

(1996) 03 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 4544 of 1991 and WMP No. 6981 of 1991

C. Perumal

APPELLANT

Vs

The Superintending Engineer, Tamil Nadu Elecy. Board and
Another

RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Tamil Nadu Electricity Board Services Regulations — Regulation 80, 81, 85

Citation : (1997) 2 LLJ 594 : (1996) 2 MLJ 213

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : P.M. Bhaskaran, for the Appellant; V. Radhakrishnan, for the Respondent

Judgement

A.R. Lakshmanan, J.—This Writ Petition has been filed by the petitioner for the issue of certiorari or any other appropriate Writ Order of

direction calling for records of the first respondent in Memo No. SET/Admn. IIIA 1. IF. DIR. 14208/90 dt. July 17, 1990 and to quash the same.

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2. The case of the Writ Petitioner as seen from the affidavit filed in support of the Writ Petition runs as follows: The petitioner was appointed as a

nominal muster roll employee by the first respondent in the year 1967. In 1971, he was promoted to the post of helper. On October 1, 1977, he

was further promoted as Wireman under the control of the first respondent. 1, During 1987, he was posted to Valapandal. One Palaniswamy,

Junior Engineer, was posted in the area. There was misunderstanding between the said J. E. and the petitioner. The petitioner's wife was suffering

from cancer and she was admitted in Hospital at Madras for treatment. Later on, she was admitted in the Govt. Arignar Anna Memorial Cancer

Hospital, Kanchipuram on "April. 21, 1989. She was in the said hospital as inpatient for about 1 1/2 months from April 2,, 21, 1989 and was

discharged from there during May, 1989. The doctors advised him to take his wife to the Cancer Institute at Madras. "Therefore, the petitioner

applied for one month leave from June 16, 1989. Since the petitioner's 3(wife's condition was deteriorating, the petitioner gave a letter to the

second respondent on June 4, 1989 to advance the leave from June 4, 1989 instead of June 16, 1989. The leave letter was handed over to the

2nd respondent in Person and there upon the petitioner took his wife for treatment. Even though his wife was in the hospital, after the expiration of

the leave, the petitioner joined duty on July 1, 1989. Then, the petitioner met with an accident due to fall,(from cycle, and his right hand was

injured. Therefore, he requested the authorities to sanction one month leave on medical ground from July 23, 1989 to August 22, 1989. He also

enclosed medical certificate. Even though the second respondent is not the leave sanctioning authority, he referred the petitioner's leave application

to the Medical Board with vindictive motive of harassing the petitioner. "Me petitioner appeared before the Medical Board. The Board issued

necessary certificate and fitness certificate to join duty. Accordingly the petitioner joined duty on August 23, 1989. The condition of the

petitioner's wife again became very critical and she was again admitted in the hospital. The petitioner also became sick due to heavy strain as he

had to attend to his work, attend to his wife who was in hospital and also to attend to three young children. Therefore, the petitioner again applied

for one month's leave from August 29, 1989 to September 27, 1989 on medical grounds.

The petitioner had about months of medical leave to his credit. According to him, he has taken only a few short spell of leave in his entire service.

On August 16, 1989, his wife expired and on September 28, 1989, the petitioner went to the second respondent for reporting duty. He also

produced medical fitness certificate from a competent Medical Officer. However, the second respondent did not allow him to sign the attendance

register. He told the petitioner that he should appear once again before the Medical Board and get the fitness certificate from the Board. As per the

instructions of the second respondent, the petitioner appeared before the Medical Board on October 3, 1989. According to the petitioner and the District Medical Officer simply asked him why he is creating problems with his Engineer. The petitioner told him that he never disobeyed his Officers and he is a sincere worker hailing from a poor family. The District Medical Officer told the petitioner that he would be sending the fitness certificate to the second respondent. Even after the petitioner appeared before the Medical Board, the second respondent did not permit the petitioner to join duty. Salary was also not paid to him. According to the petitioner, all these things were only due to the vindictive attitude and action of the second respondent who was under the impression that the petitioner might have given information about some of his activities to the public and that is why some petitions were sent against him by the local people. The petitioner made representations to the higher authorities and no action was taken to permit the petitioner to join duty. To the shock and surprise of the petitioner, the first respondent by his letter dated July 17, 1990 invalidated the petitioner from service retrospectively from October 16, 1989. Accordingly, the said order, stated to be under Regulations 80 and 85 of the Tamil Nadu Electricity Board Service Regulations, is arbitrary, illegal and mala fide.

