

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.26974 of 2014

& M.P.Nos.1 to 3 of 2014

A.Usman ... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Chief Electrical Inspector to Government,
Guindy, Chennai-600 032.
3. S.Appavoo ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the second respondent in his proceedings Che.Mu.Aa.No.16582/E2/2012, dated 31.12.2013 and Che.Mu.Aa.No.16582/E2/2012, dated 02.01.2014 and the said order also confirmed by the first respondent in his proceedings in G.O.(P).No.18, Energy (D2) Department, dated 01.10.2014 (received on 04.10.2014), quash the same and issue consequential direction to the respondents 1 and 2 to allow the petitioner to continue as Superintendent with all benefits.

For Petitioner : Mr.V.Stalin for M/s.Row and Reddy
For Respondents : Mr.K.Dhananjayan, Spl.G.P. for RR-1 and 2
No appearance for R-3

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the second respondent in his proceedings Che.Mu.Aa.No.16582/E2/2012, dated 31.12.2013 and Che.Mu.Aa.No.16582/E2/2012, dated 02.01.2014 and the said order also confirmed by the first respondent in his proceedings in G.O.(P).No.18, Energy (D2) Department, dated 01.10.2014 (received on 04.10.2014), quash the same and issue consequential direction to the respondents 1 and 2 to allow the petitioner to continue as Superintendent with all benefits.

2. It is the case of the petitioner that he was appointed as Junior Assistant on 15.12.1986 in the office of the Assistant Electrical Inspector, Tirupathur and thereafter promoted as Assistant in the year 1997 and during the year 2007, he was again promoted as Superintendent and now working under the second respondent from 2008 onwards in the office of the Chennai North Division. As the petitioner was suffering from viral fever and was under treatment from 22.03.2012 onwards, inspite of which, he worked with utmost care and caution, but he was transferred to Head Office under the second respondent. During June 2012, he applied for Medical Leave from 01.06.2012 to 12.06.2012 for ten days as he was not well, which was granted, and as he did not recover, he again applied for Medical Leave from 13.06.2012 to 30.07.2012, for which, he was asked to appear before the Medical Board at Kancheepuram, which thereafter issued Fitness Certificate to him. Since the ailment continued, he consulted private hospitals from which he came to know that he was all along suffering from Asthma, due to which, again he applied for Medical Leave from 01.08.2012 to 24.08.2012 and re-joined duty on 25.08.2012 and worked till 29.08.2012. As his health condition deteriorated, he again applied for leave from 30.08.2012 to 24.09.2012 and due to his continuous ill-health, he again applied for leave on Loss of Pay from 25.09.2012 to 06.11.2012 and this leave was applied to the second respondent through Speed Post, which was duly received by the office of the second respondent.

3. It is the further case of petitioner that on 27.09.2012, he sought certain information under Right to Information Act from the second respondent, with regard to the leave availed by one K.Selvam, who was working as Electrical Inspector under second respondent. Though on 19.10.2012, second respondent replied, since the petitioner sought for the leave details of another employee, the second respondent went inimical towards him; on 07.11.2012, second respondent issued show cause notice under Rule 17(b) of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules, and in the said show cause notice, two documents were referred, namely the letters of Medical Board, Kancheepuram, dated 02.08.2012 and 29.10.2012. In the said show cause notice, it is stated that he applied for Medical Leave by giving false statement and obtained incorrect Medical Fitness Certificate. In the second respondent's letter, dated 21.06.2012, it is stated that the petitioner has to appear as and when required by the Medical Board of Kancheepuram and thereafter, the petitioner appeared before the said Medical Board, which sanctioned the Medical Leave from 13.06.2012 to 30.07.2012. Therefore, the second respondent cannot contend that the petitioner applied Medical Leave by giving false statement.

4. It is the further case of the petitioner that on 12.11.2012, he sought for relevant documents to give suitable reply to the show cause notice. Instead of giving the documents sought for, the second respondent suspended the petitioner from service on 20.11.2012, without conducting any enquiry and without application of mind. Thereafter, the second respondent issued a charge-memo dated 27.11.2012 stating that the petitioner was tampering with the Service Register and also for non-performance of official duty from 13.06.2012 to 20.11.2012. Thereafter, the petitioner filed W.P.No.1246 of 2013 before this Court challenging the suspension order, dated 20.11.2012, and the said W.P. was disposed of by this Court on 01.04.2013 directing the respondents 1 and 2 to appoint enquiry officer in respect of the charges framed against the petitioner and to pass final orders within three months from the date of receipt of a copy of the order and till such time, the subsistence allowance shall be disbursed.

5. Thereafter, the second respondent appointed an enquiry officer and an oral enquiry was conducted and on 17.04.2013, the petitioner was directed to appear before the enquiry officer, who was directed to complete the enquiry as per the order of this Court in the said W.P.No.1246 of 2013, dated 01.04.2013. Subsequently, the petitioner sent a detailed representation, dated 25.04.2013 to the respondents 1 and 2 seeking to furnish the documents related to the charge memo issued under Rule 17(b) of the said Rules, dated 27.11.2012. Subsequently, inspite of several requests, the necessary documents sought for by the petitioner, were not furnished to him. In the meantime, for violation of the order of this Court in W.P.No.1246 of 2013, the petitioner also filed Contempt Petition in Cont.P.No.728 of 2014, which was closed on 05.06.2014.

