



W.P. No. 17523 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2025

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

W.P. No. 17523 of 2018

K.Parasuraman (deceased)

2. Jayanthi

3. P.Hariprasath

4. P.Harnee

... Petitioners

[P2 to P4 are substituted as Legal heirs of deceased first petitioner vide order dated 14.11.2024 in W.M.P. No.36992 of 2024 in W.P. No.17523 of 2018.]

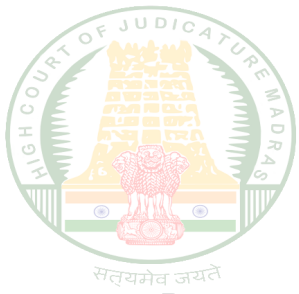
-VS-

1. Chairman-cum-Managing Director
Tamil Nadu Generation and Distribution Corporation
10th Floor, Electricity Avenue
Anna Salai, Chennai-2.

2. Chief Engineer /Distribution
TANGEDCO/ Erode Region
EVN Road, Opp. Govt. Hospital
Erode, Erode District.

3. Superintending Engineer
Salem Electricity Distribution Circle
TANGEDCO /Udaypatty By-pass
Tamil Nadu Electricity Board
K.N.Colony Post, Salem-14
Salem District.

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the third respondent in his proceedings Ku.Aa.No.659/Nipi.3/Utha.2/Ko.O.Na. 3184/2010 dated 31.12.2011 and the order passed by the second respondent in his proceedings Ku.Aa.No.004571/204Nipi.2/Aa.1/2012-1 dated 14.08.2012 and the order passed by the first respondent in Order No.189 dated 25.11.2017 and quash the same and direct the respondents to confer all the consequential benefits to the petitioner.

For Petitioners : Mr.R.Murali Krishnan

For Respondents : Mr.C.Ramkumar

ORDER

This writ petition has been filed calling for the records pertaining to the order passed by the third respondent in his proceedings Ku.Aa.No.659/Nipi.3/Utha.2/Ko.O.Na. 3184/2010 dated 31.12.2011 and the order passed by the second respondent in his proceedings Ku.Aa.No.004571/204Nipi.2/Aa.1/2012-1 dated 14.08.2012 and the order passed by the first respondent in Order No.189 dated 25.11.2017 and quash the same and to consequently direct the respondents to confer all the consequential benefits of the deceased first petitioner to the second to fourth petitioners .



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2. Heard Mr.R.Murali Krishnan, learned counsel for the petitioners and

Mr.C.Ramkumar, learned counsel for the first to third respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. The original petitioner, viz., K.Parasuraman, who has been working with the respondent Corporation, had died on 21.04.2024 while in service, during which time, this writ petition was also pending. The second to fourth petitioners are the legal heirs of the deceased first petitioner. When the deceased first petitioner was in service, a charge memo was given to him on 28.08.2003 and an enquiry has been conducted and at the conclusion of the enquiry, the deceased first petitioner was found guilty and on 31.12.2011, the third respondent passed the impugned order of removal from service. The petitioner preferred an appeal to the second respondent and the second respondent modified the punishment reduced it to reduction of pay to the lowest scale with cumulative effect for three years. A criminal case was registered on the same charges which has been ended in an acquittal. The deceased first petitioner was acquitted on 30.11.2015. The deceased first petitioner has filed this writ petition challenging the modified punishment and during the pendency of this writ petition, he died on 21.04.2024. Subsequently, the deceased first petitioner's legal representatives, who are the second to fourth petitioners



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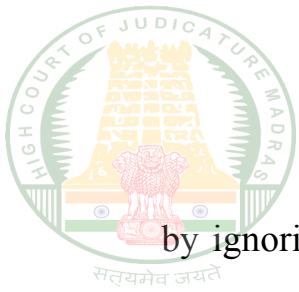
herein, had impleaded themselves as parties and continued the proceedings.

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4. The learned counsel for the petitioners submitted that for the same set of materials both the departmental proceedings and the criminal proceedings have been initiated and the deceased first petitioner was acquitted in the case pending before the criminal court.