3. According to the petitioner, the second respondent is not the sanctioning authority for leave and as such he has no powers to refer the leave application to the Medical Board. It is also stated that no examination was conducted by the Medical Board, and the Medical Officer simply asked the petitioner to pay the medical examination fees of Rs. 50 and clerical expenses of Rs. 25/- for the preparation of the certificate, which the petitioner paid. Therefore, the alleged report of the Medical Board is not based on his examination. The petitioner was not told how he was invalid and in what respect the fitness certificate issued by a competent Medical Officer 3 days earlier cannot be accepted. It is also contended that the impugned order is clearly against Regulations 80 & 85 of the Board's Regulations and that Regulations 82(a), 82(b) and 82(c) also were not followed before invalidating the petitioner from service.

4. The respondents filed a counter affidavit denying all the allegations. According to them, the second respondent has referred the petitioner to

Medical Board, Vellore for second medical opinion since the petitioner was in the habit of applying leave frequently causing inconvenience which is

detrimental to Board's works. According to them, the Leave Regulation 34-10A(iii), the second respondent i.e., the Head of Office referred to the

Medical Board. The Medical Board examined the petitioner on August 22, 1989 and issued medical fitness to resume duty on August 22, 1989.

The petitioner ought to have joined duty on August 22, 1989. As per the District Medical Officer, Vellore's fitness certificate. But, the petitioner

has, not turned up for duty either on August 22, 1989 or till August 28, 1989. The petitioner was not present on August 28, 1989 to report for

duty. The petitioner's leave application for the period from August 29, 1989 to September 27, 1989 for 30 days was received by the second

respondent, and the 2nd respondent according to the leave regulations, referred to the Medical Board. The District Medical Officer, in his letter

dated October 16, 1989, reported that the petitioner was examined by the Medical Board on October 3, 1989 and the petitioner is a case of

Alcoholism and Neuritis. Therefore, the leave applied for by him from August 29, 1989 to September 27, 1989 is not recommended on medical

grounds. Further, the Medical Officer had opined that the petitioner is not fit for duty of a wireman; he can be given an alternative duty; otherwise,

he has got to be invalidated. There are no provisions under the Tamil Nadu Electricity Board Service Regulations to give an alternative duty to the

petitioner in the same post of Wireman. Based on the medical opinion and according to Regulation 80 of the Tamil Nadu Electricity Board Service

Regulations, the petitioner had been invalidated permanently from Board's Service on Medical Grounds with effect from October 16, 1989. i.e.,

the date of opinion of the Medical Board/Vellore vide Memo. No. Adm. 2/A1/FD/F.14208/90, dated July 17, 1990.

5. The first respondent has also filed the relevant file for the Court's perusal. I have carefully gone through the affidavit, counter affidavit and the

documents filed in the typed set and the file produced by the counsel for the respondents. Both the learned counsels appearing for the respective

parties, have reiterated their stand as found in their pleadings.

6. The question for consideration in this Writ Petition is,

a) Whether the order of the first respondent dated July 17, 1990 invalidating the

petitioner from service retrospectively from October 16, 1989 is valid ?

OR

b) Whether the said impugned order in this writ petition is clearly against the Regulations 80 and 85 of the Tamil Nadu Electricity Board Service

Regulations ?

7. In this case, the first respondent has permanently invalidated the petitioner from the Board's service on medical grounds according to

Regulations 80 and 85 of the Tamil Nadu Electricity Board Service Regulations and as per the Medical Board's opinion dated October 16, 1989.

The said opinion of the Medical Board reads thus :

From

To

Dr. P. Gnanasurian

The Junior Engr/O&M,

MBBS, DCH, TNEB,

District Medical Officer

Valapandal

North Arcot Ambethkar

Pin-632 318.

District, Vellore

Dis. No. 23955/MC/89 dated October 16, 1989.

Sir,

Sub : Medical Board Thiru. C. Perumal WM

Medical Examination report forwarded-Reg.

Ref : Your Office Letter JE/O&M/VPL/F6/127/89

dated 14.9.1989

With reference to the letter 1st cited I am to inform that Thuri. C. Perumal Wireman was examined by the Medical Board on October 3, 1989. He

is a case of Alcoholism and Neuritis. The leave applied by him from August 29, 1989 to September 27, 1989 is not recommended on medical

grounds.

He is not fit for the duty of a wireman. He can be given an alternative duty.

Otherwise he has got to be invalidated.

His original Medical Certificate is returned herewith.

(sd.)

For District Medical Officer,

North Arcot Ambethkar

District, Vellore.

On the basis of the above report, the first respondent has passed the impugned order which reads as follows :

TAMIL NADU ELECTRICITY BOARD

Office of the Superintending Engineer,

TNDC : Tiruvannamalai-4.

