



2022:TSHC:28323

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 21139 OF 2019

Between:

M.Harish Kumar, S/o Satyanarayana, aged about 38 years, working as Assistant Engineer (OYCB), TSNPDCL, Indoor/DS/Nirmal.

...PETITIONER

AND

1. Northern Power Distribution Company of Telangana Ltd, 2-5-31/2, Vidyuth Bhavan, Nakkalagutta, Hanamkonda, Warangal - 506 001, rep. by its Chairman and Managing Director.
2. The Superintending Engineer (Operation), TSNPDCL, Nirmal.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ or order or direction, especially one in the nature of Writ of Mandamus. i) declare the action of the respondents in refusing to regularize the petitioner's service w.e.f. 27-06-2007 on par with his batch mates and consequential benefits is wholly illegal and arbitrary and set aside the Memo No.CMD/CGM (HRD)/GM (DC)/PO-D/FNo.2664-D1/08-16, dt.08-08-2019 issued by the 1st respondent ii) Consequently direct the respondents to regularize the petitioners services and grant seniority w.e.f. 12-06-2005 in terms of TOO (Addl. Secy. Per) Ms.No.231, dt.23-12-2008 and grant all other consequential and attendant benefits, such as, pay fixation, grant of back wages w.e.f. 12-06-2007, as per NOO (CGM-HRD) Ms.No.109, dt.11-08-2006

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to regularize the petitioners services, pending disposal of the above writ petition.

Counsel for the Petitioner:SRI. K VASUDEVA REDDY

Counsel for the Respondents: SRI. ZAKIR ALI DANISH, SC FOR TSNPDCL

The Court made the following:



2022:TSHC:28323

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.21139 of 2019

ORDER:

The writ petition is filed seeking the following relief:

"...the Hon'ble Court may be pleased to issue a Writ or order or direction, especially one in the nature of Writ of Mandamus:

- i. declare the action of the respondents in refusing to regularize the petitioner's service w.e.f. 27-06-2007 on par with his batch mates and consequential benefits is wholly illegal and arbitrary and set aside the Memo No.CMD/CGM (HRD)/GM (DC)/PO - D/FNo.2664-D1/08-16, dt.08-08-2019 issued by the 1st respondent
 - ii. Consequently direct the respondents to regularize the petitioner's services and grant seniority w.e.f. 12-06-2005 in terms of TOO (Addl. Secy. Per) Ms.No.21, dt.23-12-2008 and grant all other consequential and attendant benefits, such as, pay fixation, grant of back wages w.e.f. 12-06-2007, as per NOO (CGM-HRD) Ms.No.109, dt.11-08-2006
 - iii. and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
2. The brief facts of the case stated in the writ affidavit are as under:
- (a) The petitioner was initially appointed as Assistant Engineer on contract basis vide proceedings 12.06.2005. While the



petitioner was working as AE (Operation), Nizamsagar, his services were terminated with effect from 30.06.2008 on the ground that he was arrested by the Anti Corruption Bureau (ACB). Aggrieved by the order of termination, the petitioner filed WP.No.2068 of 2008. This Court, by order dated 23.09.2008, suspended the order of termination dated 05.07.2008. Despite the suspension of the order of termination, the petitioner was not taken into service immediately.

(b) Basing on the complaint submitted by ACB, a criminal case was registered against the petitioner in CC.No.110 of 2015 on the file of the Special Judge for Trial of SPE & ACB Cases, Karimnagar. After full-fledged trial and after considering the evidence on record, the ACB court acquitted the petitioner vide judgment dated 14.06.2017. Consequent upon acquittal, the petitioner was reinstated into service as AE (Contract) vide proceedings dated 27.07.2018. Basing on the above order of reinstatement, this Court disposed of WP.No.20688 of 2008 by order dated 17.09.2018 giving liberty to the petitioner to submit representation seeking regularization of his services. Petitioner submitted representation dated 04.10.2018 pleading that as per NOO (CGM-HRD) Ms.No.109 dated 11.08.2006, Assistant Engineers, who have completed 2 years of contract service, are



entitled to be regularized. Petitioner completed more than 2 years of service by June 2007.

(c) Under proceedings vide NOO Ms.No.78 dated 07.07.2008, the services of the other Assistant Engineers viz. M/s. B. Sagar, D. Janaki Ram Reddy, Ch. Rajender, B. Ravi Kumar and others, who were appointed along with the petitioner on contract basis, were regularized with effect from 27.06.2007. Thereafter, vide proceedings NOO (CGM-HRD) Rt.No.635 dated 19.10.2015 the aforementioned persons were further promoted as ADE's.

