



W.P.(MD)No.15192 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15192 of 2016

and

W.M.P.(MD)Nos.11197 to 11199 of 2016

R.Chandran

... Petitioner

VS.

- 1.The State of Tamil Nadu,
represented by Principal Secretary,
Department of Personnel and Administrative
Reforms (N) Department,
Fort St. George, Chennai - 600 009
- 2.The Secretary,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai, Chennai – 600 002.
3. The Chief Engineer (Distribution),
Tamil Nadu Generation and Distribution
Corporation Limited,
Madurai Region,
K.Pudur, Madurai - 625 007.



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4.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution
Corporation Limited,
144 Anna Salai, Chennai - 600 002.

5.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Madurai Electricity Distribution Circle,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ku.Aa.No. 622/Me.Pho/MaMiPaVa/MaThu/NiA/NiB.1/Vu.3/2016, dated 12.07.2016, on the file of the Respondent No.5 and the impugned proceedings in Letter (Ms)No.43/N/2015-3, dated 26.04.2016, on the file of the Respondent No.1 and the consequential impugned order in Memorandum(Per)No.31294/A18/A181/2016-1, dated 27.06.2016, on the file of the Respondent No.2 and to quash the same as illegal and consequently, for a direction, to direct the Respondent No.5 to reinstate the petitioner in the post of Junior Engineer (Grade-I) within the time period stipulated by this Court.



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For Petitioners : Mr.G.Karthik
for Mr.S.Rajasekar
For R1 : Mr.N.Muthuvijayan
Special Government Pleader
For R2 to 5 : M/s.M.Parameswari

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order, dated 12.07.2016, on the file of the 5th respondent and the impugned proceedings in letter, dated 26.04.2016, on the file of the Respondent No.1 and the consequential impugned, dated 27.06.2016, on the file of the 2nd respondent and consequently to direct the 5th respondent to reinstate the petitioner in the post of Junior Engineer (Grade-I) within the time period stipulated by this Court.

2. The brief facts of the case are that the petitioner joined as Filter Operator on 17.09.1986 at TNEB, Madurai. In 1987, the petitioner was transferred to Nagercoil. Thereafter, in 1989, he was promoted as Junior



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Engineer II Grade and posted in Ramnad. In 1998, the petitioner was promoted as Junior Engineer I Grade and posted in Dindigul. In 2002, the petitioner was transferred back to Madurai. The petitioner joined the present posting as Junior Engineer I Grade/Distribution at Panaiyur, Madurai District on 14.08.2014.

3. A criminal case was registered against the petitioner in FIR No.9 of 2015, dated 01.10.2015, on the file of Vigilance and Anti-Corruption Cell, Madurai, alleging that the petitioner demanded a sum of Rs.3,500/- from one M.Sonai, for giving temporary electricity connection. In pursuance to the registration of criminal case, 5th respondent issued suspension order, dated 02.10.2015 and placed the petitioner under suspension. The petitioner remained in suspension without any enquiry or charge sheet. The petitioner submitted a representation, dated 04.01.2016, requesting for revocation of suspension, but no actions were taken. Aggrieved over the same, the petitioner filed W.P.(MD)No.2569



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of 2016 and this Court, vide order, dated 12.04.2016, directed the 4th respondent therein to consider the petitioner's representation and pass orders on merits and in accordance to law within six weeks.

4. In spite of the order of this Court in the above said writ petition, no orders were passed. Hence, the petitioner sent a contempt notice, dated 22.06.2016. Thereafter, the 5th respondent issued the impugned order, rejecting the claim to revoke the suspension referring to the order passed by the 1st respondent, dated 26.04.2016 and the impugned order of the 2nd respondent, dated 27.06.2016.

5. The petitioner submitted that even without considering the fact that the petitioner is in suspension for about 10 months, the official respondents have passed the impugned orders.

6. Heard Mr.G.Karthik, learned Counsel appearing for the petitioner, Mr.N.Muthuvijayan, learned Special Government Pleader



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appearing for the 1st respondent and M/s.M.Parameswari, learned Standing Counsel appearing for the respondents 2 to 5.

7. The contention of the petitioner is that he was placed under suspension and the same was not revoked even though ten months had lapsed. The petitioner submitted representations and also approached this Court vide W.P.(MD)No.2569 of 2016 and this Court directed to consider the case of the petitioner based on *Ajay Kumar Choudary case Vs. Union of India*. Now the petitioner is under suspension for more than 8 years, the petitioner is seeking to reinstate him.

8. The learned Counsel appearing for the respondents vehemently opposed the plea of reinstatement, since it is a case of Vigilance and Anti-Corruption (DVAC) case, where the petitioner is facing criminal case under Vigilance and Anti-Corruption. The respondents have taken the policy decision to reinstate the employees who are under prolonged



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suspension, but the employees who are facing DVAC case were denied such concession. If it is a DVAC case, a strict policy has been taken that they should not be reinstated at all. Hence, the learned Counsel appearing for the respondents submitted that the writ petitions should not be allowed and their claim to reinstatement should not be allowed.

9. The issue of revocation of suspension was considered by the Full Bench of this Court in W.P.(MD)Nos.2165 of 2015 and 21628 of 2018, dated 15.03.2022, wherein it has been held as under:

“34. For the foregoing reasons, the reference is answered by holding that:

- (i) The judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.*
- (ii) The judgment in R.Balaji, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.*



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- (iii) *The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable. (iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet."*

10. The Honourable Full Bench has held the order of suspension should be analyzed based on facts of each case, the gravity of charges and the rules applicable. The revocation of suspension and posting in non-sensitive post cannot be endorsed or directed as a matter of routine and each and every case ought to be dealt based on the facts of each and every case and after noticing the delay in serving memorandum of charges, charge sheet.

11. In the present case, the criminal case is still pending, charge sheet was issued, but trial was not commenced at all. In such



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circumstances, the respondents are also entitled to the copies. In such circumstances the respondents shall proceed with the disciplinary proceedings and conduct the proceedings based on the copies of the documents received from the Criminal Court. In numerous cases, this Court has held that the criminal case and the disciplinary proceedings are separate proceedings. The respondents have every power to initiate disciplinary proceedings and render a finding based on the principles of preponderance of probability. Keeping a person under suspension endlessly and paying the entire monetary benefits at the end of superannuation without extracting any work from the delinquents, will create huge loss to the respondent organization.

12. Therefore, taking all these factors into consideration, this Court is passing the following order:

i. The respondents shall revoke the suspension and reinstate all the writ petitioner.



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ii. The respondents shall initiate departmental proceedings by taking all relevant documents from the criminal case. Even the petitioners shall submit the records which are served on the petitioners by the Trial Court. Based on the available records, the respondents shall complete the disciplinary proceedings and shall independently come to the conclusion based on the gravity of charges.

13. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

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To

The Principal Secretary,
State of Tamil Nadu,
Department of Personnel and Administrative
Reforms (N) Department,
Fort St. George, Chennai - 600 009



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S.SRIMATHY, J

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