



W.P.(MD)No.2475 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2475 of 2020

and

W.M.P(MD)Nos.2132 and 2133 of 2020

P.Subramani(died)

- 1.Muthammal
- 2.Shyamala
- 3.Siva

(P1 to P3 are substituted vide Court order dated
02.03.2021 in W.M.P(MD)No.225 of 2021 in
W.P(MD)No.2475 of 2020 by MSRJ)

... Petitioner

Vs.

- 1.The Tamil Nadu Generation and
Distribution Corporation Limited.,
Rep. by its Chairman and Managing Director,
144, Anna Salai,
Chennai – 2.
- 2.The Chief Engineer(Distribution),
Tamil Nadu Generation and
Distribution Corporation Limited.,
Erode Region,
Erode.



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3. The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Limited.,
Namakkal Electricity Distribution Circle,
Namakkal.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned punishment order passed by the 3rd respondent in Ku.Aa.No.00223/011/Nipi.1/Udhavi.3/Ko.Thani/2016-9, dated 12.06.2018 and Errata issued by the 3rd respondent in Ku.aa.No. 012196/369/Nipi2/Uhavi.1/2018-1 dated 16.11.2018 in rejecting the appeal preferred by the petitioner and consequential recovery orders issued by the 3rd respondent in proceeding Nos.296/Ni.Pi.2/Udhavi.3/Ko.Pa/Oivu/2018 dated 15.09.2018 and Me.Pa.Po/Na.Mi.Pa.Va/Ni.Pi.2/Vu.3/Ko.Oivu/R.296/2018 dated 15.09.2018 in recovering and adjusting terminal benefits payable to the petitioner namely Provident Fund, Special Provident Fund (SPGF 2000) amount Family Security Fund (FSFS) amount, Encashment of Earned Leave Salary and unearned leave on private affairs amounts, Gratuity amount and the last month pay towards the penalty amount of Rs.33,84,590/- imposed against the petitioner, quash the same and consequently, direct the respondents to settle all the terminal benefits without any recovery based on and pursuant to the impugned orders including monthly pension from the date of the petitioner's retirement with arrears and other monetary



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benefits together with interest at the rate of 18% per annum payable from 30.06.2018 to till the date on which the above amounts are disbursed to the petitioner.

For Petitioner	: Mr.G.Prabhu Rajadurai for Mr.A.Rahul
For Respondents	: Mrs.M.Parameswari, Standing Counsel

ORDER

This writ petition has been filed challenging the impugned punishment order passed by the 3rd respondent in Ku.Aa.No. 00223/011/Nipi.1/Udhavi.3/Ko.Thani/2016-9, dated 12.06.2018 and Errata issued by the 3rd respondent in Ku.aa.No.012196/369/Nipi2/Uhavi. 1/2018-1, dated 16.11.2018, rejecting the appeal preferred by the petitioner and consequential recovery orders issued by the 3rd respondent in proceeding Nos.296/Ni.Pi.2/Udhavi.3/Ko.Pa/Oivu/2018 dated 15.09.2018 and Me.Pa.Po/Na.Mi.Pa.Va/Ni.Pi.2/Vu.3/Ko.Oivu/R. 296/2018 dated 15.09.2018 and consequently, to direct the respondents to settle all the terminal benefits to the petitioner without any recovery pursuant to the impugned orders including monthly pension from the



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date of the petitioner's retirement with arrears and other monetary benefits together with interest at the rate of 18% per annum payable from 30.06.2018 to till the date on which the above amounts are disbursed to the petitioner.

2. During the pendency of this writ petition, the writ petitioner passed away and his legal heirs impleaded themselves as Legal Representatives. The case of the original writ petitioner is that he joined as a Contract Labour in the then Tamil Nadu Electricity Board with effect from 23.05.1980. Based on the report of the Selection Committee before which he appeared on 24.07.1995, the petitioner was appointed as Helper and his services were regularized from 21.10.1995. Since the original writ petitioner was illiterate, he did not possess the educational certificate as well as birth certificate, he was directed to appear before the Medical Officer of Government Hospital, Rasipuram and get an age certificate. The Medical Officer after examining the petitioner issued a certificate, dated 24.07.1995, certifying that the petitioner was aged 35 years and fixed the date of birth as 01.07.1960 and the date of



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superannuation as 30.06.2018 and the same was recorded in the service records. After joining duty as Helper, subsequently, the petitioner was promoted as Wireman, Line Inspector and then Foreman and thereafter, retired from service.

