



W.A. (MD) No.152 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 05.07.2023

PRONOUNCED ON : 26.07.2023

CORAM:

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.152 of 2020
and
CMP(MD).No.1127 of 2020

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Limited
Ramanathapuram 623 503
Ramanathapuram District

...Appellant

Vs

K.Kanthavel

...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal and set aside the order dated 16.09.2019 in W.P(MD).No.15848 of 2019.

For Appellant : Mr.Anand Gopalan
For M/s.T.S.Gopalan & Co

For Respondent : Mr.K.Kanthavel
Party-in-person



W.A. (MD) No.152 of 2020

J U D G M E N T

WEB COPY (Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The respondent in the writ petition is the appellant herein.

Factual Matrix:

2.The writ petitioner was working as an Assessor in Muthukulathur Section of Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) in Ramanathapuram District. He was implicated in a criminal case in Crime No.63 of 2011 on the file of Muthukulathur Police Station and he was arrested on 18.04.2011. In view of the arrest, the TANGEDCO had passed an order of suspension on 20.04.2011 suspending the writ petitioner with effect from 18.04.2011. The TANGEDCO had passed an order on 22.10.2011 revoking the order of suspension and transferring him to Kamuthi Section.

3.According to the employer, the writ petitioner had refused to receive the the said order and it was pasted upon the door on 07.05.2012. The employer had contended that the order of revocation of suspension was sent by the registered post and the same was received by the writ petitioner on 10.11.2011. The petitioner was acquitted from the criminal case on 29.04.2013 and after some



W.A. (MD) No.152 of 2020

unsuccessful attempts to cancel the order of transfer from Muthukulathur to Kamuthi, the petitioner had joined at Kamuthi on 09.10.2013. The petitioner had retired from service on 31.05.2016.

4.The writ petitioner had given a representation to the employer seeking to regularize his non-employment period between 18.04.2011 till he joined duty at Kamuthi office. Since the said representation was not expeditiously considered, the petitioner had filed W.P(MD).No.5689 of 2019 to direct the TANGEDCO to pass orders on the petitioner's application. This Court by an order dated 29.04.2019 had directed the employer to consider and pass orders within a period of four weeks after giving due opportunity to the petitioner. In compliance with the said order, the order impugned in the writ petition was passed on 02.07.2019 by the appellant herein. As per the said order, his suspension period between 18.04.2011 to 21.10.2011 was treated as 'on duty'. The period between 22.10.2011 and 10.11.2011 was treated as 'compulsory wait'. Therefore the non-employment during the above said two periods were regularised by the TANGEDCO.

5.As far as the period between 11.11.2011 to 08.10.2013 is concerned, it was treated as leave on loss of pay on the ground that despite receipt of order of



W.A. (MD) No.152 of 2020

revocation of suspension, the writ petitioner has not chosen to report for duty.

This order was challenged in W.P(MD).No.15848 of 2019.

Contention of the parties

6.The writ petitioner had contended that as per Rule 20(ii)(c) of Tamil Nadu Electricity Board Standing Orders Clerical Cadre Rules (Rules), the employer has to regularize the suspension period as duty period once the employee is acquitted of the criminal charges. Relying on Rule 20(ii)(c) and Rule 20(ii)(d) of the said Rules, the learned Single Judge has arrived at a conclusion that when an employee is acquitted from the criminal case, he is entitled to get his services regularised covering the entire period of suspension namely from 19.04.2011 to 08.10.2013. This order is under challenge in the present writ appeal.

7.The learned counsel appearing for the appellant had contended that Rule 20(ii)(c) and Rule 20(ii)(d) will be applicable only in cases where the suspension is continued till the employee is acquitted from the criminal case. In the present case, even during the pendency of the criminal proceedings, his suspension order was revoked on 22.10.2011 and the same was intimated to the



W.A. (MD) No.152 of 2020

writ petitioner on 10.11.2011. Therefore, the writ petitioner cannot contend that he was under suspension during the entire period of criminal proceedings. After receipt of revocation order, the writ petitioner has not chosen to report for duty from 11.11.2011 onwards and he joined duty only on 09.10.2013. Therefore, the said period can never be treated as a duty period.

