

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.13816 of 2008
and M.P.No.1 of 2008

P.V.Sarguru

... Petitioner

Vs.

1. Tamil Nadu Electricity Board
Rep.by its Chairman
800, Anna Salai,
Chennai 600 002.

2. Chief Engineer (Distribution)
Chennai Region/North
Tamil Nadu Electricity Board
802, Anna Salai,
Chennai 600 002.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India to issue writ in the nature of certiorarified mandamus after calling for the concerned records from the respondent, quash the charge memo bearing Memo No.014475/563/Admo./A.Sec./A.3/2003 dated 07.11.2003 issued by the second respondent, the order of the second respondent bearing memo no.014475/563/Adm.O/B.Sec./B.2/2005-4 dated 09.05.2005 and the order of the first respondent bearing Per.B.P.(Chairman) No.184, Administrative Branch, dated 30.08.2005 consequently direct the respondents to pay arrears of wages from 12.09.2000 to 31.12.2003, give continuity of service, settle all the terminal benefits of the petitioner, pay pension and pension arrears from the date of superannuation viz., 01.01.2004.

For Petitioner : Mr.Balan Haridas

For Respondents: Mrs.R.Varalakshmi for
Mrs.G.Sridevi

O R D E R

The prayer in the writ petition is for issuance of writ of certiorarified mandamus, calling for concerned records from the respondent, quash the charge memo bearing Memo No.014475/563/Admo./A.Sec./A.3/2003 dated 07.11.2003 issued by the second respondent, the order of the second respondent bearing memo no.014475/563/Adm.O/B.Sec./B.2/2005-4 dated 09.05.2005 and the order of the first respondent bearing Per.B.P.(Chairman) No.184, Administrative Branch, dated 30.08.2005 consequently direct the respondents to pay arrears of wages from 12.09.2000 to 31.12.2003, give continuity of service, settle all the terminal benefits of the petitioner, pay pension and pension arrears from the date of superannuation viz., 01.01.2004.

2. The petitioner entered into service in the respondent Board in the year 1967. After acquiring necessary qualification, the petitioner was promoted as Assistant Engineer in the year 1982 and in that capacity, he worked till 1995. In the year 1995, the petitioner was further promoted as Assistant Executive Engineer. While he was working in that capacity as Assistant Executive Engineer suspension order has been passed against the petitioner on 12.09.2000 with effect from 05.09.2000 and the petitioner was arrested.

3. Thereafter, a charge memo was issued by the Department against the petitioner on 07.11.2003 and after completing the enquiry, an order of dismissal was passed by the respondents on 09.05.2005.

4. In the meanwhile, a criminal case was filed against the petitioner, pursuant to the trap case, which ended in conviction on 20.02.2008, as against which, the petitioner had preferred an appeal in CrI.A.No.212 of 2008. The said appeal was decided by this Court by order dated 10.03.2015. This Court found that the charges framed against the petitioner were not proved by the prosecution and with the result, the petitioner was acquitted from the charges and he was set free, and the fine amount paid by the petitioner also was ordered to be refunded to him.

5. But, before the said criminal appeal was decided, the present writ petition has been filed with the aforesaid prayer challenging the charge memo as well as the final order of removal of service.

6. Heard both sides.

7. Learned counsel appearing for the petitioner would content that the petitioner, from the date of joining of service in the respondent Department from the year 1967, had worked without any blemish under various capacities and ultimately, he was working as Assistant Executive Engineer. A trap has been set up on 05.09.2000 and in fact, the petitioner was not gratified, as he neither demanded any illegal gratification nor received the same. Even though written explanation was given to the Enquiry Officer, the same was not accepted and ultimately, an order of removal was passed against the petitioner on 09.05.2005.

