



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.04.2022

PRONOUNCED ON : 19.05.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

CONT P (MD) No.1646 of 2021

WEB COPY

R.Pandiyan, B.E.,
Assistant Engineer/Electrical,
(Erstwhile Thirumayam Rural Electric Cooperative
Society Limited),
Now TANGEDCO,
110 KV/11 KV SS,
Thaniamangalam/MEDC,
Madurai-625 109.

... Petitioner

vs.

1.R.Krishnamoorthy,
Cheif Engineer (Personnel),
TANGECO, Second Floor,
Easter Wing,
144, Anna Salai,
Chennai - 600 002.

2.M.Anandhayi,
The Divisional Engineer,
Now called as Tamilnadu Generation and
Distribution Corporation Limited,
Thirumayam, Pudukottai,
Formerly called as Managing Director of
Thirumayam Rural Electric Cooperative
Society (P.A.63),
Thirumayam, Pudukkottai District.

3.D.Senthilkumar,
The Superintending Engineer,
Tamil Nadu Electricity Board,
Now called as Tamil Nadu Generation and
Distribution Corporation Limited,
Pudukkottai.

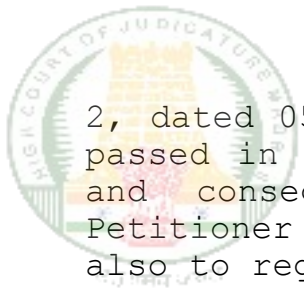
... Contemnors

PRAYER: Petition filed under under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for wilfully disobeying and not complying with the order of this Court, dated 21.06.2016, in W.P. (MD) No.2603 of 2013.

Prayer in WP(MD) . 2603/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of teh first Respondent passed in Memo No.062787/CC/G.44/G.441/2002-

<https://hcservices.ecourts.gov.in/hcservices/>



2, dated 05.03.2008 and the impugned order of the second Respondent passed in Rc.No.3614/99/A2(1), dated 29.10.1999 and quash the same and consequently directing the Respondents to reinstate the Petitioner with all monetary and attendant and monetary benefits and also to regularize the period of suspension as duty.

For Petitioner : Mr.G.Kannan
for M/s.Veera Associates
for Mr.S.Rama Sundar Vijayraj
For Contemnors : M/s.P.Malini
for M/s.T.S.Gopalan and Co.

O R D E R

This contempt petition is filed alleging disobedience of the order passed by this Court in W.P. (MD) No. 2603 of 2013, dated 21.06.2016. The Writ Petition was filed for Writ of Certiorarified Mandamus, to quash the impugned order dated 05.03.2008 and 29.10.1999 and to direct the respondents to reinstate the petitioner with all attendant and monetary benefits and also to regularize the period of suspension as duty period.

2.The brief facts of the case are that the petitioner joined as a Lineman in the Thirumaiyam Rural Co-operative Society on 30.04.1983. During the said services, the petitioner have completed Engineering graduation during 1990 and he was redesignated as Assistant Engineer with effect from 31.12.1996. The Managing Director of the said Society placed the petitioner under suspension on 29.10.1999, since a criminal case was registered by the Vigilance Department. In the meanwhile, the Society was taken over by the Tamil Nadu Electricity Board and the affairs and liabilities were taken over. All the employees were absorbed to Board service on 06.04.2002.

3.The petitioner submitted a representation to revoke the suspension, since the petitioner is under suspension for more than 9 years and also requested to pay subsistence allowance. The petitioner filed W.P.(MD) No. 298 of 2008 and this Court, vide order, dated 10.01.2008, directed to consider and pass order. Then, the order, dated 05.03.2008, was passed stating that there is no possibility to revoke the order of suspension, since the criminal case is pending, the employees of the erstwhile society were absorbed by the Tamil Nadu Electricity Board and there are not absorbing the suspended employees of the erstwhile society. This claim was refuted by the petitioner stating that the petitioner is receiving subsistence allowance from the TNEB and not from the society. Again, the petitioner submitted a representation, dated 15.03.2008, stating the pendency of criminal case is not the fault of the petitioner and there is no delay on the part of the petitioner. The final report also filed and the case is taken on file in C.C. No. 2 of 2001 and the case is pending for more than 10



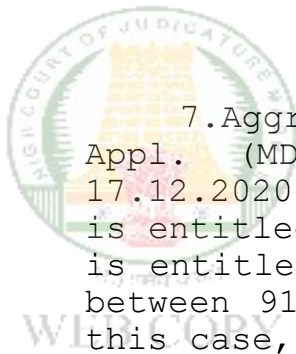
4.The respondents have framed guidelines for review of suspension wherein it is stated that beyond five years of suspension, it shall be reviewed, even though the criminal case is pending. Hence, the petitioner submitted another representation, dated 20.06.2010, which was forwarded by the 3rd respondent on 28.06.2010. The petitioner submitted reminder on 08.07.2011 stating that the suspension from 28.09.1999 is prolonged suspension and the petitioner was under suspension for more than 14 years. The petitioner filed W.P.(MD) No.12718 of 2011 and the respondents submitted that in the criminal case few witnesses were cross examined and it is in the stage of delivering judgment and the petitioner withdrew the writ petition on 09.03.2012. Again, the petitioner submitted representation, dated 14.08.2012, stating the criminal case would take few years to complete and prayed to revoke the suspension.

