



W.P No.34584 of ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **28.06.2023**

Pronounced on : **.08.2023**

CORAM:

THE HONOURABLE Mr. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.34584 of 2012
and M.P.No.1 of 2012

Rajalingam

... Petitioner

Vs.

1. Chairman,
Tamilnadu Electricity Board,
Anna Salai, Chennai – 600 002.
2. Chief Engineer, (Personnel),
Tamilnadu Electricity Board,
Anna Salai, Chennai – 600 002.
3. Superintending Engineer,
Tamilnadu Electricity Board,
Meenachinaickenpatty,
Dindigul – 624 002.
4. Executive Engineer,
Tamilnadu Electricity Board,
R.F.Road, Palani – 624 601.

... Respondents

Writ Petition is filed under Section 226 of Constitution of India to issue a writ of certiorarified mandamus to call for records of the impugned order dated 15.05.2012 passed by the third respondent in respect of treating the period of dismissal i.e. from 26.03.1998 to till the date of retirement on



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31.12.2006 as leave without salary and quash the same and subsequently to direct the third respondent to grant the pension and all other retirement benefits to the petitioner without insisting an affidavit of undertaking, as per the impugned order.

For Petitioner : Mr.R.Vijaraghavan
For Respondent : Mr.K.Rajkumar
Senior Counsel

ORDER

This writ petition has been filed to call for records of the impugned order dated 15.05.2012 passed by the third respondent in respect of treating the period of dismissal i.e. from 26.03.1998 to the date of retirement on 31.12.2006, as “leave without salary” and quash the same and subsequently to direct the third respondent to grant pension and all other retirement benefits to the petitioner without insisting an affidavit of undertaking, as per the impugned order.

2. The learned counsel for the petitioner submitted that on 06.08.1991 there was an alleged incident of death of one Anandan due to electrocution and in relation to the said incident a report was submitted by one Kannan, Junior Engineer, TNEB, Pallapatti, to the police and after completing the



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investigation a final report was filed under Section 304 (A) IPC. The father of the deceased Anandan viz. Mr.Ponnambalam filed a private complaint before the learned Magistrate inter alia alleging that the petitioner along with other accused murdered his son Anandan in furtherance of common intention. Thereafter, a common trial was conducted in respect of Section 304(A) and 302 IPC before the learned District Judge, Trichy. The learned Judge found all the accused including the petitioner guilty of offence of murder and accordingly the petitioner was convicted with other accused.

2.1 The learned counsel would further submit that the petitioner preferred an appeal in C.A.No.287 of 1998 before this Court and this Court was pleased to confirm the sentence imposed by the trial Court. Thereafter the petitioner filed a Criminal Appeal No.11 of 2005 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court vide order dated 23.02.2011 set aside the conviction and sentence imposed by the trial Court as confirmed by this Court and exonerated the petitioner from all charges.

2.2 The learned counsel would further submit that in view of the conviction order passed against the petitioner, the TNEB department dismissed



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the petitioner from the services by order dated 04.05.1999. Aggrieved over which the petitioner preferred an appeal before the third respondent requesting him to grant all the benefits of employment and pension in view of the order dated 23.02.2011 passed by the Hon'ble Supreme Court of India exonerating the petitioner from all charges. The second respondent vide letter dated 17.03.2012 granted the benefits and also pension subject to certain conditions. On the basis of the letter dated 17.03.2012, the third respondent herein passed the impugned order dated 15.05.2012 granting pension and benefits to the petitioner. In the said impugned order it is stated that the period of dismissal (i.e from 26.03.1998 to the date of retirement i.e. 31.12.2006) has been treated as "leave without salary". In the said impugned order the third respondent also requested the fourth respondent to get an affidavit of undertaking from the petitioner in a stamp paper worth Rs.80/- duly giving undertaking that he will not claim salary for the period from 26.03.1998 to 31.12.2006. In the impugned order itself it is specifically stated that the petitioner was not dismissed for any fault or violations of rules or regulations of the department but the dismissal was on account of conviction arising out of a private complaint filed against him.



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2.3 The petitioner made a representation dated 03.07.2012 to the third respondent with a request to grant all the benefits as per the orders of the Hon'ble Supreme Court without insisting an affidavit of undertaking as directed in the impugned order as it would amount to taking away his legal rights and interpretation of the orders of the Hon'ble Supreme Court.