8.The learned counsel for the appellant had further contended that when an attempt was made to serve the revocation order on the writ petitioner, the door was locked and hence, the order was pasted upon the door in the presence of Village Assistant and the landlord of the said building. Thereafter, the said order was sent through the registered post to the writ petitioner on 09.11.2011 which was returned with an endorsement as 'refused'. He had further contended that a show cause notice was issued on 04.09.2012 to the writ petitioner for not reporting to duty through registered post and the same was also acknowledged by the writ petitioner. Another letter was addressed by TANGEDCO on 10.12.2012 to the writ petitioner to report for duty and the said communication was acknowledged by him. Again on 18.07.2013 another letter has been addressed by TANGEDCO instructing the writ petitioner to join duty at Kamuthi. Hence, the contention of the writ petitioner that he was not aware of



W.A. (MD) No. 152 of 2020

the revocation of the suspension order prior to his acquittal from the criminal case is not factually correct.

9.The learned counsel for the appellant had further contended that subsistence allowance was paid to the writ petitioner only up to October 2011. The order of suspension was revoked on 22.10.2011 and hence, the petitioner is not entitled for any subsistence allowance thereafter. The learned Single Judge applied 20(ii)(c) and Rule 20(ii)(d) of the above said Rules on a wrong premise that the writ petitioner was under suspension during the entire period of pendency of the criminal proceedings. Hence, he prayed for allowing the writ appeal.

10.Per contra, the respondent appearing as party-in-person had contended that as per Rule 20(ii)(a), an employee should be placed under suspension during the pendency of the criminal proceedings and he should be paid subsistence allowance for the said period. He had further contended that as per Rule 20(ii)(d) of the Rule, if the employee is not found guilty in the criminal proceedings, and he shall be deemed to have been on duty during the period of suspension and he would be entitled to the same wages as he would have



W.A. (MD) No. 152 of 2020

received after deducting the subsistence allowance paid to him for such period.

Therefore, according to the respondent/writ petitioner, during the pendency of the criminal proceedings, the order of suspension will continue and once he is acquitted, he should be deemed to have been in service during the entire period of suspension and the consequential benefits should follow.

11.The respondent had further contended that the authorities are not entitled to revoke the order of suspension during the pendency of the criminal proceedings. Hence, no order of revocation of suspension was passed and it was not served upon him. He had not received the revocation of suspension order at any point of time. He came to know about his revocation order only when he approached the TANGEDCO office after being acquitted in the criminal case. Thereafter, he was sending several representations to cancel the order of transfer from Paramakudi to Kamuthi. Since his attempts were unsuccessful, he later joined duty at Kamuthi on 09.10.2013. Therefore, at no point of time, the order of revocation of suspension was served upon him and therefore, the entire period should be treated as suspension period pending criminal proceedings attracting all beneficial consequences.

12.The respondent had further contended that the order impugned in the writ petition has categorized suspension period into three different categories



W.A. (MD) No.152 of 2020

namely treated as duty, compulsory wait and leave on loss of pay. Under the Service Rules, there is no provision for placing the employee under compulsory wait or to unilaterally treat a particular period as leave on loss of pay. Therefore, the order impugned in the writ petition is clearly not in consonance with the Service Rules. Hence, he prayed for sustaining the order passed by the writ Court.