8. The learned counsel further submitted that the criminal case, though anxiously ended in conviction, but subsequently got reversed by orders of this Court in Criminal Appeal No.212 of 2008 dated 10.03.2015, whereby the petitioner had been acquitted of the charges as the charges framed against him had not been proved by the prosecution. Since an honourable acquittal had been made in respect of the petitioner for the same set of charges, the departmental proceedings which ended in punishment, cannot stand and therefore, in that view of the matter, he wants interference of this Court in the matter of charges framed as well as the order passed thereunder.

9. The learned counsel appearing for the petitioner in support of his claim, has relied upon various judgments of the Hon'ble Supreme Court as well as this Court.

10. Per contra the learned standing counsel appearing for the Board would contend that the petitioner has got gratification in the trap case, pursuant to which, he was arrested and therefore he was placed under suspension. Thereafter, charge was framed and charge memo was served on the petitioner and his explanation was received and considered and subsequently, it was decided to proceed against the petitioner and enquiry officer was appointed and enquiry was conducted. Enquiry report was received and the same was served on the petitioner, seeking his further explanation and his explanation was also considered. Ultimately, an order of dismissal dated 09.05.2005 was passed by the competent authority. Therefore, there is no infirmities in conducting the departmental proceedings. Merely because the criminal case ended in acquittal, there is no compulsion that the departmental

proceedings either has to be stopped or to be modified or the punishment inflicted against the erring employee has to be set aside.

11. The learned standing counsel further submitted that in respect of criminal case, criminal jurisprudence requires that the charges framed against the accused shall be proved beyond reasonable doubt by the prosecution and if the prosecution failed to prove the charges beyond reasonable doubt in the minds of the Court, benefit of doubt has to be given to the accused. However, in the case of departmental proceedings, such a procedure need not be followed. The learned standing counsel submitted a letter to show that departmental proceedings are made as per the procedures established under the relevant service rules and ultimately, based on some preponderance of probabilities, punishment was given to the erring officer. In the case on hand, the petitioner got red handed in trap case and the enquiry officer reported that the charges framed against the petitioner have been proved, which has also been accepted by the Disciplinary Authority. There is no other option except to inflict the punishment on the petitioner. Since the departmental proceedings as such has been satisfactorily completed the maximum punishment of removal of service is fully justified on the part of the respondents and therefore there is no interference whatever is called for either in the charge memo or in the impugned order of punishment given to the petitioner. Therefore the learned standing counsel submitted that the impugned orders are fully sustainable and need not be interfered with. Hence, the learned counsel wants the writ petition to be dismissed.

12. This Court has given its anxious consideration of the respective submissions made by the counsels for both parties and also the materials placed before this Court. It is no doubt that charges were framed against the petitioner departmentally and the enquiry was completed properly. There is no legal infirmity found in conducting such departmental enquiry. Even on the basis of the criminal charge, separate proceedings were initiated. However the departmental proceedings themselves are based on the trap case, out of which, criminal case was also filed and trial was conducted. Though the trial Court convicted the petitioner, ultimately, this Court by judgment dated 10.03.2015, has acquitted the petitioner of all the charges.

13. In this regard, certain observations and findings given by this Court in the said Criminal Appeal No. 212 of 2008 can be usefully referred to, which are as follows.

- 11.D.W.1/Parthasarathy in his evidence has clearly stated that for a function to be organised on 25.08.2000 in which 110 KW sub-station was to be inaugurated at Nandanam, he had convened a meeting of all the Executive Engineer and Assistant Executive Engineers working under him on 21.08.2000 till 3.00 P.M. After the meeting, he allocated them with work in respect of the said function and he left the place at 3.30 P.M. The log book was marked as Ex.D.5. Further when a suggestion was posed to him that in order to save the appellant,, he is giving false evidence, he denied the same. So, there is a clear evidence to show that on 21.08.2000 at 2:30 p.m. when the appellant is alleged to have made the first demand, the appellant was not present in his office. So, the evidence of P.W.2/Shanmugaraj is not trustworthy but it is motivated. Hence, it is unreliable.
12. P.W.5/Balasundaram in his evidence has stated that the appellant has issued the order for installing the new meter on 17.08.2000 itself. However, he had further stated that on oral instruction of the accused/appellant only, he has not prepared the requisition for obtaining new meter from the store. In such circumstances, I am of the view that the above evidence of P.W.5/Balasundaram is not reliable because it is his duty to prepare the requisition on the basis of the order passed by the appellant/accused on 17.08.2000. As he has failed in his duty, he would be subjected to disciplinary proceedings and so, P.W.5/Balasundaram in order to save his skin has given such evidence. Furthermore, for discarding the evidence of P.W.5, it is pertinent to note that on 05.09.2000, when P.W.5 went to the Egmore Police Station to prefer a complaint against the energy theft, it was stated that the appellant must come in person to prefer the complaint and at that time, P.W.5 called the office to inform the same to the appellant.