5. The respondents did not prefer to file an appeal on the verdict of the criminal court and the same had attained finality. Even before the conclusion of the criminal proceedings, the deceased first petitioner was made to face the disciplinary proceedings, which has been conducted in his absence. Before passing any punishment order or filing any enquiry report, the deceased first petitioner was not given with an opportunity by giving any second show cause notice, and this is in violation of Regulation 39 of the Tamil Nadu Electricity Board Service Regulations.

6. It is further submitted that the punishment has been imposed in violation of the Regulation 39 of the Tamil Nadu Electricity Board Service Regulations. As the enquiry has been conducted in violation of principles of natural justice and in violation of the Tamil Nadu Electricity Board Service Regulations and



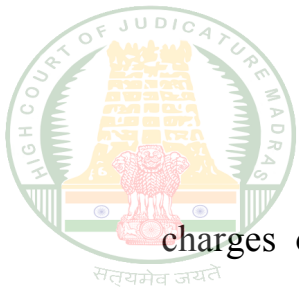
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by ignoring the judgment of the order of acquittal given in the criminal case,

the impugned are to be set aside.

7. The learned counsel for the respondents submitted that the writ petitioner has filed a writ petition in W.P. No.21337 of 2005 by challenging the departmental enquiry and in which a direction has been given that the deceased first petitioner should appear before the enquiry. Despite the notices have been served upon the petitioner by informing him about the pending enquiry, he did not choose to appear before the enquiry officer and hence, it is not correct to state that he was not given with any opportunity. The petitioner has been imposed with the punishment on 14.08.2012 and after waiting for five year, this writ petition has been filed by the deceased first petitioner, which is affected by delay and laches and after waiting for four years, the mercy petition has been filed by the deceased first petitioner and invited an order on 25.11.2017, which is for the purpose of this writ petition.

8. The stand of proof required for the departmental proceedings and the criminal proceedings are not one and the same and hence, the deceased first petitioner acquittal in criminal case cannot have any bearing on the departmental proceedings. The deceased first petitioner has been given with the



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charges on the allegations that when agricultural service connections were

given under Self-Finance Scheme, the deceased first petitioner has violated the Board Regulations and he has misappropriated the amount meant to be credited in the account of the Board. Having not satisfied with the explanations given by the deceased first petitioner, the enquiry was conducted by the enquiry officer.

9. The learned counsel for the petitioners submitted that no opportunity was given to the deceased first petitioner and the enquiry was conducted behind his back. It is seen from the records that the deceased first petitioner has already filed a writ petition in W.P. Nos. 21337 of 2005 challenging the charge sheet and the same was disposed by giving a direction to the respondents to give opportunity to the deceased first petitioner.

10. The learned counsel for the respondents submitted that despite the opportunity was given to the deceased first petitioner, he did not participate in the enquiry and for the default on the deceased first petitioner, he cannot blame the enquiry officer. As the deceased first petitioner has challenged the charge sheet immediately by filing a writ petition and the Court has also passed an order directing the respondents to give opportunity, it has to be presumed in all probabilities that the respondents would have given sufficient opportunity



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for the deceased first petitioner to make himself conveniently participate in the enquiry. If really the respondents did not give any opportunity to the deceased first petitioner, he would have immediately filed a contempt proceedings stating that the orders of the Court has not been complied by the respondents. If the deceased first petitioner has not chosen to appear before the enquiry by obstructing him from participating in the enquiry, that goes with him and once the enquiry is over, the deceased first petitioner cannot expect to blame the respondents in respect of proper opportunity.

11. Conscious omission to participate in the enquiry will not come to the rescue of the deceased first petitioner with the presumption that he he was not given with due opportunity. The enquiry officer has arrived at the finding that the guilt against the accused / deceased first petitioner was proved. After the enquiry officer filed a report to the disciplinary authority on the finding that the charges are proved, the disciplinary authority is expected to issue a second show cause notice to the deceased first petitioner as to why he was not imposed with any punishment. But such an opportunity has not been given. Even the respondents records does not disclose whether the deceased first petitioner was given with the second show cause notice before imposing any punishment. Without giving opportunity of that sort, the deceased first petitioner was given



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with the punishment of removal from service. However, the deceased first petitioner has filed an appeal challenging the above order in the appeal, the order of punishment was modified to reduction of pay scale to the minimum with the cumulative effect for three years.

