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S.Santhi. Vs. the Superintendent Engineer, and anr.

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Court : Chennai

Decided On : Aug-16-2010

Judge : D.Hariparanthaman, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.11991 OF 2009 AND M.P.NOS.1 OF 2009 AND 1 OF 2010

Appellant : S.Santhi.

Respondent : The Superintendent Engineer, and anr.

Advocate for Def. : Mr.M.Sekar, Adv.

Advocate for Pet/Ap. : Mr.M.Ravi, Adv.

Judgement :

1. The petitioner joined service as Technical Assistant on 02.01.1998 in the Tamil Nadu Electricity Board. She was promoted as Assistant Engineer on 15.05.2002. She joined duty as Assistant Engineer in Sub-Station, Mettur R.S. on 28.06.2008.

2.While so, the Vigilance and Anti Corruption Unit, Salem registered a case against the petitioner in Crime No.8/AC/2008 on 12.09.2008 on the basis of a complaint given by one Mr.Srinivasan, son of Mr.Manickam, Karumalaikoodal Village, Mettur Dam, Salem District. The complaint was that the petitioner demanded illegal gratification for providing additional electricity supply of 70 HP for his vessels manufacturing company in the SIDCO at Karumalaikoodal. In this

connection, the petitioner was arrested by the officials of Vigilance and Anti Corruption Department on 13.09.2008 pursuant to the trap laid by them. The petitioner was released on bail on the same day on execution of her own bond.

3.In these circumstances, invoking its power under Regulation 9(a)(ii) of the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations (in short "the Regulations") the petitioner was placed under suspension by an order dated 16.09.2008, by the first respondent.

4. According to the petitioner, she was placed under suspension invoking Regulation 9(b) of the Regulations, as if she was detained for more than 48 hours.

5.Hence, the petitioner has filed the present writ petition seeking to quash the aforesaid order dated 16.09.2008 of the first respondent and for a consequential direction to the respondents to reinstate her in service.

6. Interim stay was granted by this Court on 02.07.2009. The respondents filed counter affidavit.

7. Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.M.Baskar, learned counsel for the respondents.

8.According to the learned counsel for the petitioner, the petitioner was deemed to have been suspended with effect from the date of detention on 13.09.2008 as per the impugned order. The deemed suspension provided under Regulation 9(b) could be come into operation only in cases when the person is in custody for more than 48 hours. But in this case, the petitioner was not in custody for more than 48 hours and hence, the suspension is illegal. In this regard, the learned counsel for the petitioner relied on a judgment of this Court in K.SEENUVASAN VS. THE SUPERINTENDING ENGINEER in W.P.No.15327 of 2009 (decided on 19.08.2009).

9. The learned counsel for the petitioner has also relied on Regulation 57 of the Tamil Nadu Electricity Board Service Regulations. According to him, since the petitioner was placed under suspension by the impugned order dated 16.09.2008 with effect from the date of detention on 13.09.2008; the impugned order is bad

and illegal.

10. Further, the learned counsel for the petitioner submits that there cannot be retrospective suspension in the case of Regulation 9(a)(ii) of the Regulations and since the petitioner was suspended retrospectively with effect from 13.09.2008 without application of mind, the impugned order is illegal.

11. On the other hand, the learned counsel for the respondents submits that the petitioner was placed under suspension taking into account the public interest as contemplated under Regulation 9(a)(ii) of the Regulations. It is also submitted that since a criminal case is pending against the petitioner, the petitioner was placed under suspension invoking its power under Regulation 9(a)(ii) of the Regulations.

12. I have considered the submissions made on either side. In the suspension order, the first respondent invoked only Regulation 9(a)(ii) of the Regulations and the petitioner was not placed under suspension invoking Regulation 9(b) of the Regulations. In this regard, it is relevant to extract Regulation 9(a) and (b) of the Regulations and those Regulations are as follows: "9.Suspension

(a) A member of a class of service may be placed under suspension from service, where -

(i) an enquiry into grave charges against him is contemplated, or is pending, or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

(b). An employee who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this regulation."

13.It is stated in the impugned order that the petitioner was detained in the custody at 16.45 hours on 13.09.2008 and released on bail on the same day. Hence, the first respondent was conscious that the petitioner was not in custody beyond 48 hours so as to invoke Regulation 9(b) of the Regulations.

14. In my view, the impugned order relies only on Regulation 9(a)(ii) of the Regulations. Furthermore, the impugned order also states that a criminal case in Crime No.81 AC/2008 under Section 7 of the Prevention of Corruption Act, 1988 read with Section 120(B) IPC, is under investigation. Since Regulation 9(a)(ii) of the Regulations is referred to and the fact of pending investigation in a criminal case is stated in the impugned order, I do not find any infirmity in the impugned order.

15. But, the learned counsel for the petitioner relies on the portion of the order, which places the petitioner under suspension from 13.09.2008, the date on which the petitioner was detained in custody. According to him, this would make the impugned order totally illegal as it amounts to retrospective suspension.

16. Just because the suspension order dated 16.09.2008 placed the petitioner under suspension with effect from 13.09.2008, the order of suspension could not become illegal. Even according to the learned counsel for the petitioner, the first respondent could place the petitioner under suspension prospectively from 16.09.2008. At the most, the suspension could be invalid only from 13.09.2008 to 16.09.2008 and not thereafter. The respondents have also stated in their counter affidavit that the petitioner was placed under suspension in public interest. This shows that the respondents invoked only Regulation 9(a)(ii) of the Regulations. Hence, there is no merit in the submissions made by the learned counsel for the petitioner.

17. The judgment relied on by the learned counsel for the petitioner is a case wherein the concerned person was in custody for more than 48 hours. The concerned workman in that case was in custody for more than 10 days and hence Regulation 9(b) of the Regulations was invoked therein. Moreover, the order therein was not passed invoking its power under Regulation 9(a)(ii) of the Regulations. Hence, the said judgment is not applicable to the facts of this case. 18.For all the reasons stated above, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. TK

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