



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.10932 of 2013

WEB COPY

S.Narayanan

... Petitioner

Vs.

1.The Superintending Engineer,
O/o. Superintending Engineer,
Madurai Distribution Circle / Metro,
Tamil Nadu Electricity Board (TANGEDCO Ltd.),
K.Pudur, Madurai.

2.The Assistant Engineer,
Sub-Station,
Tamil Nadu Electricity Board (TANGEDCO Ltd.),
Villapuram, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Ku.No.596/Mo.Po/Ma.Mee.Pa.Va/Pa.Na/Vu.Nee.A/Nee.PeeII/Utha4/Ko.Vo .Na/2007-1, dated 15.06.2013 on the file of the first respondent herein and quash the same and consequently direct the respondents to reinstate the petitioner with backwages and all attended benefits.

For Petitioner : Mr.P.Gunasekaran
For Respondents : Mr.S.Dhayalan

O R D E R

By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to set aside the impugned proceedings dated 15.06.2013 passed by the first respondent / the Superintending Engineer, TANGEDCO, Madurai, in and by which, the petitioner was removed from service.

2. During the time the Court was under long boycott by the lawyers, learned counsel for the petitioner failed to appear and therefore, the petitioner has attempted to appear as party-in-person, however, since the issue involved in this matter is little bit complicated in nature, this Court, in the interest of both parties, has appointed Mr.P.Gunasekaran, as the counsel for the petitioner to assist the petitioner as well as this Court.

3. Mr.P.Gunasekaran, learned counsel for the petitioner submitted that initially, the petitioner along with 80000 persons were deployed by the respondent Board as helpers on contract



basis. Subsequently, in the year 1990-1991, the respondent Board ousted the contract labours as they wanted to recruit the helpers on regular time scale. Aggrieved against such stand taken by the respondent Board, the Trade Union raised several industrial disputes before the Labour Courts in all over the State and finally, the said issue went upto the Supreme Court, where the Supreme Court constituted a committee headed by Hon'ble Mr. Justice Khalid (Retd.) with a direction to work out a solution to resolve the issue. After elaborate enquiry, His Lordship filed a status report observing that the contract labours and new entrants can be appointed as helpers at the ratio of 1:1 basis. Thereafter, a Circle Level Committee was constituted to identify the contract labours and thereupon the Committee verified the records and identified the eligible contract labours and in the said committee, the petitioner had also appeared on 16.12.1997 and after verification, he was appointed as helper in the regular post by virtue of an order passed by the Chief Engineer, Chennai, dated 14.03.1998.

4. While the facts stood above, learned counsel for the petitioner contended, the respondent Board, overlooking the above said factual aspects, issued a charge memo dated 27.05.2002 containing three charges and finally, the Enquiry Officer submitted his report holding that the charge Nos. 1 and 3 as proved and charge No.2 as not proved. Based on such report, the first respondent, by proceedings dated 29.07.2005, imposed an order of punishment with stoppage of increment for a period of three years with cumulative effect. The said punishment has become final as the petitioner did not prefer any appeal against the same. However, to the shock and surprise of the petitioner, he was again issued with a second charge memo dated 22.04.2006 for the very same charges as the charge Nos.2 and 3 were already contained in the first charge memo dated 27.05.2002. However, with regard charge No.2 which states that the petitioner has impersonated Jeeva @ Jeevanathan, son of K.Raman for the post of helper in TNEB, though the petitioner had produced the documents, such as Voter ID, Adhar Card and Driving license, to disprove the same, the respondent Board did not consider the same and ultimately, the respondent Board came to the conclusion that all the charges are proved, when the charge Nos.2 and 3 are the repetition of the earlier charge Nos.3 and 2 respectively. Thus, he contended, no punishment can be imposed on the very same set of charges as the same is hit by the doctrine of double jeopardy, inasmuch as he was punished for the same charges on earlier occasion. Moreover, the present charge No.3 was already found not proved by the Enquiry Officer, whileso, the same charge cannot be put against the petitioner. Besides, the same charge cannot be found proved.



5. In support of his submissions, he had also relied upon a judgment of the Hon'ble Division Bench of this Court in ***D.Narayanan v. District Revenue Officer and others (W.P.No.28847 of 2004, dated 17.02.2009)*** to contend that once a person was imposed with a punishment, again on the basis of the same misconduct or charge, he cannot be revisited with another punishment which will amount to double jeopardy, therefore, the petitioner ought not to have been repeatedly punished by the respondent Board for the second time on the basis of the very same set of charges.

6. Again, taking support from the judgment of the Hon'ble Apex Court in the case of ***Roop Singh Negi v. Punjab National Bank and others [(2009) 2 SCC 570]***, learned counsel for the petitioner contended that to substantiate the charge of impersonation, when the petitioner had produced the documents like Voter ID, Adhar Card and Ration Card, the respondent Board, without advertting to any one of the documents, only on mere surmises and assumptions, dismissed the petitioner from service, therefore, he pleaded, the petitioner should be reinstated in service with all backwages.

