



W.A.(MD)No.785 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.785 of 2013

S.Murugaiah Joseph

... Appellant/Petitioner

Vs.

1.The Superintending Engineer,
Electricity Board,
Thanjavur Electricity Distribution,
Circle, Thanjavur.

2.Chief Engineer,
Distribution Trichirapalli Region,
Thennur, Trichy-17.

3.The Chairman,
Tamil Nadu Electricity Board,
Chennai.

... Respondents /Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 15.03.2013 made in W.P.(MD)No.5824 of 2006 on the file of this Court.



W.A.(MD)No.785 of 2013

For Appellant : Mr.N.Tamilmani
For Respondents : Ms.M.Parameswari
Standing Counsel

JUDGMENT

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

This Writ Appeal has been directed against the order passed by the writ Court dated 15.03.2013 in W.P(MD).No.5824 of 2006.

2. That the writ petitioner/appellant joined in the respondents Board as Electrical Tester in 1963. He was promoted as Junior Engineer in 1970 and was placed as Junior Engineer I Grade in 1978. His name was included in AD promotional panel/list and seniority also was fixed in 1992.

3. While so, on 04.08.1992, there has been an illegal gratification case, pursuant to which, a charge memo was given on 07.02.1994 against the petitioner/appellant for the charge that allegedly, he received a sum of Rs.50/- as bribe from one Ganesan.



W.A.(MD)No.785 of 2013

WEB COPY

4. On 12.09.1995, explanation to the charge memo was given by the appellant/petitioner.

5. Subsequently, enquiry was conducted and based on the Enquiry Officer's report as the charge framed against the appellant/petitioner was proved, accepting the Enquiry Officer's report, the Disciplinary Authority inflicted the maximum punishment against the appellant/petitioner (i.e.,) dismissal of service on 23.09.1995. Thereafter, the petitioner approached the writ Court by filing a writ petition in W.P(MD).No.4094 of 1996 where a remand order has been passed on 20.06.2001, pursuant to which, a re-hearing was taken place where the statement of witnesses was recorded by the Enquiry Officer on 11.03.2002. Thereafter, the Enquiry Officer filed a report dated 30.06.2002 against the petitioner/appellant stating that the charge has been proved. Thereafter, a second show cause notice was given to the petitioner on 21.09.2002, for which, the petitioner/appellant gave explanation on 08.11.2002.



W.A.(MD)No.785 of 2013

WEB COPY

6. Not satisfying with the said explanation to the second show cause notice given, the Disciplinary Authority (i.e.,) the first respondent passed an order of removal from service against the petitioner/appellant on 27.11.2002, as against which, the petitioner/appellant preferred an appeal on 13.12.2002 and the said appeal was also dismissed on 26.05.2003 and thereafter, a mercy petition was filed by the petitioner/appellant on 13.06.2003, that was also dismissed by the Competent Authority on 05.03.2004, as against which, the petitioner/appellant preferred a writ petition in W.P(MD).No.5824 of 2006 on 08.04.2006, which was also dismissed on 15.03.2013 (i.e.,) the order impugned in this writ appeal which was filed on 26.04.2013, that is how, this Intra-Court Appeal has come up.

7. In the last hearing, we heard the learned counsel for the appellant and for the arguments of the respondents' counsel, we posted the matter today. Today, we have heard Ms.M.Parameswari, the learned Standing Counsel appearing for the respondents/TANGEDCO.



W.A.(MD)No.785 of 2013

WEB COPY

8. After having gone through the records filed before this Court, we felt that since the illegal gratification of Rs.50/- that was a charge made against the petitioner/appellant, has been proved as per the Enquiry Officer's report and as against the Enquiry Officer's report, no finger has been shown by the petitioner/appellant to state that the enquiry was not properly conducted, we cannot find fault with the said enquiry conducted by the respondents/employer.

9. After enquiry which was properly conducted, since the charge against the petitioner/appellant has been proved, for the said charge, the punishment was awarded by the respondents/employer.

10. However, it is to be noted that the petitioner/appellant had rendered service from 1963 till 2002. Therefore, very many years (i.e.,) long years of service have been put in by the petitioner/appellant to the respondents/TANGEDCO.



W.A.(MD)No.785 of 2013

WEB COPY

11. After putting such a long years of service, if ultimately the maximum punishment of dismissal of service is inflicted against the petitioner/appellant, by thus, the empty doors have been shown to him that will be a shocking exercise to be faced by any employee.

12. No doubt, 50 Rupees illegal gratification case has been proved on the departmental enquiry, for which, certainly the petitioner/appellant is liable to be punished. But, at the same time, the maximum punishment of dismissal of service whether is proportionate to such proven charge is a question.

13. Though it has been settled in a number of judgments that the Court normally would not interfere with the proportionality of the punishment, unless and until it shocks the conscience of the Court as to the proportionality, in this case, we feel that since 50 Rupees illegal gratification case even though has been proved, for which, the petitioner/appellant is liable to be punished, the maximum punishment of dismissal of service for an employee who had put in service of 37 years and



W.A.(MD)No.785 of 2013

odd, is definitely a disproportionate punishment as after serving such a long years of nearly about four decades, the employee cannot be sent out without a single pie, as definitely a family would have been in expectation from the petitioner/appellant at his retirement or at his final day of his service to get some substantial amount by way of retirement benefits which would be greatly helpful to the family, who is the dependent of the petitioner/appellant.

14. Therefore, we feel that the said punishment of dismissal of service inflicted against the petitioner/appellant can be modified into a compulsory retirement.

15. For the said modification, the learned Standing Counsel appearing for the respondents has registered her objection.

16. The reason for such objection is that, if the punishment is modified one into compulsory retirement, the appellant/petitioner would get retiral benefits as well as pensionary benefits. Such pensionary benefits would be forever till his death and therefore, if that kind of pensionary



W.A.(MD)No.785 of 2013

benefits is extended to an erring person like the petitioner/appellant, that would be construed as a premium being paid to him for the proven charge of illegal gratification.

17. The said submission made by the learned Standing Counsel appearing for the respondents/TANGEDCO is also to be taken into account.

18. By taking all these aspects into consideration, we are of the view that while modifying the punishment into compulsory retirement, we want to restrict the benefits to be paid to the petitioner/appellant as to the retiral benefits, but not the pensionary benefits.

19. In view of the aforestated discussion, we are inclined to dispose of this writ appeal with the following orders:

(i) that the punishment awarded against the petitioner/appellant by the respondents Department (i.e.,) dismissal of service, is hereby modified into the punishment of compulsory retirement;

(ii) as a result, the appellant/petitioner would be entitled to get the retiral benefits as if that he was compulsorily retired from service;



W.A.(MD)No.785 of 2013

(iii) However, we make it clear that by virtue of compulsory retirement, the appellant/petitioner is not entitled to seek for any pensionary benefits which can be denied by the respondents/TANGEDCO.

20. To that extent, the order passed by the learned Judge which is impugned herein dated 15.03.2013, is also modified.

21. As per the modified order, the needful shall be undertaken by the respondents/TANGEDCO and the retiral benefits shall be paid to the appellant within a period of three months from the date of receipt of a copy of this judgment.

22. With these modifications, this Writ Appeal is disposed of. There shall be no order as to costs.

(R.S.K., J.) & (K.K.R.K, J.)

16.06.2023

NCC : Yes
Index : Yes
Internet : Yes
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9/11



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W.A.(MD)No.785 of 2013

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W.A.(MD)No.785 of 2013

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