



WP.No.21447 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.21447 of 2012

1.C.Kannappan (Deceased)

2.K.Vijayalakshmi

3.K.Lakshmanaiya

...Petitioners

(P2 and P3 are substituted as legal heirs of deceased P1, as per order of Court dated 03.06.2024, made in W.M.P.No.18108 of 2016 in W.P.No.21447/2012 by RKMJ)

Vs.

1.The Chairman,
Tamil Nadu Electricity Board,
Electricity Complex,
800, Anna Salai,
Chennai- 600 002.



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2.The Superintending Engineers,
Tamil Nadu Electricity Board,
Cuddalore Division at Cuddalore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, directing to call for the records relating to order No.Lt.No.016225/146/ADM.2/A2F.Court/2010, dated 29.12.2010, passed by the 2nd respondent and quash the same and direct the respondents to reinstate the petitioner w.e.f 27.05.1985 with all consequential benefits including arrears of pay and allowances, pension, gratuity and other terminal benefits.

For Petitioner : M/s.Y.Kavitha

For Respondents : Mr.P.Subramanian
Senior Counsel for TNEB

ORDER

The 1st petitioner herein, who was aged about 77 years, when this writ petition was filed. The original writ petitioner passed away and his legal representatives namely wife and daughter are brought on record as petitioners 2 and 3. The petitioner No.2 also is reported to have been passed away and the petitioner No.3, alone is surviving. The 1st petitioner herein was initially appointed as Wire Man on 02.01.1954 in Tamil Nadu Electricity Board, A-E Construction, Madras, Sub-Division on a daily basis and thereafter promoted



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as Line Man in the month of June 1959. Thereafter, he was promoted from time to time and finally promoted as Junior Engineer Electrical Grade II in the month of December 1978 and thereafter, he was transferred to South Arcot Electricity System, Melpattambakkam, (now Cuddalore Electricity Distribution Circle) as Junior Engineer Electrical (Operation and Maintenance). While working as such at Cuddalore Electricity Distribution Circle, the 1st petitioner discontinued his services and thereafter, a Criminal case was registered against the petitioner vide C.C.No.354 of 1988 on an allegation of misappropriation of a sum off Rs.2720/-. It is thereafter, the 1st petitioner absconded and had not chosen to attend his duty. While so, the 1st petitioner attained the age of superannuation in the month of October 1993 and then he made a claim for payment of his terminal benefits by submitting representation dated 17.10.1993.

2.Considering the said representation, the 2nd respondent herein, though Letter No.SE/SAVEDC/Cud/AO(R)/ATO/D.379/94, dated 03.01.1994 sought for certain informations from the petitioner and also required the 1st petitioner to remit an amount of Rs.2720/- alleged to have been misappropriated by the 1st petitioner. However, the 1st petitioner instead of



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immediately responding to the said communication dated 03.01.1994, responded to the same only on 03.03.2005 expressing inability to furnish any information on the ground that he is aged about 70 years and suffering from various ailments. The same was pursued by the 1st petitioner further and finally the impugned order dated 29.12.2010 came to be passed by the 2nd respondent intimating the 1st petitioner that he was dismissed from service as early as on 27.05.1985 and therefore, the entire service rendered by him stand forfeited in terms of Rule 21 of the Tamil Nadu Pension Rules, 1978. It is aggrieved by the said proceedings dated 29.12.2010 the 1st Petitioner approached this Court by filing the present writ petition.

3.This Court, having noticed the contention of the respondent that the 1st petitioner was dismissed from service as early as on 27.05.1985, required the respondents to produce a copy of the said order of dismissal dated 27.05.1985. In response to the same, an additional counter affidavit dated 29.08.2024 was filed contending that the order of dismissal is not traceable and stated as under in paragraph No.5, of the additional counter:

5) I humbly submit that the records pertaining to



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*the disciplinary proceedings initiated against the Petitioner herein due to efflux of time could not be traced despite several sincere attempts and concerted steps upon forming special teams to recover the same. In fact upon the available records it was categorically found and recorded as "**Dismissed from service on 27-05-1985**" in the Petitioner's TNEB General/Contributory Provident Fund Ledger Card for the year 1983-84. I humbly submit that due to efflux of time and that too after nearly 39 long years and also due to the bifurcation and reorganization of the Electricity Distribution Circle, the records relating to the disciplinary proceedings initiated against the Petitioner herein could not be traced. I humbly submit that the failure to produce the order of dismissal dated 27-05-1985 is neither willful nor wanton but only due to the above said reasons. In fact, it is categorically clear that the Petitioner herein has been dismissed from service upon the ground of misappropriation by order*



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dated 27-05-1985. And in fact the Petitioner herein in his representation dated 11-07-2005 has also admitted his unauthorized absence without any kind of permission, leave or approval due to his mental condition and sought for pardon. The Petitioner herein has approached this Hon'ble Court only in order to gain unjust enrichment at the cost of the Board exchequer. The amounts due to the Petitioner as per law has been disbursed to him with interest and no further dues is outstanding. Hence the Petitioner and the legal heirs are not entitled to Pensionary and Family Pension benefits as claimed herein."