Memo. No. SET/Adm. 2/A1/F.D./R. 14208/90

dt. 17.7.90

Sub : Establishment-RWE-Thiru. C. Perumal, Wireman (SR. No. 6409).

Valapandal-Permanently invalidated from Board's Service with effect from 16.10.89 AN - Orders issued. -----

According to Regulations 80 and 85 of T.N.E.B. Service Regulations and as per the Medical Board/Vellore opinion dated October 16, 1989,

Thiru. C. Perumal, Wireman (SR. No. 6490), Valapandal is permanently invalidated from Board's Service on medical grounds with effect from

October 16, 1989 A.N.

He is eligible for payment of Gratuity/Pension or Gratuity/Pension and Death-cum-Retirement Gratuity admissible to him under the relevant

scheme.

SD/-

J. Williams,

Superintending Engineer/TEDC.,

Tiruvannamalai.

It is stated in the said order that the petitioner has been permanently invalidated according to Regulations 80 & 85. Regulation 80 reads thus :

80. An employee is liable to be invalidated from service, who by bodily or mental infirmity is permanently incapacitated for service.

Note : A decision to invalidate an employee may not, however, be given effect to if the medical opinion is that the employee concerned may

become fit for duty if he undergoes suitable medical or surgical treatment. If, the treatment has failed or if the employee is willing and declines to

undergo the treatment, he will be invalidated. Invalidation in the latter case will not be considered as one of complete and permanent incapacity for

service.

Thus, it is seen that bodily or mental infirmity should be the reason for invalidating an employee of the Board. Admittedly, there is no allegation of

bodily or mental infirmity in the case of the petitioner. Therefore, I am of the view that the impugned order is bad and arbitrary for the above said

reason and also for the other reasons to be stated hereinafter.

8. As per the note attached to the said Regulation-80, a decision to invalidate an employee may not, however, be given effect to if the medical

opinion is that the employee concerned may become fit for duty if he undergoes suitable medical or surgical treatment. If, the treatment fails, or if

the employee is unwilling and declines to undergo the treatment, then only he will be invalidated. If the medical opinion is that the employee

concerned may become fit for duty if he undergoes suitable medical treatment, he cannot be invalidated. In the instant case, as rightly pointed out

by the learned counsel for the petitioner Mr. P. M. Bhaskaran, there is no consideration at all whether the alleged incapacity is permanent or

curable. Even if it is alcoholic, there are treatment for such illness and now it is perfectly curable. The petitioner reiterates that he was never an

alcoholic. It is not known under what circumstances, the said report was given. In fact, a month before that, the same doctor has found the

petitioner for resumption of duty. Therefore, in my opinion, the report is one sided and there is every reason for this Court to believe that the said

report has been given to please the respondent.

9. Regulation 81(b) deals with obtaining certificate regarding incapacity for service. Under Regulation 81(b), it is only the appointing authority, viz.,

the competent authority to fill the appointment is empowered to send an employee before the Medical Board or a Medical Officer. The second

respondent who is a Junior Engineer is incompetent to send the petitioner to the Medical Board, as he is not the appointing authority. Regulation

81(b) reads as follows :

An employee wishing to retire on invalidation may apply with a Medical Certificate to the authority competent to fill the appointment held by him

who will arrange to send him before a Medical Board or a Medical Officer, as the case may be.

Under the above rule, no such medical certificate can be issued unless the head of the office has made a request to that effect under Regulation-

81(c). Therefore, the action of the 2nd respondent in my view is without jurisdiction.

10. Under Regulation-81(c), it is obligatory on the part of the Medical Officer to scrutinise the service records, his service book, age, etc. The

appointing authority is also bound to furnish such particulars, to the Medical Board or the Medical Officer as the case may be. In the instant case, it

is not the case of the department that the department has supplied all the official records such as service book etc. Therefore, in my opinion, the

alleged report cannot be of any value.

11. Under Sec. 81(c), it is also necessary to have a request from the Head Office and the finger prints of the employee taken on the medical

certificate by the Medical Board or Medical Officers. Regulation-81(c) runs thus :

(c) No Medical Certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Head of his office is

aware of his intention to appear before a Medical Board or Medical Officer, as the case may be. The Medical Board or Medical Officer, as the

case may be, shall also be supplied by the Head of the office with a statement of what appears from official records to be the applicant's age.

Where the applicant has a service book, the age there recorded should be reported.

Note-(1) : The finger-prints of the applicants shall be taken on the medical certificates by the Medical Board or Medical Officer, as the case may

be.