12. As per Regulation 39 of the Tamil Nadu Electricity Board Service Regulations, if the punishment of reduction to the lower stage in his time scale has been imposed, the authority ordering such a punishment should state to which period the punishment will be in effect, whether on restoration the period of reduction shall operate to postpone future increments; but as such in the order, it has been stated that the punishment of reduction to the lower time scale was with cumulative effect for three years. The cumulative effect would only convey that it will postpone the future increments for three years. So, I do not find any ambiguity in the punishment. If the punishment would also state that after the currency of the punishment is over, the deceased first petitioner's pay would be fixed at the lower minimum and his next increment would be calculated from there. But such an addition to the punishment of reduction of the pay scale is not contemplated under the Tamil Nadu Electricity Board Employees' Discipline & Appeal Regulations. The punishment itself is ambiguous and not in accordance with Tamil Nadu Electricity Board

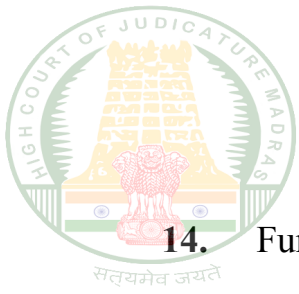


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Employees' Discipline & Appeal Regulations.

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13. The learned counsel for the petitioners attracted the attention of this Court to Regulation 8(b) of the Tamil Nadu Electricity Board Employees' Discipline & Appeal Regulations and relied on the judgment in ***Tamil Nadu Electricity Board -vs- N.K.Shanmughasundaram*** reported in (1992) 1 MLJ 499. In the said judgment, the respondent Board has taken a plea that Regulation No.8(b) of the Board Proceedings No.368 (Secretariat Branch) dated 07.07.1980 does not contemplate a second show cause notice before imposing any penalty. But after filing various earlier judgments of the Hon'ble Supreme Court, this Court has observed that though the respondents can exclude the application of principles of natural justice in the given case, the same is subject to the scrutiny on the touchstone of Article 14 of the Constitution of India. The stage of the imposition of penalty is consequent to the enquiry officer finding of guilty against the delinquent officer. So the finding of the guilty is the first stage and imposition of penalty is at later stage. The deceased first petitioner was entitled to get show cause notice on both stages in order to make his submissions. So the respondents could not take advantage of the exemptions, if any, available to the Board Regulations for violating the principles of natural justice.



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14. Further, the submission of the learned counsel for the petitioners is that

the criminal case registered against the deceased first petitioner was also on the same set of facts, and the deceased first petitioner has been acquitted on the finding that the charges against the deceased first petitioner were not proved. But the departmental proceedings had brought to an end even before the criminal court proceedings were over on the presumption that the standard of proof required for the two actions are different. Though the above presumption is true, when the materials relied by the respondents in both the criminal case as well as the departmental proceedings are one and the same, it would have been appropriate for the respondents to stop the disciplinary proceedings till the disposal of the criminal case. No doubt, the materials produced before the criminal court should also be the same, in view of the nature of charges made against the deceased first petitioner. The charges against the deceased first petitioner is that he has misappropriated the funds, which is meant to be the property of the society, it requires a detailed investigation. After the criminal case was registered, the investigating authority was also made an exhaustive investigation and thereafter, filed a charge sheet. When the criminal court has found that the charges are not proved and thereby, acquitted the accused, it will have bearing on the disciplinary proceedings also. If the disciplinary proceedings is independent of criminal proceedings and on the basis of other



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materials, it would be correct to state that the disciplinary proceedings has got

nothing to do with the criminal proceedings. As the same set of materials and the witnesses have been examined both in the criminal case and the departmental proceedings, the verdict of the acquittal given by the criminal court can have bearing on the disciplinary proceedings also. However, this cannot be laid down as a general rule, but it is applicable to facts of each case. So the above observation has been made in this case only considering the exclusive nature of the charges made against the deceased first petitioner and for which, the criminal case has also been registered.