4. In the absence of any order of dismissal placed before this Court, this Court is unable to accept the contention of the respondent that the petitioner was dismissed from service on 27.05.1985. Admittedly, the petitioner absconded from service from the year 1984 onwards and thereafter, it is only in the year 1994 the petitioner approached the respondent making a claim for payment of terminal benefits. In the absence of petitioner being available to the respondent for taking appropriate action



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for the alleged misconduct of misappropriation or on the ground of absconding from service, it is not known as to how the respondent could have passed an order of dismissal from service on 27.05.1985. It is also not brought to the notice of this Court as to on what ground the petitioner was dismissed from service, whether the procedure that is required to be followed in a matter of disciplinary proceedings was conducted or not & whether the order dated 27.05.1985 was duly served on the petitioner or not ?

5. According to the respondents, no record pertaining to the said disciplinary proceedings said to have been concluded against the petitioner is available with the respondent and so many reasons have been stated in the counter affidavit. But considering the fact that the 1st petitioner was initially appointed in the year 1954 on daily wage basis and subsequently, his services were made permanent and he was promoted from time to time and finally to the post of Junior Engineer in the year 1978 and worked as such for about 5 years, thereby completing almost about 30 years of service in the respondent Board, this Court is unable to accept the contention of the respondent that the petitioner was dismissed from service, especially, in the absence of any such order of dismissal being placed before this Court.



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6. As already noted above, the petitioner made a claim for payment of his terminal benefits after attaining the age of superannuation as early as in the year 1994 and the respondents were very much aware of the claim that is being made by the petitioner through his representation dated 17.10.1993 which was responded by the 2nd respondent through his letter dated 03.01.1994. As the 1st petitioner made a claim for payment of terminal benefits as early as on 17.10.1993, the respondents ought to have taken appropriate steps to preserve the record pertaining to the alleged dismissal from service and ought to have communicated the same to the petitioner atleast at that point of time. But for the reasons best known, the respondents have not even stated about the said order of dismissal in the letter dated 03.01.1994 addressed to the petitioner. On the other hand, the 2nd respondent required the petitioner to furnish certain information and to pay an amount of Rs.2,720/- for the purpose of settling the terminal benefits of the petitioner. Therefore, it cannot be said that the petitioner has approached the respondents after a long lapse of time. Admittedly, the criminal case was registered against the petitioner at the instance of the respondents in the year 1988 and the said criminal case was pending till 15.12.2009 when the



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petitioner was acquitted in the said criminal case. As the said proceedings are pending, since the year 1988, the respondents, in all fairness, ought to have preserved the records or should have communicated the so called order of dismissal from service. But, none of the above steps were taken by the respondents. In spite of this Court granting considerable time to enable the respondent to place before this Court the so called order of dismissal dated 27.05.1985 nothing is brought on record. On the other hand, the respondents have expressed their inability to produce the same on various grounds. In the absence of the said order being placed before this Court, bare statement in the additional counter of the respondents cannot be accepted and the said so called order of the dismissal from service is liable to be treated as *non est* in the eye of law.

7.The next question that would arise for consideration is as to for what relief the 1st petitioner is entitled to?

8.Admittedly, as seen from the affidavit filed in support of the writ petition, the 1st petitioner was absconding from service from the year 1984 and thereafter he never reported to his duty till he attained the age of



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superannuation in the month of October 1993. Thus, the 1st petitioner has served in the respondent Board till 05.01.1984, by which date he has completed more than 30 years of service in the respondent Board. In the absence of any order of dismissal being placed before this Court, this Court does not find any justification for the respondents to deny the benefits of 30 years of service rendered by the 1st petitioner in the respondent Board without following the due process of law.

9. In the normal course, consequent upon concluding that the order of dismissal from service dated 27.05.1985 is *non-est* in the eye of law, this Court would allow all the consequential benefits to the 1st petitioner. But taking into consideration the conduct of the 1st petitioner that he was absconding from service from 05.01.1984 on his own showing and has approached the respondent Board only in the month of October 1993 when he was about to attain the age of superannuation and also considering the long delay in pursuing the matter and not responding to the letter dated 03.01.1994 issued by the 2nd respondent till the year 2005, this Court is not inclined to allow all consequential benefits, consequent upon declaring the order of dismissal from service as non est in the eye of law. Instead this Court



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is of the considered view, by taking into consideration over all facts of the case, to treat the 1st petitioner as retired from service with effect from 05.01.1984 in the post of Junior Engineer.

10. Accordingly, the impugned order dated 29.12.2010 is set aside and respondents are directed to settle the terminal benefits of the 1st petitioner treating him as retired from service on 05.01.1984 and pay all the terminal benefits that are payable in favour of the petitioner No.3 as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order.

11. Accordingly, the writ petition stands disposed of. No costs.

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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