6. It is further stated that the second respondent passed an order of revocation of suspension on 08.07.2013, after which, he had not rejoined the duty in the post of Superintendent. To the

surprise of the petitioner, the second respondent passed an order of punishment reducing his rank to the lower post of Assistant, by proceedings, dated 15.07.2013 and he was directed to join the post of Assistant in the Electrical Inspector's Office, Kancheepuram (South). Challenging the said punishment order, dated 15.07.2013, the petitioner filed W.P.No.20704 of 2013 before this Court, and this Court, by order dated 29.07.2013, set aside the impugned order, i.e. 15.07.2013 order, and remanded the matter back to the second respondent, based on the Constitution Bench judgment of the Supreme Court reported in AIR 1994 SC 1074(1) (in the case of Managing Director, ECTL, Hyderabad Vs. S.Karunakar).

7. It is further submitted by the petitioner that the second respondent again suspended the petitioner by order dated 12.08.2013 as he sent a representation, dated 19.07.2013. This suspension order was again challenged before this Court in W.P.No.23616 of 2013, and this Court, by order dated 26.08.2013, granted interim stay. The second respondent furnished the enquiry report, dated 31.05.2013, through his proceedings, dated 22.08.2013. Thereafter, the petitioner re-joined duty on 13.09.2013 in the post of Superintendent based on this Court's order dated 26.08.2013 in W.P.No.23616 of 2013. Subsequently, another letter, dated 28.11.2013 was issued to the petitioner seeking for further explanation from him, in regard to which, he gave a representation, dated 03.12.2013, requiring certain documents to be furnished to the petitioner. To the shock of the petitioner, again the second respondent passed the very same punishment order of reduction to the lower post of Assistant, for a period of three years, by proceedings, dated 31.12.2013 and 02.01.2014, and also directed the petitioner to join duty as Assistant in the office of the Electrical Inspector, Chennai North. This has resulted in the petitioner again filing W.P.No.2009 of 2014 before this Court seeking to quash the said orders, dated 31.12.2013 and 02.01.2014, in which, this Court again granted interim stay on 27.01.2014, which was extended periodically and finally, on 05.03.2014, this Court, while dismissing the said Writ Petition, directed the petitioner to prefer an appeal to the appellate authority (i.e. first respondent herein) within a period of one month from the date of receipt of a copy of the order, with a direction by this Court for relaxation of the limitation period to prefer such appeal.

8. Thereafter, the petitioner preferred appeal before the first respondent on 10.03.2014. Pending the said appeal, he filed another Writ Petition in W.P.No.8394 of 2014 before this Court, which gave a direction on 21.03.2014 to dispose of the said appeal within three months from the date of receipt of a copy of the order, inspite of which, the first respondent has

not disposed of the appeal. Hence, the petitioner preferred Contempt Petition in Cont.P.No.2156 of 2014 in W.P.No.8394 of 2014, and after notice, the first respondent sought for extension of time by six months in M.P.No.1 of 2014 in W.P.No.8394 of 2014 and this extension of time petition was listed along with the Contempt Petition. This Court did not extend the time and the Contempt Petition was adjourned periodically for compliance of the order of this Court. The first respondent rejected the appeal of the petitioner, dated 10.03.2014, by proceedings in G.O.(P).No.18, Energy (D2) Department, dated 01.10.2014. All these proceedings came to be issued without furnishing the relevant documents sought for by the petitioner. Hence, the petitioner has filed the present Writ Petition for the relief stated supra, on the ground that the above orders were passed without application of mind and in violation of principles of natural justice.

9. Learned counsel for the petitioner submitted that the main grievance of the petitioner is that without furnishing the relevant documents sought for by the petitioner at every stage, the impugned orders were passed, and therefore, the petitioner was not in a position to give proper explanation/reply to the show cause notice, etc. issued against him.

10. Learned Government Advocate appearing for the respondents 1 and 2 submitted that the respondents 1 and 2 are prepared to furnish the necessary documents as sought for by the petitioner, and accordingly, he also handed over a copy of those documents to the learned counsel for the petitioner in the open Court today. Learned Government Advocate submitted that the respondents 1 and 2 have no objection to set aside the impugned orders and remand the matter back to the concerned authority for conducting fresh enquiry.

11. Since the relevant documents sought for by the petitioner had now been furnished to him, and in view of the above submission made by the learned Government Advocate, this Court sets aside the impugned orders, dated 31.12.2013 and 01.10.2014 and remit the matter back to the second respondent with a direction to the second respondent to issue notice, conduct enquiry and give an opportunity of hearing to the petitioner and thereafter pass appropriate orders, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that based on the above submission of the learned Government Advocate, this Court has simply set aside the impugned orders, without going into the merits of those orders and issued direction to the second respondent as above.

12. With the above observations and directions, the Writ Petition is disposed of. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Chief Electrical Inspector to Government,
Guindy,
Chennai-600 032.

+2cc to Mr.Row & Reddy, Advocate, S.R.No.63225
+1cc to the Government Pleader, S.R.No.63303

vd(CO)
md(29/11/2016)

W.P.No.26974 of 2014

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