3. The case of the petitioner is that as per NOO (CGM-HRD) Ms.No.109 dated 11.08.2006 the service of the Assistant Engineers, who have completed two years of contract service and whose performance is satisfactory, is liable to be regularized on completion of two years of service and will be placed on regular scale. Thereafter, in the meeting of CMD/AP TRANSCO and CMD/s of Discoms held on 24.11.2008, it was decided to treat the contract of employees, such as, AEs, Sub Engineers, etc. as regular service for the purpose of seniority without any monetary benefits. Accordingly, TOO (Addl. Secy-Per) Ms.No.231 dated 23.12.2008 was issued giving effect to the decision taken on 24.11.2008. Consequently, all candidates, who were appointed on contract basis, after due process of law, were given seniority with effect



from 27.06.2007 and their services were regularized from the same date.

4. It is the further case of the petitioner that the respondents were not justified in continuing the petitioner on contract basis. The petitioner was reinstated in view of his acquittal in the criminal case. As he was reinstated, he is entitled to be regularized, as the termination order was suspended and the order got merged in the final orders passed in WP.No.20688 of 2008. The request of the petitioner for regularization was rejected on the ground that acquittal of the petitioner was on benefit of doubt and he was not fully exonerated from the charges levelled against him.

5. The case of the respondents is that the petitioner was appointed as Assistant Engineer (Electrical) on yearly contract basis. The services of the petitioner were terminated as he was involved in ACB trap case. Pursuant to the judgment of acquittal by ACB court dated 14.06.2017 in CC.No.110 of 2015, the petitioner was appointed on contract basis afresh subject to outcome of WP.No.20688 of 2008 with the consolidated remuneration of Rs.41,115/-. Consequent on appointment, the petitioner reported to duty on the forenoon of 08.08.2018 duly submitting the contract agreement for a period of one year to that effect. As per the orders of this Court in WP.No.20688 of 2008 dated 17.09.2018,



the petitioner had submitted representation dated 04.10.2018 seeking regularization of services on par with his batch mates with effect from 27.06.2007 and for consequential benefits.

6. It is further stated that the representation of the petitioner was rejected vide Memo.No.CMD/ CGM(HRD) / GM(DC) / PO-D / F.No.2664-D1 /08-16, dated 08.08.2019, as the petitioner was not in service on 07.07.2008. The services of the petitioner were terminated on 05.07.2008 as a contract employee itself and he was out of service for more than 10 years. Therefore, the benefits under NOO 109 dated 11.08.2006 cannot be extended to the petitioner, as such, his services were not regularized on par with the AEs and probation was not declared. The termination order dated 05.07.2008 was not set aside and moreover, this Court in its order dated 17.09.2018 in WP.No.20688 of 2008 did not pass any positive direction, as such, orders of termination dated 05.07.2008 became final.

7. Mr. P. Suresh Reddy, learned senior counsel appearing on behalf of Mr. K. Vasudeva Reddy, learned counsel for the petitioner, submitted that the action of the respondent authorities is wholly unjustified. The contention of the respondent No.1 that the petitioner was acquitted by giving benefit of doubt and he is not fully exonerated from the bribe charge is incorrect and baseless.



There is total non-application of mind and the respondent No.1 has not properly gone through the entire judgment of the ACB Court and was carried away by a stray observation in the judgment that the petitioner is entitled for benefit of doubt. He further submitted that merely because the services of the petitioner were terminated on 05.07.2008 and other similarly placed employees were regularized vide proceedings dated 07.07.2008, it cannot be said that the petitioner is not entitled for parity. The petitioner has completed two years of service and as per NOO Ms.No.109 dated 11.08.2006, he is entitled for regularization on par with his batch mates. The finding of the respondent No.1 under the impugned memo that termination orders were not set aside by this Court in WP.No.20688 of 2008 vide order dated 17.09.2018 and therefore, the period from the date of termination i.e. 05.07.2008 to 08.08.2019 cannot be reckoned for any purpose and the petitioner cannot get any benefit for the service rendered before 05.07.2008 for the purpose of regularization is arbitrary and unjust.

8. Learned senior counsel for the petitioner relied upon the judgments of this Court in **Dr. T.P. SRINIVASAN v. GOVT. OF A.P. and OTHERS** (WP.No.30757 of 1997 dated 25.03.2004) and **D. RAJAIAH AND OTHERS v. STATE OF A.P. AND OTHERS** (WP.No.14783 of 2010 and batch dated 12.10.2011).



