



W.P.(MD)No.19662 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.19662 of 2020

M.Glory Saroja Bai

.. Petitioner

Vs.

1. The Chairman and Managing Director,
TANGEDCO (Tamil Nadu Generation
and Distribution Corporation),
10th Floor Npkrr Maaligai,
104, Annasalai,
Chennai.

2. The Chief Engineer,
TANGEDCO (Tamil Nadu Generation and
Distribution Corporation),
Tirunelveli Region,
Tirunelveli-11.

3. The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
TANGEDCO (Tamil Nadu Generation
and Distribution Corporation),
Tuticorin.



W.P.(MD)No.19662 of 2020

WEB COPY

4. The Enquiry Officer,
Assistant Executive Engineer,
(Construction and Development)
TANGEDCO, Kovilpatti,
Tuticorin District.

5. Assistant Engineer,
Distribution,
TANGEDCO,
Kayatar,
Tuticorin District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certorified Mandamus, calling for the records pertaining to impugned order No.Ku.Aa.No.13425-1/310/Ni.Aa/Ni P3/U1/KO.O.Na/2018 dated 10.07.2018 on the file of 3rd respondent and quash the same as illegal and consequently order to disburse all terminal benefits and all other monetary benefits eligible to the petitioner's deceased husband, to the petitioner within the stipulated time limit.

For Petitioner : Mr.Musthafakhan
for Mr.M.Kupendran

For Respondents : Mr.S.Arivalagan
Standing Counsel



WEB COPY



W.P.(MD)No.19662 of 2020

ORDER

This writ petition has been filed questioning the impugned proceedings in No.Ku.Aa.No.13425-1/310/Ni.Aa/Ni P3/U1/ KO.O.Na/2018 dated 10.07.2018 whereby the husband of the petitioner, namely, Late C.Micheal was removed from the post of Commercial Inspector.

2. The brief facts that are relevant for the disposal of this writ petition are as follows:

The husband of the petitioner while working as Commercial Inspector in the respondent Board, he suffered serious illness resulting in not attending to his regular duties with the respondent Board. As a consequence, the petitioner was imposed with various punishments on five occasions through proceedings dated 14.11.2002, 21.11.2006, 25.11.2011, 30.01.2015 and 20.09.2016. Further, the petitioner also stated to have absented himself from his duties with effect from 18.02.2016 till 17.06.2016 and out of that for the periods, from 03.03.2016 to 17.03.2016, 18.04.2016 to 17.05.2016 and



W.P.(MD)No.19662 of 2020

18.05.2016 to 17.06.2016, the petitioner submitted applications for sanction of leave belatedly. However, in respect of the periods during 18.02.2016 to 02.03.2016 and 18.03.2016 to 17.04.2016, no application was submitted for sanction of leave.

2.1. On the ground that the husband of the petitioner has not submitted any application for sanction in respect of two periods and submitted application for sanction or leave belatedly in respect of three periods, the husband of the petitioner was subjected to disciplinary proceedings by issuing a charge memo containing three charges. Though three charges are framed, the nature of allegation with regard to the three charges is identical. However, the charge No.3 takes note of the previous punishments that were imposed on the petitioner on five occasions. Though an enquiry stated to have been conducted by the Enquiry Officer appointed by the respondent, the petitioner could not participate in the said enquiry for the reason of his serious illness and as he was bedridden. The respondents having conducted an ex parte enquiry and issued a show cause notice proposing to remove the husband of the petitioner from service, but the



W.P.(MD)No.19662 of 2020

WEB COURT

husband of the petitioner could not respond to the said show cause notice resulting in passing the impugned order dated 10.07.2018 removing the husband of the petitioner from service. Within a short span of two months, thereafter, the husband of the petitioner finally succumbed to death due to serious illness on 18.09.2018.

3. Considering the fact that the husband of the petitioner succumbed to death on 18.09.2018, that is, just about two months after the passing of the impugned order and also the contents of paragraph No.3 of the counter affidavit about sanction of leave on medical certificate, extra ordinary leave etc., this Court is *prima facie* convinced that the absence of the husband of the petitioner from his duties on various occasions is only due to the illness of the petitioner's husband. It is also on record that the respondent themselves referred the petitioner to Medical Board on number of occasions and they were also aware of the serious illness being suffered by the petitioner's husband. Paragraph No.3 of the counter affidavit reads as under:

“3. I respectfully submit that the petitioner's



W.P.(MD)No.19662 of 2020

WEB COPY

Husband on Thiru.C.Micheal has joined 25.06.1998 FN at TANGEDCO Ltd., in Tirunelveli Electricity Distribution Circle and subsequently he promoted as Commercial Assistant on 12.01.2005 FN. In his tenure from as 25.06.1998 to 10.07.2018, he has been availed 520 days Unearned Leave through Medical Certificate submitted on 31.10.2006, 2065 days Extra ordinary Leave without Medical Certificate upto 30.09.2015, 495 days Extra Ordinary Leave with Medical Certificate on 31.10.2017. The employer had taken disciplinary proceeding against petitioner's husband and imposed punishment time and again for his absence of duty.”