3. While the matter stood thus, the original petitioner was issued with a charge memo, dated 27.09.2016, based on an anonymous petition received from Unemployed Graduate Association, Elur, alleging that the petitioner's medical certificate as to his age was bogus one. Subsequently, an Enquiry Officer was appointed and after enquiry, the enquiry officer filed a report, dated 22.05.2017, holding that the charge against the petitioner was not proved. However, the third respondent has not accepted the said report and appointed a new Enquiry Officer, who in turn, submitted an enquiry report holding that the charge against the petitioner was proved. Based on the said report, punishment was imposed and recovery order was also passed. Challenging the same, the present writ petition is filed.



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4. The learned counsel appearing for the petitioner would submit that there is no provision available in the regulation in respect of the petitioner's cadre for appointing a second Enquiry Officer. Therefore, in the absence of any provision available for appointing second Enquiry Officer by the disciplinary authority, on disagreement with the enquiry report of the first Enquiry Officer, the disciplinary authority appointed second enquiry officer and obtained favourable report from the second Enquiry Officer and therefore, the present punishment imposed against the petitioner, is not sustainable and hence, prayed for allowing of this writ petition.

5. Per contra, the learned standing counsel appearing for the respondents would submit that the authority is having power to appoint a second Enquiry Officer if he is not satisfied with the enquiry report filed by the first Enquiry Officer on condition that they have to give ample opportunity to the employee. In the case of the petitioner, sufficient opportunity was given to the petitioner and the petitioner has also participated in the enquiry proceedings and thereafter only punishment



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was imposed and accordingly prayed for dismissal of this writ petition.

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6. Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondents and perused the materials produced before this Court.

7. Admittedly, the petitioner entered into service in the year 1980 and his services were regularized in the year 1995 and he was appointed as Helper based on the report of the Selection Committee on 24.07.1995 and subsequently, he acquired various promotions and attained superannuation in the year 2018. As the petitioner was not having the age certificate, he was directed to appear before a Medical Officer. The Medical Officer has also issued a certificate in favour of the petitioner and thereafter, the appointing authority fixed the age of the petitioner as 01.07.1960 and the date of superannuation as 30.06.2018. However, in the year 2016 based on the anonymous petition, disciplinary proceedings were initiated as if the petitioner obtained bogus age certificate, for which, the Enquiry Officer has given a report stating that



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the age certificate produced by the petitioner is a genuine one. However, disagreeing with the same, the disciplinary authority appointed the second Enquiry Officer for conducting fresh enquiry.

8. The core issue to be decided in this writ petition is whether the Disciplinary Authority has power to appoint second Enquiry Officer. Perusal of the Regulation shows that there is no provision available authorizing the Disciplinary Authority to appoint a second Enquiry Officer. Though there is no provision available for the Disciplinary Authority to appoint second enquiry officer, the Disciplinary Authority has appointed the second Enquiry Officer, in the absence of any provision. If the Disciplinary Authority is not satisfied with the enquiry report of the Enquiry Officer, based on the materials which were not considered by the Enquiry Officer, the Disciplinary Authority can appoint a second Enquiry Officer. However, in the present case, no such opinion was recorded by the Disciplinary Authority for appointing the second Enquiry Officer and hence, the appointment of the second Enquiry Officer and the punishment imposed on the basis of the second enquiry



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report is not sustainable one. Further, Clause 36 of the very same Regulation prescribed for obtaining Medical Certificate. As per Clause 36(2), if any employee joined the respondent Board and was not able to produce the age certificate, the Board can refer the employee to appear before the Medical Officer for the purpose of ascertaining the age.

9. In view of Clause 36(2) of the Regulation, the Board directed the petitioner to appear before the Medical Officer and the Medical Officer also issued a certificate fixing the age as 01.07.1960. While such being a position, after a lapse of two decades, the disciplinary authority initiated proceedings and imposed punishment against the petitioner, which is not sustainable one and therefore, the impugned orders are liable to be interfered with in terms of the Regulations.

10. In the result, this writ petition is allowed and the impugned orders are set aside. The respondent Board is directed to disburse all the eligible monetary benefits to the petitioners, who are the legal representatives of original petitioner, with applicable interests as per the



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Pension Rules, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

20.12.2022

pm

Index:Yes/No

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M.DHANDAPANI,J.

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