was issued without stating any reason for rejection.



Accordingly, the following order is passed;

i. Impugned rejection order passed by the 3rd respondent dated 15.07.2018 is quashed.

ii. Petitioner is permitted to make fresh representation to the respondent enclosing all particulars, within a period two weeks from the date of receipt of a copy of this order.

iii. On receipt of such representation, the respondent is directed to consider the same and pass appropriate orders as expeditiously as possible, by taking note of the decision rendered by the Hon'ble Full Bench of this Court cited supra.

9. With the above directions, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

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(TNGEDCO), NPKRR Maaligai,
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4. The Assistant Engineer,
Operation & Maintenance,
Lalpet - 608 303
Cuddalore District.

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+1cc to Mr.D.Murugan, Advocate, S.R.No.28131

+1cc to Mr.P.Subramanian, Advocate, S.R.No.28114

W.P.No. 4384 of 2022
and

WMP.No.4507 of 2022

SSD (CO)
PM/31/05/2022