7. Per contra, Mr.S.Dhayalan, learned standing counsel for the respondent Board submitted that as the petitioner, by producing bogus certificates, had got appointment as helper on 14.03.1998, several complaints were received by them which lead to the appointment of the Enquiry Officer to delve into such complaints. In the enquiry, the petitioner was not able to defend his claim to prove that he is S.Narayanan, son of K.Sivaraman. Finally, on the basis of the report submitted by the Additional Director of Police, Vigilance, the petitioner was issued with a charge of impersonation, for which he was also found guilty by the Enquiry Officer and ultimately, he was imposed with an order of termination from service. Therefore, he pleaded, such an order of termination passed by the respondent Board, by following procedures adumbrated in law, cannot be interfered with.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Admittedly, the petitioner was issued with a charge memo dated 27.05.2002 containing three charges as stated below;

"(i) The petitioner had produced bogus school certificate as if he studied upto Vth standard in Thodaneri, Madurai District.

(ii) Produced bogus experience certificate

(iii) On the basis of bogus certificates he received salary and other allowances."



With regard to the above said charges, it is the contention of the petitioner that he was initially appointed as helper on contract basis along with 80000 persons. However, in the year 1990-1991, since the respondent Board wanted to recruit the helpers on regular time scale basis, the Trade Union raised several industrial disputes before the Labour Courts in all over the State, which ultimately went upto the Supreme Court, where the Supreme Court constituted a committee head by the Hon'ble Mr. Justice Khalid (Retd.) to resolve this issue. After elaborate enquiry, the committee submitted its report observing that the contract labours and new entrants can be appointed as helpers at the ratio of 1:1 basis. Thereafter, for the purpose of identifying contract labours, a Circle Level Committee was constituted along with the members of the local trade Union and thereupon, the Circle Level Committee, on conducting the interview and verification of the records, identified the eligible contract labours, in which the name of the petitioner was also found place. It is also further observed in the report submitted by the Justice Khalid committee that since the contract labours were already working as helpers, they need not produce any educational qualification certificates, instead their length of service itself could be construed as equal to the educational qualification. Accordingly, in the light of such report, the petitioner was appointed as helper in regular post by virtue of an order passed by the Chief Engineer, dated 14.03.1998.

10. Thus, the charge memo dated 27.05.2002 issued by the respondent Board alleging that the petitioner had produced bogus school certificates and bogus experience, in my view, cannot be sustained in the light of the report submitted by the Justice Khalid Committee which categorically observed that the contract labours need not produce any educational qualification certificates as their length of service could be construed as educational qualification. However, based on the said charge memo, disciplinary proceedings were initiated against the petitioner and ultimately, the Enquiry Officer submitted his report dated 05.11.2003 holding that the charge Nos.1 and 3 as proved and Charge No.2 as not proved.

11. In the meantime, the Chief Engineer, TNEB, passed a proceeding in (Per) B.P.(F.P.) No.27, dated 07.11.2002, stating that in cases where persons were dismissed or removed from service for the charge of production of bogus certificates, they should be again reinstated into service and instead of removal or dismissal, reduction of pay to the minimum of the time scale of pay for three years could be imposed as punishment. For better appreciation, relevant portions of the said proceedings are extracted below:



orders:

a(i) The punishment of removal/dismissal from service imposed by the Superintending Engineers for production of bogus certificate for qualification, age by contract labourers absorbed as Helpers shall be cancelled.

b(ii) In these cases the punishment of dismissal/removal imposed shall be modified to that of reduction of pay to the minimum of the time scale of pay of the post held on the date of issue of orders for a period of 3 years which will operate for future increments.

b) The period of suspension/absence of these workmen shall be regularised as detailed in para 5 above.

7. The Superintending Engineers are informed that when the School records are found bogus the date of birth indicated in the school records and reckoned earlier for determining the age of the workman cannot hold good. Hence, in these cases, the individual workman may be directed to obtain and produce birth certificates from competent authorities for determining their age. In cases there is difficulty to obtain birth certificate, Medical Certificate from the D.M.O. or equivalent rank may be accepted.

8. The above orders will strictly apply only to the case of contract labourers absorbed as helpers and who were dismissed/removed from service solely for production of bogus certificate.

9. The Superintending Engineers are informed that the orders shall be issued to individual only after obtaining clearance from this office."

Therefore, following such order passed by the Chief Engineer, the first respondent, vide order dated 29.07.2005, imposed a punishment of reduction of pay for three years with cumulative effect against the petitioner. The petitioner did not challenge the said punishment and therefore, the same had become final.

12. It is settled legal position that no person should be vexed twice for the same set of charges as that would amount to double jeopardy. However, in the instant case, ignoring such charge, the respondent Board issued another charge memo dated 22.04.2006 by simply repeating the charge Nos.2 and 3 found in the earlier charge memo dated 27.05.2002, by adding one more



charge. For better appreciation, the same is extracted below:

(i) The original name of the petitioner was R.Jeeva @ Jeevanandam, son of R.Ravanan. But he had got employment by impersonating one C.Narayanan.

(ii) By suppressing his original name and by producing bogus certificates, the petitioner received salary and allowances.

(iii) The petitioner produced bogus experience certificate.