5.Since the prayer of the petitioner to review the suspension order was rejected, vide order dated 05.03.2008, the petitioner had filed the Writ Petition to quash the impugned order, dated 05.03.2008 and the suspension order, dated 29.10.1999. The said Writ Petition was allowed, vide order, dated 21.06.2016, wherein, this Court has set aside the impugned suspension order, dated 29.10.1999, passed by the second respondent and directed the respondents to reinstate the petitioner into service with all attendant and monetary benefits.

6.Aggrieved over the same, the respondents had preferred a writ appeal in W.A.(MD)No.440 of 2017 and this Court, vide order, dated 10.08.2017, has held as under:

"4. The writ petitioner was admittedly an employee of Thirumaiyam Rural Cooperative Society. He was only under suspension. The employer and employee relationship does not get snapped during suspension. Therefore, when the Tamil Nadu Electricity Board took over the said society, obviously the appellant (writ petitioner) was taken as an employee of Tamil Nadu Electricity Board. It is a matter of record that the appellant had been paying 100% pay during the period of suspension as subsistence allowance. Since the writ petitioner was also acquitted on 20.01.2016, he is entitled to get all the benefits from the said date.

5. The appellants are directed to regularize the period of suspension in view of the judgment of acquittal. However, it is made clear that the appellants will not be entitled to any other benefits for the period from the date of suspension when he was under suspension from service till 29.01.2016. This writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed"

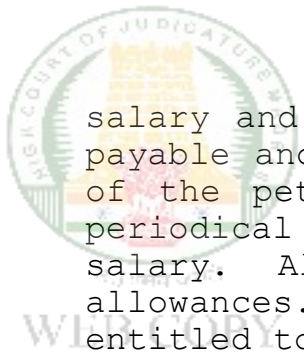


7. Aggrieved over the same, the petitioner had preferred Review Appl. (MD)No.15 of 2019 and this Court, vide order, dated 17.12.2020, has held that the Regulation states that the delinquent is entitled to full pay and allowances and therefore, the delinquent is entitled to 50% of wages for the first 90 days, 75% of the wages between 91st and 180th days. Then 100% from 180th day onwards. In this case, the delinquent has been paid 100% wages after 180 days is not disputed by the delinquent. Therefore, the respondents are directed to rework the entitlement of the review applicant as mentioned above and pay the balance amount. Since the amount was not paid, the petitioner had filed the present Contempt Petition alleging disobedience of the order.

8. The respondent have passed an order dated 24.01.2022, wherein the respondents have stated that the petitioner was granted full subsistence allowance, which is equal to the amount paid to other employees. Thereafter, the suspension period was regularized as duty period and the pension and terminal benefits are paid to the petitioner. The benefits were paid on 24.01.2022 and the same was received on 07.02.2022.

9. The claim of the petitioner is that the respondents have paid Rs.47,58,522/- and the balance is payable is Rs.32,42,651/-. The contention of the petitioner is that the annual increment and other hikes ought to be included in the salary, since the same was not included the petitioner is claiming to include the same. However, the learned Counsel appearing for the respondents submitted that since the petitioner was kept under suspension by the erstwhile society, the petitioner has not served the Board and under the "no work no pay", the petitioner is not entitled to the hikes. The learned Counsel appearing for the petitioner replied that since the respondent refused to revoke the suspension, thereby, refused to allow to join duty, the petitioner could not work. The petitioner is not at fault for not doing the work and hence, the respondent ought to pay the benefits for the entire period. Moreover, the petitioner was acquitted by the criminal court.

10. It is seen from the records that the petitioner was kept under suspension by the erstwhile society, then the society was taken over by the Tamil Nadu Electricity Board. The contention of the respondent is that while taking over the society, the suspended employee was not taken into Board Service. But the same could not be established, since the petitioner was receiving the suspension allowance from the Board and he was receiving full subsistence allowance. Thereafter the petitioner was acquitted in the criminal case and his suspension was revoked. After attaining superannuation, the petitioner was retired from service. The petitioner was under suspension and during that period he has not worked and applying the principle of "no work no pay" principle, the petitioner may not be entitled to salary. However, the Service Board states that the delinquent is entitled to the



salary and other allowance. The respondents have taken the salary payable and other allowances and has paid Rs.47,58,522/-. The claim of the petitioner is that the respondents have not included the periodical annual increments into account, while calculating the salary. Also, have not included the increase in the other allowances. But the respondents have stated that the petitioner is entitled to the salary and other allowances as per rule and the same is paid.

11.This Court has directed the respondents to pay the full subsistence allowance, which is equal to the amount paid to other employees and to regularize the suspension period and to pay pension and terminal benefits. The respondents have regularized the suspension period and has paid the full salary for the suspension period, then has paid terminal benefits. This court is of the considered opinion that the petitioner is entitled to salary and other allowances and the respondents have paid the same. There may be discrepancy in calculation but the amount is paid to the petitioner, hence, there is no contempt.

12.The contention of the petitioner is that he is entitled to more salary and allowances. This Court is of the considered opinion that the respondents have substantially paid the amount and hence, there is no contempt. Hence, the contempt is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

TO

+1 CC to M/s.P.MALINI, Advocate for M/s.T.S.Gopalan, Advocate (SR-23746[F] dated 19/05/2022)

Order made in
CONT P(MD)No.1646 of 2021
19.05.2022

RS (01.06.2022) 5P/2C