2.4 The grievance of the petitioner is that he was prevented from attending the duty only on account of the said dismissal and hence treating the said period of dismissal as “leave without salary” is against the principles of natural justice and deprivation of legitimate entitlement of wages. The second respondent having accepted that the petitioner was dismissed only on account of conviction and decided to grant all the benefits to the petitioner including pension, ought not to have treated the period of dismissal as “leave without salary”. The second respondent ought to have granted all the wages to the said period also. The other co-accused who have been exonerated by this Court were granted salary and all other attendant benefits for the period of their non-employment due to the dismissal for the same reason. Aggrieved by the order passed by the third respondent dated 15.05.2012 (impugned order) treating the period of dismissal from 26.03.1998 to 31.12.2006 as “leave without salary”,



the petitioner has come forward with the present Writ Petition.

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3. The main contention of the learned counsel for the petitioner is that the respondents failed to see that the principle of “No work no pay” shall have no application in the case on hand. The co-accused who have been exonerated by this Court were granted salary and all other attendant benefits for the period of their non-employment. Hence the petitioner should be granted with pension and all other retirement benefits without insisting an affidavit of undertaking. In support of his above contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Gowramma C (Dead) by Lrs. Vs. Manager (Personnel) Hindusthan Aeronautical Ltd., & Anr. in Civil Appeal Nos.1575 & 1576 of 2022.*** The relevant portions of the said judgment is extracted hereunder:

“ .. 12. The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her binding vindicated at the end of the day would be unfair to the employee. In such circumstances, no doubt, the question relating to alternative employment that the employee may have restored to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case whether apart from the charge of the employee having produced false caste certificate, there is no



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charge. Therefore, we would think that interest of justice, in the fact of this, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants.”

4. The third respondent has filed his counter affidavit. The relevant portion of the said counter is extracted hereunder:

“... 9. It is stated in this connection that the Hon'ble Supreme Court in the case of *Ranchhodji Chaturji Thakore Vs. Superintending Engineer, Gujarat Electricity Board, Himmat Nagar (Gujarat and others reported in ARI 1997 SCC 1802 in para 3 held as follows:*

“The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The situation of backwages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved, himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in



jail. Under these circumstances the petitioner is not entitled to payment of backwages.”

The above discussion of the Supreme Court has been relied on subsequently in the case of Balde Singh Vs. Union of India and others (AIR 2006 SC 531) wherein the Supreme Court in para 7 held that “merely because there has been an acquittal does not automatically entitle him to get salary for the concerned period. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction and the effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service.”

5. Heard both sides and perused the materials available on records.

6. In the case on hand, the petitioner was convicted based on a private complaint given by one Ponnambalam, father of the deceased Anandan who died due to electrocution. The allegation was that the petitioner along other person murdered Anandan in furtherance with common intention. The learned District Judge, Trichy convicted the petitioner for the alleged offence. Aggrieved by the order, the petitioner preferred an appeal before this Court in C.A.No.287 of 1998 and this Court confirmed the conviction imposed by the learned District Judge, Trichy. Aggrieved over the same, the petitioner preferred a Criminal Appeal before the Hon'ble Supreme Court of India in



Criminal Appeal No.11 of 2005 and the Hon'ble Supreme Court of India vide order dated 23.02.2011 set aside the order passed by the trial Court as confirmed by this Court and exonerated the petitioner from all charges.

7. The issue which has to be decided in this case is whether the period of dismissal from 26.03.1998 to 31.12.2006 has to be treated as a duty period or not.

8. The third respondent vide impugned order dated 15.05.2012 treated the period of dismissal from 23.06.1998 to 31.12.2006 (date of retirement) as “leave without salary”. The petitioner was dismissed from service only on account of the conviction order passed by the learned District Judge, Trichy and not for any fault or violations of the rules and regulations of the Department.

9. Since the petitioner has been exonerated of all the charges by the judgment of the Hon'ble Supreme Court of India dated 28.07.2004, this Court is of the considered view that the petitioner is entitled for pension and other retirement benefits for the period of dismissal i.e. from



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26.03.1990 to 31.12.2006 without insisting an affidavit of undertaking, as per the impugned order.

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10. In the result, the Writ Petition stands allowed and the third respondent is directed to grant all the pension and other retirement benefits to the petitioner for the period from 26.03.1998 to 31.12.2006 without insisting an affidavit of undertaking as per the impugned order, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

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J.SATHYA NARAYANA PRASAD, J.

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Pre-delivery order made in
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