A bare perusal of the above charges would show that the above said Charge No.2 is nothing but the repetition of Charge No.3 of the earlier charge memo dated 27.05.2002 extracted at page No.6 above. In addition thereto, the above said Charge No.3 is also the repetition of Charge No.2 of the earlier charge memo, which was ultimately found not proved by the disciplinary authority.

13. Thus, the respondent Board cannot subsequently reopen the matter and inflict another order of dismissal from service, which is impugned herein, especially when the respondent Board had already imposed a punishment of reduction of pay for 3 years with cumulative effect against the petitioner by order dated 29.07.2005 on the very same charges. In the instant case, as stated above, it is admitted that the petitioner had already been punished on the charge of production of bogus certificates and the said order has not been recalled, cancelled or revoked. Whiles, it is thus not open to the respondent Board to punish the petitioner twice for the same set of charges as it is against the doctrine of double jeopardy.

14. In this context, it is relevant to extract the judgment of the Hon'ble Division Bench of this Court in **D.Narayanan (cited supra)**, wherein it is held thus:

"25.As a matter of fact, even in the decision relied upon by the counsel for the State reported AIR 2003 SC 1253 cited supra, the Apex Court, while recognizing the possibility of application of doctrine of double jeopardy in service jurisprudence, has held, in the peculiar factual situation in that case, that the causes of action for two different punishments were distinct and separate.

26.A question may crop up that even after a person is subjected to some insignificant punishment in a departmental enquiry, he may be imprisoned after being convicted in a criminal case based on similar set of allegations and, in such circumstances, whether it would be in the



interest of administration to allow such person to continue in service. We do not think that the State or the department is remediless in such a situation. If a person, on account of his conviction is imprisoned and remains absent from service, he can always be penalised for remaining absent from duty. Even otherwise, a departmental authority or the State Government for that matter can always review the punishment by following the procedure contemplated under relevant service rules by altering the initial punishment to some higher punishment.

27. In the present case, the disciplinary authority himself has imposed the second punishment on the basis of the very same allegation of temporary misappropriation. Such order of the disciplinary authority cannot be considered as an exercise of power of review of punishment, inasmuch as such punishment has been imposed beyond the period of limitation contemplated under the relevant service rules.

28. For the aforesaid reasons, we are unable to sustain the subsequent order of dismissal passed by the very same disciplinary authority. The question as to whether the initial punishment deserves to be reviewed by any competent authority is a matter left open, as such a question has not arisen either directly or indirectly in the present case. No costs."

In view of the above, the impugned order of dismissal from service cannot be sustained, as admittedly the respondent Board issued the second charge memo dated 22.04.2006 by repeating the charges levelled in the first charge memo dated 27.05.2002. Such factum was also fairly conceded by the learned counsel for the respondent Board during the course of argument.

15. Now, the only charge left out is charge No.1 of the second charge memo dated 22.04.2006 i.e., the petitioner impersonated one C.Narayanan and his original name is Jeeva @ Jeevanandam, son of K.Raman. To substantiate such charge, the petitioner had produced the documents, such as Voter ID, Adhar Card and Driving License. But, unfortunately, the Enquiry Officer, without advertng to any one of the documents, held against the petitioner holding that he has impersonated which is wholly impermissible in law. It is also further seen that during the enquiry proceedings, the respondent Board did not examine the officer who conducted the local enquiry and that the information as to how many persons were examined in the locality is absent in the enquiry report. Thus, the charge of impersonation foisted



against the petitioner cannot be sustained, because no evidence on this charge has been placed against the petitioner.

16. Unquestionably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. Therefore, the Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against the delinquent by itself could not be treated to be evidence in the disciplinary proceeding. In the instant case, no witness was examined to find out the veracity of the documents produced by the petitioner to substantiate that he is S.Narayanan, son of K.Sivaraman. The Enquiry Officer, without following any of the principles adumbrated in service jurisprudence, simply held the charge of impersonation against the petitioner stood proved, which ultimately ended in passing the impugned order of dismissal from service by the respondent Board. As a matter of fact, there was no direct evidence produced before the Enquiry Officer nor any indirect evidence is placed before me. When the petitioner was charged with serious allegations of forgery and impersonation without any documents whatsoever, it is not known as to how the Enquiry Officer has arrived at the present finding, that too without any direct or indirect evidence. Therefore, the writ Court is entitled to interfere with the findings of fact. A reference can be had from the **Central Bank of India Ltd. V. Prakash Chand Jain [AIR 1969 SC 983]** and **Kuldeep Singh V. Commissioner of Police [(1970) 1 SCC 709]**.

17. Thus, for the reasons stated above, the impugned order is quashed. Consequently, the writ petition is allowed with a direction to the respondents to reinstate the petitioner with all backwages. This Court, while appreciating the efforts of Mr.P.Gunasekaran, learned counsel for the petitioner, to assist this Court as well as the petitioner, hereby directs the legal services authority attached to Madurai Bench of this Court to pay a sum of Rs.5,000/- as his legal fee. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

Copy to: The Secretary, Legal Services Authority,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.P.Gunasekaran, Advocate in SR.No.50375