4. From the above, it is evident that the respondent Board has granted good amount of leave in favour of the petitioner's husband on medical certificate on more than two occasions and they have also considered



W.P.(MD)No.19662 of 2020

WEB COPY

the case of the petitioner for grant of extraordinary leave without medical certificate also. This goes to show that the respondents are fully aware about the physical condition of the husband of the petitioner. The fact remains that the husband of the petitioner died soon after passing of the impugned order.

5. As already noted above, the basis for issuing the impugned order is an exparte enquiry that was conducted behind the back of the husband of the petitioner. As claimed by the petitioner, her husband could not participated in the enquiry because he was bedridden at the relevant point of time. But the respondent had proceeded with the exparte enquiry without taking note of the serious illness of the petitioner's husband. Added to that the charges that are framed against the petitioner are only relating to his absence or unauthorised absence during the period between 18.02.2016 and 17.06.2016. Even assuming that during the entire period for which the husband of the petitioner was charged now is unauthorised, unless the respondent establish that the said unauthorised absence is wilful with a view to avoid his regular duties, the imposition of punishment of removal from



W.P.(MD)No.19662 of 2020

service which will have a serious civil consequence is highly disproportionate. The Hon'ble Apex Court, in catena of cases, has considered the similar aspect and has been pleased to hold the order passed removing from service on mere charge of unauthorised absence in the absence of wilful and deliberate absence is bound to be declared as highly disproportionate. No doubt, the petitioner was subjected to disciplinary proceedings on similar allegations on five previous occasions. But the petitioner was punished in respect of such incident. The absence which is the subject matter of the disciplinary proceeding in question is because of the serious illness of the husband of the petitioner which is further supported by the death of the petitioner's husband immediately after passing of the impugned order.

6. Considering these facts, this Court is of the considered view that the past conduct of the petitioner's husband imposing punishment on him on five occasions cannot be relevant factor for passing an order of removal while holding the petitioner guilty of the charges levelled against him in the present proceedings.



W.P.(MD)No.19662 of 2020

WEB COPY

7. In the light of the above, the action of the respondents in passing the impugned order dated 10.07.2018 removing the husband of the petitioner from service while he was suffering from serious illness highly is disproportionate and shocking to the conscience of this Court and the same requires to be modified appropriately.

8. As already noted above, the husband of the petitioner is no more, as seeks this Court is not inclined to remit the matter back to the respondents for consideration to pass appropriate orders imposing lesser punishment. In view of the same, the above impugned order cannot be sustained in its present shape and accordingly, the impugned order is modified by treating the punishment of removal from service imposed on the husband of the petitioner to that of compulsory retirement with effect from 10.07.2018.

9. Accordingly, this writ petition is disposed of directing the respondents to treat the impugned order dated 10.07.2018 as an order



W.P.(MD)No.19662 of 2020

WEB COPY

imposing the punishment of compulsory retirement on the husband of the petitioner, namely, C.Michael and disburse all the benefits that he would be eligible on compulsory retirement with effect from 10.07.2018 to the petitioner as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this order. No Costs.

20.03.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

PJL

To

1. The Chairman and Managing Director,
TANGEDCO (Tamil Nadu Generation
and Distribution Corporation),
10th Floor Npkrr Maaligai,
104, Annasalai,
Chennai.

2. The Chief Engineer,
TANGEDCO (Tamil Nadu Generation and
Distribution Corporation),



W.P.(MD)No.19662 of 2020

WEB COM
Tirunelveli Region,
Tirunelveli-11.

3. The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
TANGEDCO (Tamil Nadu Generation
and Distribution Corporation),
Tuticorin.

4. The Enquiry Officer,
Assistant Executive Engineer,
(Construction and Development)
TANGEDCO, Kovilpatti,
Tuticorin District.

5. Assistant Engineer,
Distribution,
TANGEDCO,
Kayatar,
Tuticorin District.



WEB COPY



W.P.(MD)No.19662 of 2020

MUMMINENI SUDHEER KUMAR, J.

PJL

W.P.(MD)No.19662 of 2020

20.03.2024