14. At this juncture, it is appropriate to consider the explanation given by the appellant/accused wherein he has stated that on the specific date, he was at the Egmore Police Station to prefer a complaint about the energy theft. A complaint has been registered in Crime No.855 of 2000 and the FIR

is marked as Ex.D.4. The occurrence is said to have taken place at 2.00 p.m, but the complaint has been preferred only at 17.30 hours. So, the appellant/accused was at the Egmore Police Station at the time of the alleged occurrence and he is not at the place of the trap proceeding. In such circumstances, the second demand/acceptance is also not proved by the prosecution.

15. As already stated, the evidence of P.W.5/Balasundaram is not reliable. To prove that Ex.D.4/FIR has been registered in the absence of the appellant/accused as was claimed by P.W.5, the prosecution has not examined the police officer who registered the case. In such circumstances, as per the record viz., Ex.D.4/FIR, the appellant herein has appeared before the Egmore Police Station and preferred a complaint at 17.30 hours. Hence, I am of the view that the trap has not been proved by the prosecution beyond all reasonable doubt.

14. Ultimately, this Court in para 19 of the said judgment, has passed the following orders.

17. (i) The appellant herein has given plausible explanation i.e., the enmity between him and P.W.2.

(ii) The appellant herein had passed an order for replacing the faulted meter with a new one, even on 17.08.2000.

(iii) The first demand was not proved by the prosecution.

(iv) Even at the time of the alleged second demand, as per the document Ex.D.4/FIR, the appellant accused was at the Egmore Police Station for preferring a complaint. So, his presence at the time of trap has not been proved by the prosecution.

19. In fine,

(a) The Criminal Appeal is allowed.

(b) The judgment of conviction and sentence dated 20.02.2008 made in C.C.No.7 of 2001 on the file of the learned Additional District and Sessions Judge/Special Judge, City Civil Court, Chennai is hereby set aside.

(c) The appellant is acquitted from the charges levelled against him and he is set free.

(d) The fine amount paid by the accused is ordered to be refunded to him.

(e) The Bail bond, if any executed by the appellant, shall stand cancelled.

15. The learned counsel appearing for the petitioner would contend by relying upon the afore mentioned judgment of this Court and the judgment of the Hon'ble Apex Court in para 29 of the judgment reported in 2006 (5) SCC 446, wherein Hon'ble Apex Court has held as follows:-

29. Under these circumstances it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

16. Learned counsel for the petitioner has further relied upon the judgment of the Apex Court reported in 2008 (4) SCC Union of India and others Vs Naman Singh Shekhawat at para 28, Hon'ble Apex Court has opined as follows:-

"The entire basis of the said finding is the ipse dixit of the disciplinary authority and the appellate authority. It again goes to show that despite the findings of the Customs Authorities and the criminal court, what was uppermost in the mind of the disciplinary authority and the appellate authority was his alleged involvement in the smuggling activity."

17. Like that, in the judgment of Division Bench of this Court reported in 2006(1) MLJ 146 P.Ramasamy Vs The Government of Tamil Nadu & others in para 4, it is held as follows

"In as much as the charges both in the departmental enquiry and in the criminal case are one and the same, and the Criminal Court acquitted the accused on merits,

we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused on merits is to be considered by the department before proceeding further. We are satisfied that in as much as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 02.11.95, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference."