13. We have carefully considered the submissions made on either side and perused the material records.

Discussion

14. There is no dispute that the writ petitioner while he was working as an Assessor at Muthukulathur Section, Ramnad District in TANGEDCO, was placed under suspension with effect from 18.04.2011 for his involvement in a criminal case. The employer had contended that the said order of suspension has been revoked by an order dated 22.10.2011 and the same could not be served upon the writ petitioner immediately due to 'door locked'. However, the said order was sent by the registered post on 09.11.2011 which was returned by the writ petitioner as 'refused'. The returned cover has been placed in the typed set of papers which indicates that a letter has been addressed to the writ petitioner on 09.11.2011 under the registered post and it has been returned with an



W.A. (MD) No.152 of 2020

endorsement as 'refused'. The inter departmental communication dated 24.11.2011 discloses that the returned cover was forwarded by the Assistant Engineer to the Assistant Executive Engineer. .Another communication dated 04.09.2012 annexed to the typed set of papers indicates that a show cause notice has been addressed to the writ petitioner for not reporting for duty despite revocation of suspension order. The said communication has been received and acknowledged by the writ petitioner.

15. Another communication dated 10.12.2012 issued by TANGEDCO had instructed the writ petitioner to immediately join duty or face disciplinary proceedings. This communication has also been received and acknowledged by the writ petitioner. Therefore, it is clear that the writ petitioner was aware of the cancellation of suspension order dated 22.10.2011. The writ Court has invoked Rule 20(ii)(c) and 20(ii)(d) in order to grant relief to the writ petitioner on the ground that once an employee is acquitted by a criminal Court, his entire suspension period should be treated as duty period.

16. The trajectory of events narrated above will disclose that the petitioner was not under suspension between 18.11.2004 to 08.10.2013. His suspension was revoked on 22.10.2011 itself. Therefore, the writ Court was not



W.A. (MD) No.152 of 2020

right in relying upon the Rules cited supra for granting benefit to the writ petitioner.

17.A peculiar argument was advanced on the side of the respondent that the employer has no jurisdiction whatsoever to revoke the order of suspension when a criminal case is pending as against him. The order of suspension is deemed to have continued during the entire period of suspension and on his acquittal, the said period should be treated as a duty period. It could be seen from the records that there was a quarrel between the writ petitioner and one of the customers which has resulted in initiation of criminal proceedings. The employer thought it fit to suspend him on the ground that he was arrested. However, on a later point of time, they felt that the said criminal case has nothing to do with the discharge of his official duties and proceeded to revoke the order of suspension. The employer had got complete discretion to decide whether to keep his employee under suspension or reinstate him and extract work. Therefore, the contention of the respondent that the employer has no power to revoke the order of suspension during the pendency of the criminal proceedings is not legally sustainable.



W.A. (MD) No. 152 of 2020

18.A perusal of the order impugned in the petition clearly discloses that the period between the order of suspension and the revocation of suspension has been treated as a period of duty. The period between the revocation order and serving of the said order has been treated as compulsory wait which ultimately means that the said period is treated as duty period. The period during which the employee had chosen not to report for duty after having knowledge about the revocation order and the actual date of joining of duty has been treated as leave on loss of pay.

19. The employee after having knowledge, refused to receive the order of revocation of suspension probably on the ground that the said order is a composite order of revocation of suspension and an order of transfer. Even after contacting the TANGEDCO office after his acquittal in the criminal case, the petitioner has been making hectic efforts to get his order of transfer from Paramakudi to Kamuthi cancelled. Therefore, it is clear that the petitioner is having knowledge about the revocation of suspension, had chosen not to report for duty only because of the fact that he had been transferred from Paramakudi to Kamuthi.



W.A. (MD) No.152 of 2020

Conclusion

WEB COPY

20. In view of the above said deliberations, we are of the considered opinion that the writ Court was not right in invoking Rule 20(ii)(c) and Rule 20(ii)(d) of the Tamil Nadu Electricity Board Standing Orders Clerical Cadre Rules to confer benefit upon the writ petitioner who had refused to join duty despite having knowledge about the revocation of suspension order.

21. The Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.,] & [R.V.J.,]

26.07.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
msa



WEB COPY



W.A. (MD) No.152 of 2020

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

msa

Pre-delivery Judgment made in
W.A(MD).No.152 of 2020
and
CMP(MD).No.1127 of 2020

26.07.2023