Note-(2) : All cases in which it is certified that the incapacity for service is due to irregular or intemperate habits should be submitted to the Board

for orders through the proper channel, together with the opinion of the Director

of Medical Services.

Note-(3) : If a certificate is granted by a Civil Surgeon or other Medical Officer in a district other than the district in which the employee was

serving on account of the fact that he was spending his leave in that district, the certificate so granted should be got countersigned by the Director

of Medical Services.

Note-(4) : All employees in Class III and IV Service as to whose fitness for further service there may be doubt, should unless they happen to be

absent in other district, on long leave, be sent for examination before the District Medical Officer of the district in which they are serving. Where an

employee's jurisdiction falls within more than one Revenue District, he may be required to appear before the District Medical Officer of such

district as may be administratively convenient. If, in special cases, this procedure has necessarily to be departed from, the reasons therefore should

be recorded in writing.

Note-(5) : The Chief Medical Officer, Lady Willingdon Leper Settlement, Tirumani, is deemed to be a Civil Surgeon for the purpose of granting

invalidation certificates to employees under his treatment for leprosy. The Medical Superintendent, Union Mission Tuberculosis Sanatorium,

Madanapalle, is deemed to be a Civil Surgeon for granting invalidation certificates to employees under his treatment for tuberculosis provided that

he is registered under the Madras Medical Registration Act, 1914. The invalidation certificates in these cases should be countersigned by the

Director of Medical Services concerned.

The above statutory requirements were not also complied with in the case of this petitioner. No finger prints were also taken as required under the

rules. The petitioner's service records were not even asked for.

12. It is contended by Mr. P. M. Bhaskaran, learned counsel for the petitioner that Regulations 82(a) to 82(c) have also not been complied with.

Regulation 82(a) reads as follows :

A succinct statement of the medical case and of the treatment adopted, should, if possible be appended.

From the letter of the District Medical Officer, it is clear that he has not given any succinct statement of the medical case and of the treatment

adopted. Merely saying that the petitioner is an alcoholic, without any evidence is no medical report at all, in the eyes of the Law. In fact, the very

same Medical Board has given a fitness certificate for resumption of duty just a month back i.e., on August 22, 1989 which reads thus :

Certificate of Fitness to Return to Duty

Signature of the candidate : (sd.)

This is to certify that we Medical Board the undersigned have examined Thiru-C. Perumal whose signature is given above, working as Wireman in

the Office of the J.E.O&M, TNEB Valapandal department and have to come to the conclusion that he/she has recovered from his illness and is

now physically fit to resume his duties in Government Services with effect from August 22, 1989 AN.

We also certify that before arriving at this decision, we have examined the original medical certificates and statements of the case (or certified

copies thereof) on which leave was granted or extended and have taken these into consideration in arriving at our decision.

1) (Sd.)

2) (Sd.)

3) (Sd.)

Station : Vellore

Medical Board, Govt.

Headquarters Hospital,

Date : 22-8-89. Vellore, n.a.

dist.

Therefore, in my opinion the respondents ought to have ignored the medical report dated October 16, 1989 and sought a second opinion, from

some other Board. Under Regulation-82(b) if an employee is below 55 years, and the Medical Officer is unable to discover any specific disease, a

second opinion should be obtained. The said Regulation reads thus :

If the Examining Medical Officer, although unable to discover any specific disease in the employee considers him incapacitated for further service

by general debility while still under the age of fifty-years, he should give detailed reasons for his opinion, and if possible, second medical opinion

should always, in such a case, be obtained.

In the petitioner's case, no detailed reason for his opinion was given and no second opinion was sought as required under the Rules.

13. It is argued by Mr. P. M. Bhaskaran, learned counsel for the petitioner that in a case of medical invalidation special explanation is required

from the employer of the grounds on which it is proposed to invalidate an employee. Regulation 82(c) stated such special explanation and grounds.

The said Regulation 82(c) reads as follows :

In a case of this kind, special explanation will be expected from the Head of the office of the grounds on which it is proposed to invalidate the employee.

In the instant case, the first respondent has mechanically and casually passed an order retrospectively without assigning any special ground as

required under Reg. 82(c).

14. It is contended that the first respondent has erred in relying upon the Regulation 85 for invalidating the petitioner from service. The said

Regulation is applicable where an employee submits an application to relieve him from duty on the ground of incapacity. In this case, the petitioner

has not submitted any application to invalidate him from duty, on the ground of incapacity, under the above Regulation. However, the first

respondent has also quoted Regulation-85 for invalidating the petitioner from service, which only shows the total non-application of mind by the

first respondent. The impugned order, passed by Mr. J. Williams, S.E., Tiruvannamalai therefore, in my opinion, is bad and totally without

jurisdiction and illegal.

