

**(2002) 11 MAD CK 0135**

**Madras High Court**

**Case No:** Writ Petition No. 741 of 1999 and WMP No. 988 of 1999

N. Rangaswami

APPELLANT

Vs

Tamil Nadu Electricity Board

RESPONDENT

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**Date of Decision:** Nov. 22, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** E. Padmanabhan, J

**Bench:** Single Bench

**Advocate:** N.G.R. Prasad, for Row and Reddy, for the Appellant; Chandrasekaran, for V. Radhakrishnan, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

E. Padmanabhan, J.

The writ petitioner prays for the issue of a writ of certiorarified mandamus to call for the records relating to the proceedings of the third respondent in No. SEV/Adm.2/A3/100%DCRG/98, dated 5.12.1998, quash the same and consequently direct the respondents to pay the DCRG together with interest at 15% per annum from the date of petitioner's retirement and till date of payment.

2. The respondents have been served and they have entered appearance through Mr. V. Radhakrishnan. The respondents have also filed their counter. The writ petitioner being a Senior citizen, the above writ petition came to be included in the special list. With the consent of counsel for either side, the writ petition itself is taken up for final disposal.

3. It is the case of the writ petitioner that he joined the respondent-Electricity Board on 4.9.1961 as Supervisor (Civil) and then promoted to the cadre of Assistant Executive Engineer (Civil) in the third respondent's Circle. On 21.7.1990, the

petitioner requested the Chief Engineer to permit him to retire voluntarily with effect from 31.10.1990. By a memo dated 6.10.1990, the third respondent raised a query as to whether the petitioner has undergone any higher studies or training at Board's cost and if so whether the petitioner is willing to reimburse the expenses and also to pay the monetary difference of stoppage of increment that was ordered by the Superintending Engineer by memos dated 19.3.1990 and 5.7.1990. The petitioner by reply dated 20.8.1990 stated that he had not undergone any higher studies or training and also expressed his willingness to pay the monetary equivalent of the unexpired portion of the punishment of stoppage of increment. The second respondent by memo dated 7.10.1990 permitted the petitioner to retire w.e.f. 31.10.1990. A day prior to 31.10.1990 the petitioner was called upon to remit Rs. 4387.50, less he will not be relieved and the said amount was claimed towards unexpired portion of the punishment of stoppage of increment imposed against him. The same was complied. The petitioner handed over the charges to his successor and he was allowed to retire on 31.10.1990 without any reservation or condition.

4. The petitioner submitted his application for sanctioning of pension and DCRG. After 1 " years the pension was sanctioned on 2.11.1991, However, GPF accumulations was disbursed closely following the retirement. The petitioner's application dated 8.11.1990 for payment of DCRG has been kept pending. The petitioner has followed the same with reminders dated 5.6.1992, 14.4.1995, 12.4.1996 and 11.10.1996. On a representation to the Chairman, TNEB, the said authority by letter dated 28.3.1994 directed the third respondent Superintending Engineer to examine the petitioner's request and take appropriate orders without delay. After expiry of three years by letter dated 29.7.1997 the petitioner was called upon to appear before the second respondent on 4.8.1997. The second respondent promised to release DCRG. Even after lapse of one year there was no action. By communication dated 28.12.1998, the third respondent informed the petitioner that the entire amount of DCRG of Rs. 66,030/= is adjusted towards the alleged loss of Rs. 99,619 suffered by the Board in execution of the work by the contractor M.P.L. Narayanaswamy & Sons and that the balance of Rs. 33,589 will be recovered from his pension.

5. The petitioner made his representation contending that he is not guilty of negligence nor he could be fastened with liability for inaction on the part the respondents and others who have succeeded the office after the petitioner's retirement. It is contended that having allowed the petitioner to retire unconditionally, the respondents cannot seek to recover any amount either from DCRG or from pension. In the circumstances, challenging the impugned communication, the present writ petition has been filed.

6. On behalf of the respondents, the third respondent filed a counter. The third respondent referred to the construction of 6 numbers of Casting Beds for Pole

Casting Yard, Anchoring and Tensioning ends in PSC Yard at SIPCOT/Ranipet at a cost of Rs. 68.75 lakhs by the contractor Narayanaswamy & Sons, the contractor's conduct, in delaying the execution delay in furnishing the bank guarantee and delay in depositing the security deposit. The said contractor furnished a bank guarantee for Rs. 75,070/= on 4.2.1987. The Contract value was Rs. 9,38,359.50 and the contractor submitted seven part bills and they were passed. The 8th and final bill had been finalised but not passed for want of contractor's signatures in the bill and on the M. book. The contractor has not responded. As against the contractor a sum of RS. 11,8389.47 has to be recovered being the cost of materials supplied, the difference in value due to adoption of market rate for special steel, 10% penalty as per Boards tender committee resolution as well as Income Tax and surcharge. Total recovery has been arrived at Rs. 2,37,219.23. Deducting the sum of gross amount of 8th and final bill namely 1,18,829.53, a sum of Rs. 1,18,390.00 is the amount ordered to be recovered. After deducting the security deposit of Rs. 18770.00, the amount to be recovered from the Contractor was arrived at Rs. 99,620.00. The bank guarantee furnished by the contractor in a sum of Rs. 75,070 has been released on 12.4.1990 without recovering the amount due to the Board.