15. On perusal of the judgment of the criminal court, it is seen that the criminal court has made an exhaustive analysis on the evidence and thereafter, only arrived at the conclusion that the deceased first petitioner was not found guilty. Further, the deceased first petitioner has stated in his grounds of appeal before the appellate authority that he was not given with the promotion to the next level and his pay has also been fixed at the lowest minimum. By so stating it is claimed by the deceased first petitioner that he has suffered double jeopardy and he was punished for the same occurrence twice. As per the Board Regulations, during the currency of the punishment, the promotion will not be given. Hence, the deceased first petitioner cannot presume that the denial of



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promotion during the currency of punishment is a separate or another kind of punishment and claim that he was punished for the same occurrence twice.

16. On perusal of the records, the appellate authority has imposed a punishment without clarity as to the future increments. The order of the appellate authority is ambiguous. Had the appellate authority appreciated the grounds raised by the deceased first petitioner, he could have taken a better view.

17. The deceased first petitioner has been dismissed from service in view of the some other charges made against him. The petitioner did not challenge the said order of dismissal. So, the scope of this appeal is concerned, it is confined to the earlier charges for which the modified punishment of reduction in the scale of pay to the lowest scale of pay for three years.

18. Despite the deceased first petitioner was tried in the criminal case also with the same set of allegations and the trial has been conducted on the basis of the same materials and the same set of witnesses, the acquittal of the criminal case can also have bearing on the disciplinary proceedings. The disciplinary proceedings have been concluded even before the criminal case, and he was not



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given with second show cause before imposing punishment. The punishment

was also not in accordance with law, in view of the fact that it deprives the petitioner's raise in scale of pay and had chosen to fix him on the lowest scale of pay for the purpose of increment, after the currency period was over. I find such punishment is in violation of the Board's Regulations. In other words, such kind of punishment is not contemplated under the Tamil Nadu Electricity Board Employees' Discipline & Appeal Regulations and hence, the above punishment is liable to be set aside.

19. The learned counsel for the respondents submitted that the petitioner is suffering from delay and laches as he has chosen to file an appeal itself only after four years before the Review authority. Such a contention was not taken seriously by the Review Authority and he had proceeded to consider the Review on merit. The respondents shall not rest their arguments on delay and laches.

20. Insofar as this writ petition is concerned, the petitioner has filed it on time immediately after his mercy petition before the Reviewing Authority has been dismissed. Hence, I do not subscribe to review that the writ petition is affected by the delay and laches.



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21. In view of the above stated reasons and also taken into consideration of

the order of acquittal passed by the criminal court, after an exhaustive trial on the same set of charges and evidence, I feel the impugned order is liable to be set aside.

22. In the result, **this writ petition is allowed**. The impugned proceedings Ku.Aa.No.659/Nipi.3/Utha.2/Ko.O.Na. 3184/2010 dated 31.12.2011 passed by the third respondent and the proceedings Ku.Aa. No.004571/ 204Nipi.2/ Aa.1/2012-1 dated 14.08.2012 passed by the second respondent and the order No.189 dated 25.11.2017 passed by the first respondent are set aside and the respondents is directed to grant all consequential benefits to the petitioner and pass orders to that effect within a period of eight(8) weeks from the date of receipt of a copy of this order. No costs.

25.04.2025

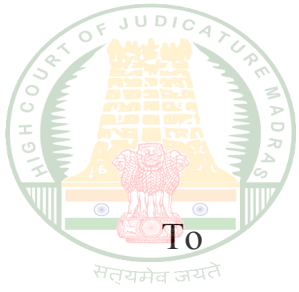
Index: Yes/No

Internet: Yes/No

Speaking /Non-speaking order

Neutral Case Citation: Yes/No

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To

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1. The Chairman-cum-Managing Director
Tamil Nadu Generation and Distribution Corporation
10th Floor, Electricity Avenue
Anna Salai, Chennai-2.
2. The Chief Engineer /Distribution
TANGEDCO/ Erode Region
EVN Road, Opp. Govt. Hospital
Erode, Erode District.
3. The Superintending Engineer
Salem Electricity Distribution Circle
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Salem District.



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R.N.MANJULA, J.

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Dated : 25.04.2025