18. In yet another judgment of a Division Bench of this Court in Writ Appeal No.5 of 2011 in Kalyanasundaram Vs The Management of Tamil Nadu Transport Corporation and another the Division Bench observed as follows:-

"9. Admittedly, the appellant was exonerated by the criminal court from the charges of negligent driving by judgment dated 20.06.1991. The criminal court held, on the basis of evidence, that the appellant was not guilty of rash and negligent driving of the vehicle. The judgment of the criminal court was passed during the pendency of the departmental enquiry and the said fact was brought to the notice of the authority concerned, but on the basis of the evidence produced by the Management, the order of termination of the appellant from service was passed on 07.10.1993 without full opportunity of hearing."

19. The Division Bench of this Court in the above said judgment, by relying upon the judgment of the Supreme Court in the case of Capt.M.Paul Anthony Vs.Bharat Gold Mines Limited reported in (1999) 3 S.C.C.679 has ultimately concluded that the appeal has to be allowed and holding that the departmental proceedings and criminal case against erring officer are operating in different fields. Merely because the criminal case is pending or initiated that would not prejudice the employer to proceed departmentally against the erring person and in that view of the matter, law is well settled. However once the criminal case ended in conviction and the departmental

proceedings were initiated and concluded on the basis of the said criminal charges alone with same set of facts and same witnesses, then much credence has to be given to the findings rendered in the criminal case before taking a decision in the departmental proceedings.

20. Here, in the case on hand, though initially the criminal case ended in conviction, ultimately it was reversed and the petitioner has been set free in criminal case by this Court on 10.03.2015. However, even before such findings are given by this Court, the departmental proceedings were concluded and an order of dismissal was passed on 09.05.2005. Therefore, one cannot find any fault with the respondents for proceeding against the petitioner in the departmental proceedings and it was concluded with an enquiry, which ended in punishment. However, this Court must give credence to the findings of the Court in the criminal proceedings where the learned Judge has considered the entire materials and findings of the trial Court which has given a finding to the effect that the main witness who was the complainant before the trap case, was an interested person and the demand itself was not proved and also the acceptance of gratification was also not proved. When there is a categorical finding of this nature by this Court in the said criminal appeal, the same can be pressed into service in respect of the present case where the petitioner is challenging the departmental proceedings and its ultimate order of dismissal.

21. Following the principles and ratio laid down by the Hon'ble Apex Court as well as this Court in the judgments referred to above and also taking into consideration the categorical findings given by this Court in Criminal Appeal No.212 of 2008 dated 10.03.2005, this Court is of the considered view that atleast some lenient view should be shown to the petitioner. Moreover, the petitioner had served in the respondent Board from 1967 till the date of dismissal on 09.05.2005 without any remark or black-mark. Since the petitioner has already been under suspension on 31.12.2003 some lenient punishment would meet the ends of justice. Therefore, this Court has no hesitation to interfere with the impugned order dated 09.05.2005, by modifying the same to the extent of compulsory retirement instead of removal from service.

22. In the result, the writ petition is partly allowed. Impugned order dated 09.05.2005 is modified to the extent that the petitioner shall be placed under compulsory retirement as a punishment and in view of the same, all service benefits for which the petitioner is entitled to, in the relevant rules of

the respondent-organisation, shall be given to the petitioner and the needful shall be done within a period of three months from the date of receipt of a copy of this order. No costs. Connected Miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Chairman
Tamil Nadu Electricity Board
800, Anna Salai,
Chennai 600 002.
2. Chief Engineer (Distribution)
Chennai Region/North
Tamil Nadu Electricity Board
802, Anna Salai,
Chennai 600 002.

+1cc to Ms.R.Varalakshmi, Advocate Sr.63019
+1cc to Mr.Balan Haridas, Advocate Sr.62720

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and M.P.No.1 of 2008

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