7. It is stated that the petitioner is not responsible for the amount due as it is alleged that the petitioner had not taken effective steps to recover the Board's materials, the contractor submitted 8th and final bill on the verge of the petitioner's voluntary retirement on 31.11.1990 and that the petitioner by letter dated 21.2.1991 has given his consent to withhold certain required amount as deemed it from his retirement and terminal benefits and he sought for the payment of balance. Therefore there is every justification to withhold the payment of entire DCRG and also ordering recovery of balance of shortage from the pension.

8. The petitioner filed a reply contending that he is not responsible for the shortage if any as he has handed over the charges and it is for his successor to have taken steps, that he has not ordered releasing of bank guarantee and that the bank guarantee was released only by the third respondent-Superintending Engineer. For that, the petitioner in no way responsible. That apart, on 26.3.1990 the then Chief Engineer has extended the period to the contractor to complete the works without any penalty. The petitioner demitted office on 31.10.1990 and he cannot be held responsible for any omission or negligence on the part of the contractor. The petitioner further contended that he has simply forwarded the application for release of the bank guarantee with his recommendation as the work was completed and the site was taken over on 4.4.1990. The contention that the petitioner is liable to in this respect is unsustainable as the authority who has directed the release of the bank guarantee is the Superintending Engineer and not the petitioner and he cannot be held responsible. Even the Superintending Engineer and Accounts Officer were aware of the fact that final bill has not been submitted by the contractor at the time of release of the bank guarantee and the Superintending Engineer was well within his powers to withhold the bank guarantee or he could have returned the

proposal to the field officer. Legally the petitioner cannot be fastened with such liability or omission on the part of the contractor and his successor should have taken steps. The bills if any have been prepared by the Assistant Engineer and after retirement of the petitioner the Superintending Engineer should have examined the same before passing the orders. The petitioner cannot be fastened with the liability for the alleged shortage on the part of the contractor and the successor or the respondents should have taken steps against the contractor and the petitioner cannot be proceeded without taking action against the contractor either by the respondent or by the successor in office to the petitioner. There is totally no justification to order recovery for the shortage from DCRG of the petitioner and that too after a period of nine long years without holding an enquiry. Before ordering recovery minimum formalities should have been resorted to and there was not even a show cause notice, nor even any action taken in this respect by the respondents. Hence the impugned order is illegal.

10. The points that arise for consideration are:-

(A) Whether the impugned communication of the 3rd respondent dated 5.12.1998 is liable to be quashed?

(B) Whether the petitioner is entitled for a direction for payment of entire DCRG?

(C.) Whether the petitioner is entitled for a direction for payment of interest on the belated payment of DCRG?

All the three points could be considered together.

11. There is no controversy that the petitioner was permitted to retire on 31.10.1990 without any reservation after his remitting Rs. 4387.50 being the monetary equivalent of the unexpired portion for stoppage of increment imposed against him. On 31.10.1990 the petitioner was allowed to retire without any reservation and any condition. Only on 2.11.1991, after One and Half years pension was sanctioned. Even at that time also there was no indication that proceedings are pending against him with respect to the alleged shortage by the contractor or the loss caused by the said contractor. The petitioner submitted a number of representations on 5.6.1992, 14.4.1995, 12.4.1996 and 11.10.1996 etc., and requested for payment of DCRG. On 29.7.1997, the third respondent called upon the petitioner to appear before him on 4.8.1997 with records. The petitioner appeared before the third respondent and produced material papers before the third respondent in support of his claim that he is entitled for payment of entire DCRG. Even at that stage no notice was issued to the petitioner alleging that he has caused shortage of materials or loss or made over payments or wrongful release of bank guarantee and no notice even has been issued to the petitioner.

12. Suddenly on 5.12.1998, the impugned communication was sent stating that DCRG of Rs. 66,030/= is sanctioned and the said sum is adjusted towards the loss

suffered by the Board in execution of work at SIPCOT by the Contractor M/s. Narayanaswamy & Sons and intimating the petitioner that balance will be recovered from pension. This is the first time such communication has been sent to the petitioner though he has been permitted to retire unconditionally on 31.10.1990. After eight long years the present order has been passed without even resorting to the minimum procedure and without following the principles of natural justice.