15. The explanation offered by the petitioner, to my mind, appears to be genuine and acceptable to any right thinking person. It is specifically

stated in the affidavit that due to prolonged treatment to the petitioner's wife for cancer and her admission into various hospitals for treatment, the

burden of hospital expenses and her ultimate death, the responsibility of looking after 3 small children below the age of 10 years and attending the

office work, lack of regular and timely food had affected the petitioner and that is the reason for his applying for leave for one month on medical

ground. It is also not in dispute that the petitioner has about 15 months of medical leave to his credit. The petitioner has also alleged malafides and

motives against the 2nd respondent who was also working as Jr. Engineer in the same office. It is also stated that the 2nd respondent under the wrong impression that the petitioner was responsible for petitions being sent by the local people against him to the higher authorities. The petitioner has explained that he has nothing to do with the said alleged complaints and inspite of his explaining his position to the 2nd respondent personally, the 2nd respondent was showing his prejudice against the petitioner. There is no reason for me to disbelieve the statement of the petitioner. It is also not denied that the petitioner was not given a copy of the report of the Medical Board, to make any submission. If the copy of the report was given to the petitioner, he would have been given an opportunity to state his case or for requesting the first respondent to send the case for the second opinion. As rightly pointed out by the learned counsel for the petitioner, the respondents have erred in relying upon the report of the Medical Board. There was no opportunity to the petitioner before the impugned order was made. Therefore, it is against the principles of natural justice. There was no enquiry held before the petitioner was removed from service. The first respondent has relied upon the medical report obtained by him behind the back of the petitioner. There was no opportunity of being heard. Therefore, the impugned order is also violative of Art. 311(2) of the Constitution of India. The non-supply of copy of the report has thus resulted in denial of reasonable opportunity to the petitioner. The petitioner has also made several representations to the authorities to interfere in the matter and to cancel the order of the first respondent. He also made representations to the Hon''ble Minister in charge of the Department. The first respondent by his letter dated October 4, 1990 rejected the petitioner's request. Consequently, in view of the impugned order, for no fault of his, the petitioner was sent out of his job without any opportunity or valid reason. This apart, as per the Regulation only in case of extraordinary nature or in case if the leave applied is for more than 60 days, the matter has to be referred to the Medical Board and that is also to be done by the leave sanctioning authority.

16. From the file produced by the Department, it is seen from the letter sent Er. P. Chinniah, Superintending Engineer, Tiruvannamalai Electricity

Distribution Circle, to the Chief Engineer, Distribution, Vellore Region, Vellore in Lr. No. SET/Adm. 2/A. 1/F.W.M./R. 587/89 dated November

22, 1989 that the Medical Board/Vellore has not issued Medical Certificate to invalidate the petitioner on medical grounds. Under the above

circumstances, a clarification was sought from the Chief Engineer, Distribution, Vellore Region as to whether the petitioner wireman may be

appointed as Office Helper so as to give him an alternative duty as recommended for by Medical Board/Vellore. It is also stated in the said letter

that there are sufficient number of Office Helper posts in that circle. It is also seen from the said letter that the S.E. has recommended that the

petitioner may be given alternative duty as Office Helper. However, this recommendation made, has gone into the winds. In spite of the said

recommendation made by the S.E., on the basis of the recommendation made by the Medical Board for an alternative employment, the first

respondent (Mr. J. Williams) herein has passed the impugned order invalidating the petitioner from service on the basis of the Medical Board's

letter dated November 16, 1989 sent by Dr. P. Gnanasuriyan, District Medical Officer, North Arcot Ambethkar District, Vellore.

17. For all these reasons stated supra, in my opinion, the order impugned in this writ Petition is wholly illegal, arbitrary, unjust and wholly without

jurisdiction, and has been passed without affording any opportunity to the petitioner. Further, as discussed earlier in the paragraphs supra, the

respondents have not complied with the procedures prescribed under the Regulations. The first respondent has undoubtedly and arbitrarily

exercised his power. Therefore, I have absolutely no hesitation in setting aside the order impugned in this Writ Petition.

18. In the result, the Writ Petition is allowed and the order impugned in this Writ Petition is hereby quashed. Consequently, the Writ Petitioner is

directed to be reinstated in service forthwith. He shall also be entitled to all the emoluments such as salary, increments etc., etc., with all other

attendant benefits for the entire period in question which shall be calculated and be paid to the petitioner within one month from today, in order to

relieve him and his children from starvation. The Writ Petition is thus allowed with costs of Rs. 2500/-. Consequently WMP. No. 6981/1991 is

dismissed as unnecessary.