9. Per contra, Mr. Zakir Ali Danish, learned standing counsel for the respondents, submitted that the acquittal of the petitioner in the ACB case was not a clean acquittal but was on benefit of doubt. Consequent upon acquittal of the petitioner, he was given fresh appointment on contract basis. The petitioner cannot claim parity with the other similarly placed persons as he was not in service from 05.07.2008 till 08.08.2019. The termination of the petitioner was on 05.07.2008. The services of the batch mates of the petitioner were regularized vide proceedings dated 07.07.2008. As on 07.07.2008, the petitioner was not in service, as his services were terminated on 05.07.2008. The learned standing counsel relied on a judgment of the Supreme Court in **RAJ NARAIN v. UNION OF INDIA**¹.

10. Learned senior counsel for the petitioner submitted that the observation of the ACB Court in para 57 of the judgment that the accused is entitled for benefit of doubt is read out of context by the respondent authorities. In order to understand the purport of the judgment, it was necessary for the respondent authorities to look into the entire text of the judgment and not by a stray sentence and observation. The ACB Court discussed in a detailed manner more than 35 judgments and came to the conclusion that the prosecution failed to prove the guilt of the accused beyond

¹ (2019) 5 SCC 809



reasonable doubt and there is no incriminating material found against the accused.

11. Heard the learned senior counsel for the petitioner and the learned standing counsel for the respondents.

12. Before entering into the other issues, it would be proper for this Court to consider whether the judgment of acquittal of the petitioner passed in CC.No.110 of 2015 by the ACB Court is a clean acquittal or not. The prosecution has examined P.Ws.1 to 8 and marked Exs.P1 to P16. Further material objects were marked as M.O.1 to M.O.9. The issues No.2 and 3, which deal with the demand and acceptance of bribe and abuse of official position by the petitioner/accused, were dealt with by the ACB court in paras 27 to 47. The ACB Court recorded a categorical finding in para 47 of the judgment as follows:

"47. From the foregoing discussion, as PW-1 the defacto-complainant who is a material witness to the case of prosecution candidly and categorically stated that, Accused Officer never demanded and never accepted bribe from him, recovery of tainted amount was not made from the actual possession of accused but underneath the table cloth of Accused Officer's table on the left side corner of visitor's side and opposite to his right side corner of the table and as the phenolphthalein test did not yield positive result, official witness PW5 did not support prosecution case. I hold that prosecution failed to prove vital aspects of demand, and voluntary acceptance and recovery of tainted amount from



conscious possession of Accused, hence these two points are answered against prosecution and in favour of accused."

13. Having perused the judgment of the ACB Court, this Court does not have any hesitation to hold that the judgment of the ACB Court is purely on merits and acquittal recorded is clean acquittal and not on benefit of doubt.

14. WP.No.20688 of 2008 was disposed of giving liberty to the petitioner to submit representation to the petitioner seeking regularization and other service benefits on par with the persons recruited along with the petitioner. This Court in the said writ petition having taken note of the fact that the petitioner was reinstated into service consequent upon his acquittal in the criminal case, obviously, did not consider it necessary to go into the issue of validity of the termination order. The grievance of the petitioner in the said writ petition challenging the termination order stood redressed as the respondents have themselves reinstated the petitioner pursuant to his acquittal in the ACB case. In such circumstances, there was no occasion for this Court to decide the issue of validity of the termination order.

15. It is also not the case of the respondents that the reinstatement of the petitioner was subject to any conditions and has got nothing to do with his initial appointment on 12.06.2005. Merely because a new appointment on contract basis was given to



the petitioner on 27.07.2018, it cannot be said that it is a fresh appointment unconnected with the initial appointment on 12.06.2005. In fact it is a reinstatement and not a fresh appointment. It cannot be denied that the services of the petitioner were terminated on account of his arrest in a trap case and later on his being acquitted by the ACB court, he was reinstated into service. Thus, the contention of the learned standing counsel that the petitioner is not entitled to seek regularization on par with his batch mates is without any legal basis. The petitioner completed two years of service from the date of his appointment. The date on which the batch mates of the petitioner were regularized i.e. 07.07.2008 is not of much relevance. The appointment of the petitioner and his batch mates was in the year 2005 and all of them have completed two years of service in the year 2007. The relevant factor to be seen was similarity of circumstances between the petitioner and his batch mates when they have completed two years of service (June, 2007). As the ACB case ended in acquittal and as pointed above, it is a clean acquittal, the petitioner cannot be deprived of regularization on par with his batch mates.