13. For the alleged loss caused by the Contractor, there is nothing to indicate that the petitioner is liable to make good. If there has been a default or even there is a failure on the part of the contractor to return the materials, the respondents or the successor in office to the petitioner should have initiated action as on the date when the petitioner demitted office and his successor took charge without any gap. After having slept over for 8 years, the petitioner cannot be fastened with huge liability. The loss has been caused by the alleged omission or commission on the part of the contractor and it is not as if the petitioner has pocketed the materials, nor it is the case of the respondents that the petitioner had deliberately took away the materials or appropriated the value of the materials.

14. The alleged default if any is on the part of the contractor and the respondents could have taken appropriate action against the contractor. But the respondents have miserably failed to take action against the contractor and the successor in office to the petitioner also failed to initiate or take appropriate action. Hence at this belated stage the petitioner cannot be proceeded. Had there been an action against the contractor for alleged shortage or loss or over payment and if it has become impossible then it would be permissible for the respondents to proceed against the petitioner and that too within the period of limitation. This is not so in this case.

15. One of the allegations being the petitioner has forwarded the proposal for return of the Bank Guarantee. On the completion of work the petitioner has simply forwarded the application for return of bank guarantee as the competent authority has extended the period of contract prior to final payment for completion of the work by the contractor without imposing any penalty and the final bill has also been submitted. It is not as if the petitioner has released the bank guarantee. But it is the third respondent who has released the bank guarantee. There is nothing to suggest that the petitioner has suppressed or concealed any omission at that point of time. That being so, it is not open to the respondent to order recovery of the amount of loss alleged to have been sustained by the Board by the omission on the part of the contractor. It is not even alleged that the petitioner has joined hands with the Contractor and has suppressed the materials or concealed the materials. Therefore the impugned communication directing recovery of the entire DCRG and also the threat to deduct the shortage from the pension is illegal. The order if any should have been passed before the voluntary retirement and permitting the petitioner to retire or demit his office. In other words, at least the petitioner's relieving should have been made subject to conditions such as making good the loss.

16. Here no loss has been caused by the petitioner. If the contractor had not surrendered the materials, the successor to the petitioner should have taken steps. So also further action should have been taken against the contractor by instituting appropriate action such as arbitration or civil suit as the case may be. But from the counter, it is clear that no such step has been taken by the respondents. After Eight long years the respondents cannot seek to fasten the liability on the petitioner for the alleged loss or damages suffered by the Board at the hands of contractor.

17. The learned counsel for the respondents relied upon a letter written by the petitioner on 21.1.1991 wherein the petitioner who has been starving without payment of pension and terminal benefits merely requested that certain required amount as deemed fit may please be withheld from his retirement and terminal benefits as suspense account and the balance substantial amount may be arranged to be released early. This letter is being pressed into service by the respondents. A reading of the letter would show that the petitioner could be proceeded if at all for certain amount to be retained out of the terminal benefits. The letter dated 22.1.1991 cannot be treated as an admission of the entire liability by the petitioner towards the alleged loss caused to the Board by the contractor M/s. Narayanaswamy & Sons. The letter is not an acknowledgment.

18. That apart, the respondents should have initiated an action within a reasonable time much less from the date of retirement if such an action is permissible and nothing has been done by the respondents in that respect. The petitioner has been addressing the respondents continuously and calling upon them to pay the terminal benefits payable to him. After 8 " years the present communication has been sent to him holding that he is liable to pay Rs. 99,619/= and adjusting the entire amount of DCRG of Rs. 66,030/- is not only arbitrary, unreasonable, prima facie illegal, without authority and barred by limitation as well. The impugned communication holding that the petitioner is liable to pay Rs. 99,619/= is liable to be quashed. Accordingly, it is quashed and there will be a consequential direction to the respondents to pay the sum of Rs. 66,030/- being the DCRG payable to the petitioner as on 31.10.1990.

19. The counsel for the petitioner persuaded this court to direct the respondents to pay interest at 15% on the DCRG which has been sanctioned after 8 1/2 years. In this respect, the learned counsel for the petitioner relied upon the pronouncement of the Apex Court in Vijay L. Merotra Vs. State of U.P. And others reported in 2000 3 LLN 1, where the Apex Court directed payment of 18% interest on the terminal benefits which were not paid for a considerable period.

20. Taking into consideration of the entire facts and delay of eight years the respondents have kept the DCRG without settling the dues, this court directs payment of simple interest on the sum of Rs. 66,030/= at 10% per annum from 1.4.1991 onwards till date of payment.

21. The respondents are granted three months time from today to pay DCRG as well as 10% simple interest on the entire DCRG for eight years. If the entire DCRG with interest at 10% is not paid within three months from today, the respondents shall be liable to pay interest at 18% per annum on the entire DCRG since the date of retirement and till date of payment. It is made clear that no amount shall be recovered from the pension of the petitioner towards the alleged loss as well. Writ Petition is allowed. Consequently, connected WMP is closed. No costs.