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W.A.No.969 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE G.ARUL MURUGAN

W.A.No.969 of 2020
and
C.M.P.No.11803 of 2020

1. Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO),
(Formerly Tamil Nadu Electricity Board),
Rep. By its Chairman-cum-Managing Director,
No.144, Anna Salai,
Chennai – 600 002.
2. The Chief Engineer (Personnel),
Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO),
(Formerly Tamil Nadu Electricity Board),
Rep. By its Chairman-cum-Managing Director,
No.144, Anna Salai,
Chennai – 600 002.
3. The Chief Engineer (Distribution),
Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO),
(Formerly Tamil Nadu Electricity Board),
Erode Electricity Distribution Circle,
Erode.
4. The Junior Engineer,
O&M/North/Gobi (Distribution),
Tamil Nadu Generation & Distribution



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Corporation Limited (TANGEDCO),
(Formerly Tamil Nadu Electricity Board),
Erode Electricity Distribution Circle,
Gobichettipalayam,
Erode District.

... Appellants

Vs.

R.Palanisamy

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 29.01.2020 made in W.P.No.18656 of 2019.

For Appellants : Mr.K.Rajkumar
Standing Counsel for TANGEDCO

For Respondent : Mr.R.Prem Narayan

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This intra Court appeal has been directed against the order passed
by the Writ Court dated 29.01.2020 made in W.P.No.18656 of 2019.

2. The respondent R.Palanisamy was an employee of the appellant
TANGEDCO against whom there has been a vigilance case registered,
which become a calender case in Spl.C.C.No.11 of 2015 on the file of the
Chief Judicial Magistrate Court, Erode.



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3. Pursuant to the said case which was registered against the respondent, the appellant placed the respondent employee under suspension by order dated 08.02.2008.

4. Since he had been under prolonged suspension from 2008, challenging the suspension order, the respondent filed writ petition in W.P.No.18656 of 2019 which was allowed by the order impugned passed by the Writ Court dated 29.01.2020 with a direction to the concerned Magistrate Court to take up the Spl.C.C. and complete the same by taking the trial on day-to-day basis within a time stipulated by the Court. Aggrieved over the said order passed by the Writ Court, this appeal has been directed.

5. Heard Mr.K.Raj Kumar, learned Standing Counsel appearing for the appellants and Mr.N.Prem Narayan, learned counsel for the respondent.

6. No doubt there has been a criminal case pending against the respondent since 2008 and the said criminal case has become Spl.C.C. where charges have been filed in the year 2015 since then it has been



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pending before the concerned Magistrate Court. Taking note of these situations only, the learned Judge has shown his indulgence in the order impugned where taking note of the fact that, since the petitioner/respondent was receiving subsistence allowance at the rate of 75% without doing any work, the learned Judge was pleased to set aside the order of suspension, directed the appellant Department to reinstate him and also had given direction to the Magistrate to take up the Spl.C.C. on day-to-day basis and complete the same within a time frame.

7. Aggrieved over the same, though the present appeal has been filed where stay has been granted by a Division Bench of this Court by order dated 02.02.2021, the appellant Department so far has not complied with the orders passed by the Writ Court.

8. The resultant situation would be that the respondent without doing any work to the appellant Department is getting the maximum amount as subsistence allowance for all these years.

9. Moreover, the criminal case is pending since 2008 already 15 years have gone by and despite the direction given by this Court in the



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year 2020 to the Magistrate Court to take up the trial on day-to-day basis and complete the same, it is yet to be completed.

10. When this kind of situation is faced by any employee where unnecessarily he has been placed under suspension for a prolonged period, how such a situation to be dealt with time and again has been considered by the law Courts based on various judgments of the Hon'ble Supreme Court, recently in a Division Bench judgment in W.A.No.1657 of 2019 where one of us (R.S.K.J.) is a party, the Division Bench has considered the similar situation and passed the following order:

“7.Insofar as the direction given by the learned Judge after setting aside the suspension order is only to accommodate him in a non-sensitive post.

8.If these kind of cases where without initiating any disciplinary proceedings merely on the basis of the pendency of the criminal cases if the Government employee is suspended, such a suspension cannot be extended endlessly without any reason.

9.In this context, every quarter of the year i.e., at the end of third month, the employer has to review the necessity for extending the suspension.

10.Here in the case on hand, the consistent stand taken by the appellant Department is that since the criminal



case was pending, at this moment it may not be conducive for the employer to revoke the suspension.

11.The said reason cannot be stated endlessly for several years as the criminal case was pending trial before the concerned Court.

12.Moreover, the respondent employee is at the verge of his superannuation and within a short period since he is going to superannuate, before which some decision has to be taken by the appellants as to whether disciplinary action separately has to be taken against him, for which a charge has to be framed, otherwise on superannuation whether the services of the employee has to be retained for the purpose of taking disciplinary action in future depending upon the decision to be made by the Trial Court in the pending criminal case have to be decided, for the said purpose the reinstatement by revoking the suspension as directed by the learned Judge become inevitable.

13.In view of the aforestated, we feel that the order passed by the learned Judge which is impugned herein cannot be said to be an erroneous one and therefore, the same has to be sustained.”

11. Exactly the same situation is faced by the parties in the present *lis*, where a direction was given by this Court in the impugned order, the Criminal Court has not completed the trial so far and the orders passed



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by this Court giving direction to the appellant Department to reinstate the respondent also has not been complied with because of the stay granted by the Division Bench.

12. Be that as it may, the appellant cannot justify their action in not reviewing the suspension order periodically for 15 long years statically the employer cannot take a defence that because of the pendency of the criminal case, the employer is not able to take the employee back despite the orders passed by this Court.

13. Because of this kind of situations, the employee is getting considerable amount as subsistence allowance without rendering any job to the employer and in order to avoid these kind of situations, the suspension at regular interval would be reviewed by the employer. Here in the case in hand, no such review since has been taken place, we feel that, it is an appropriate time where directions can be given to the appellant Department to review the suspension order in view of the factual matrix which is peculiar to this case and accordingly the suspension shall be reviewed and he shall be reinstated pending disposal of the criminal case.



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14. At the same time, the employer also can retain the right of initiating disciplinary proceedings unmindful of the decision to be taken by the criminal Court either way in the pending Spl. C.C.

15. In that view of the matter, this Court is inclined to dispose of this writ appeal with the following orders:

(i) That the order impugned passed by the learned Judge to the aforestated observation is to be sustained. Resultantly, there shall be a direction to the appellant Department to review the suspension order passed against the respondent in the year 2008 and taking note of the aforesaid observations made herein above, the suspension order shall be reviewed accordingly and on such review, the respondent shall be reinstated into service. The needful as indicated above shall be undertaken by the appellant Department within a period of four weeks from the date of receipt of a copy of this judgment.

(ii) It is made clear that, this order would not prejudice the right of the appellant Department to initiate disciplinary



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proceedings in future depending upon the outcome of the criminal case either way.

(iii) However it is made clear that, by virtue of this disposal, as per the earlier order passed by the Writ Court which is impugned in this appeal, the concerned Magistrate Court shall take up the criminal trial on day-to-day basis and shall try to complete the same by giving the final verdict within a maximum period of four months from the date of receipt of a copy of this judgment.

16. With these observations and directions, this Writ Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [G.A.M., J.]
10.11.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
Sgl
To
The Chief Judicial Magistrate,
Erode District.



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and
G.ARUL MURUGAN, J.

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