16. This Court in **Dr. T.P. SRINIVASAN**'s case (supra) decided an issue relating to the effect of reinstatement and held as under:

"This order merely directs the 3rd respondent herein to reinstate the petitioner as lecturer in Geology with immediate effect. The expression "reinstatement", in the



absence of any specific algorithm of meaning, means "placing a person back in a state in which he was earlier". The meaning of the expression "reinstate" as per the Concise Oxford Dictionary 10th Edition, is "restore to a former position or state". On a true and fair construction and employing the golden rule of construction viz., the grammatical interpretation, the order of the 2nd respondent dated 4.8.93 means that the petitioner was restored to the position in which he was prior to the order dated 4.8.93 ..."

17. In somewhat similar circumstances regarding regularization of the services of employees, who faced disciplinary proceedings, this Court in **D. RAJIAH**'s case (supra) held as under:

"... The Government issued G.O.Ms.No.285, Transport, Roads and Buildings (Tr.II) department, dated 05.10.2007, directing regularisation of such of the employee, who are recruited up to March, 1999 and continuing in service. 603 employees, however, were not extended the benefit, on account of the fact that they were facing disciplinary proceedings or were removed or terminated at the relevant point of time. The petitioners fall into that category. Therefore, the proposals were submitted thereafter by the 2nd respondent on 10.12.2008. the Government accorded permission through G.O.Ms.No.145, dated 01.07.2009. Based on the same, the Corporation issued office orders directing that the services of the petitioners herein be regularized with effect from 01.07.2009 ... Once it is not in dispute that the petitioners are appointed initially in the year 1999, and their fellow employees were regularised in terms of G.O.Ms.No.285 dated 05.10.2007, there is no reason to deny them the benefit thereof. It was not on account of any fault or defect on the part of the petitioners,



that they were not extended the benefit under G.O.Ms.No.285."

18. In view of the aforesaid two judgments relied upon by the learned senior counsel for the petitioner and observations as above, this Court is of the considered opinion that the reinstatement of the petitioner consequent upon his acquittal in the ACB case should relate back to 12.06.2005 i.e. the date of his initial appointment, for all practical purposes.

19. However, coming to the issue of back wages, it is neither pleaded by the petitioner nor there is any material to hold that the prosecution in ACB case was with any mala fide intention. For the reasons beyond the control of employer, it took nine years for completion of the ACB case i.e. from 2008 to 2017. The judgment of acquittal was on 14.06.2017 and reinstatement was on 27.07.2018. In **RAJ NARAIN's** case (1 supra), it was held as follows:

"...The observation made in the judgment in *Union of India v. Jaipal Singh* [(1996) 11 SCC 603] has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceeding was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-à-vis a criminal case lodged by the police. For example, if any employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal



gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal court, unless it is found that the prosecution is malicious."

In view of the principle of law laid down in **RAJ NARAIN's** case (1 supra), this Court is of the opinion that the petitioner is not entitled for back wages as the prosecution launched against the petitioner in ACB case was not *mala fide* or vexatious.

20. In view of the above, the writ petition is allowed setting aside the Memo No.CMD/CGM (HRD)/GM (DC)/PO - D/FNo.2664-D1/08-16 dated 08.08.2019 issued by the respondent No.1 and consequently the respondents are directed to regularize the services of the petitioner and grant seniority with effect from 12.06.2005 in terms of TOO (Addl. Secy. Per) Ms.No.21 dated 23.12.2008 and grant all other consequential and attendant benefits, such as, pay fixation with effect from 12.06.2007, as per NOO (CGM-HRD) Ms.No.109, dated 11.08.2006, however, without back wages.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

SD/-L.LAKAHMI BABU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the Hon'ble Sri Justice B. VIJAYSEN REDDY
(for His Lordships Kind Perusal)

To,

1. The Chairman and Managing Director, Northern Power Distribution Company of Telangana Ltd, 2-5-31/2, Vidyuth Bhavan, Nakkalagutta, Hanamkonda, Warangal - 506 001.
2. The Superintending Engineer (Operation), TSNPDCL, Nirmal.



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3. 11 LR.Copies
4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs,
New Delhi
5. The Secretary, Advocates' Association Library, High Court Buildings, Hyderabad.
6. One CC to Sri. K Vasudeva Reddy, Advocate [OPUC]
7. One CC to Sri. Zakir Ali Danish, SC for TSNPDCL [OPUC]
8. Two CD Copies.

PM
BS

Handwritten signature



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HIGH COURT

DATED:28/04/2022

ORDER

WP.No.21139 of 2019



Allowing the WP
Without costs.

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