

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.12.2017
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No. 27032 of 2014
and
M.P.Nos.1 & 2 of 2014

K.Ravishankar

...Petitioner

Vs.

- 1.The Chairman
TANGEDCO
Anna Salai, Chennai.
- 2.The Chief Engineer
Distribution (South)
TANGEDCO, Chennai.
- 3.The Superintending Engineer
TANGEDCO,
Kancheepuram Electricity Distribution
Circle
Kancheepuram.
- 4.The Executive Engineer (Enquiry Officer)
TANGEDCO, Kanchipuram Electricity Distribution Circle
Operation & Maintenance
South, Kanchipuram.
- 5.The Executive Engineer
TANGEDCO
Operation & Maintenance
Thiruvallur.
- 6.The Assistant Executive Engineer (O&M)
Kanchipuram Electricity Distribution Circle
TANGEDCO, Walajabad
Kanchipuram.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent in memo.No.EE/O&M/S/K/ADMN/A1/D927/2012 dated 26.04.2012, 3rd respondent in Charge Memo No.251/Admn D4/Admn.Sub D2/K.Marai/2013 dated 19.08.2013 30.01.2014 and Letter Dt.11.08.2014 vide Memo No.988/EE/O&M/Thiru/Ne.Ma/2.1/Ko.Thani/2014 of the 5th respondent and quash the same and consequently direct the respondents to conduct the proceedings in accordance with

principles of law and natural justice by providing adequate opportunity and documents to the petitioner to defend himself.

For Petitioner : Mr. S.Vijayan
For Mr.A.Jenasenan

For Respondents : Mrs.R.Varalakshmi

O R D E R

The relief sought for in this writ petition is to call for the records pursuant to the proceedings issued by the 4th respondent dated 26.04.2012 charge memo.No.EE/O&M/S/K/ADMN/A1/D927/2012, 3rd respondent of Memo No.251/Admn D4/Admn.Sub D2/K.Marai/2013 dated 19.08.2013 and Letter dated 11.08.2014 issued by the 5th respondent vide Memo No.988/EE/O&M/Thiru/Ne.Ma/2.1/Ko.Thani/2014 and quash the same and consequently, direct the respondents to conduct the proceedings in accordance with principles of law and natural justice.

2.The learned counsel for the petitioner vehemently contended that the opportunity as contemplated under the rules has not been provided to the writ petitioner while participating in the process of enquiry.

3.The writ petitioner was appointed as an Assessor in the respondent/Board and now, holding the post of Revenue Supervisor, and on account of certain allegations, he was placed under suspension vide proceedings dated 29.03.2012. The disciplinary proceedings were initiated against the writ petitioner and a charge memo was issued to him vide proceedings dated 26.04.2012. The charges against the writ petitioner is that he misappropriated the funds of the respondent/Board to a larger extent.

4.The grievances of the writ petitioner is that 3 proceedings were issued in this regard and the quantum of misappropriated amount has not been mentioned clearly and in each memo, different amount has been mentioned and on this ground itself, the charge memos are to be quashed.

5.The learned counsel for the writ petitioner states that the writ petitioner has participated in the enquiry proceedings and the list of documents furnished in the charge memo has not been provided to the writ petitioner and therefore, he was unable to defend his case properly.

6. Apart from the departmental proceedings, a criminal case was registered against the petitioner and the same is pending.

7. In the charge memo dated 30.01.2014, near about 127 documents were listed and the petitioner has not been furnished with the copies of those documents mentioned in the charge memo. Hence, the petitioner is unable to defend his case properly before the enquiry officer.

8. The learned counsel appearing on behalf of the respondents opposed the contention by stating that the petitioner though participated in the enquiry proceedings has not cooperated for the conclusion of enquiry proceedings. Though the writ petition is pending from the year 2014, the respondents have not filed any counter affidavit in this writ petition. The respondents have requested this Court for adjourn the matter on an earlier occasion for the purpose of filing counter. However, till today i.e. 07.12.2017 no counter affidavit has been filed. Thus, this Court has to draw an inference that the respondents have not responded to the notices issued by this Court and the officials responsible for non-filing of the counter has to be dealt with in accordance with the conduct rules. Non filing of counter affidavit in the writ petition would certainly amount to dereliction of duty and negligence on the part of the officers. Thus, this court is constrained to issue direction to the first respondent to initiate appropriate action against all the officials, who are responsible for non-filing of the counter affidavit for about 3 years in this writ petition.

10. May that it be, in respect of the grounds raised in this writ petition, this Court is of the opinion that the allegations against the writ petitioner is relating to the misappropriation of funds, of the respondent/Board. Certainly, such allegations are serious in nature, warranting a full fledged enquiry. The petitioner cannot be exonerated at this point of time, when the enquiry proceedings are on and, a final decision is to be taken, by passing an order in the disciplinary proceedings.

11. This Court is of the firm opinion that a charge memo can be entertained only on exceptional circumstances and not in a routine manner. Any disciplinary proceedings initiated against a public servant has to reach its logical conclusion and the employees are bound to face the disciplinary proceedings and prove their innocence during the course of enquiry. Once a charge memo is issued against an employee, the employees are bound to submit their explanation/ objections under the rules and defend the enquiry.

12. A charge memo can be challenged on the ground of jurisdiction or incompetency or on the ground of malafides. Even in the case of raising the plea of malafides, the said person

has to be impleaded as a party in his personal capacity. In the absence of these grounds, no writ can be entertained challenging the charge memo. This Court cannot adjudicate the merits and demerits of the charges at this stage and it is for the writ petitioner to defend his case and prove his innocence before the enquiry to be conducted by the disciplinary authority.

13. Thus, this Court is unable to agree with the submissions made in this regard. Once, the charges are framed, it is left open to the petitioner to submit his explanation /objections and participate in the process of enquiry and prove his innocence. A person against whom such serious charges are set out, shall not be allowed to escape from the clutches of enquiry and disciplinary proceedings.

14. The learned counsel for the petitioner states that he is ready to participate in the enquiry proceedings and the only impediment is that the respondents are not furnishing the documents as listed in the impugned charge memo. In the event of furnishing all the documents, then, the writ petitioner will be in a position to defend his case in the disciplinary proceedings. The arguments advanced in this regard is certainly reasonable and the respondents have listed out the particulars of the documents in the impugned charge memo and such documents are to be made available at the time of enquiry proceedings. Certainly, certain documents cannot be furnished to the writ petitioner in the interest of administration.

15. However, those documents shall be allowed to be perused by the petitioner at the time of conducting the disciplinary proceedings. When, the department is relying on certain documents, the delinquent employee is also entitled to peruse the same for the purpose of his defence in respect of the charges framed in the impugned charge memo.

16. Opportunity to peruse the document is a valuable right of a delinquent employee and such a right cannot be denied. Denial of such an opportunity is in violation of principles of natural justice and this Court is of the opinion that once a list of documents are furnished in the charge memo, then the delinquent employee is entitled to have a copy of the same and if those documents are marked before the enquiry officer, then certainly, the petitioner is also entitled to take defence on the said documents. Such being the valuable rights provided to the delinquent employees, the same cannot be denied.

17. However, such allegations at this point of time need not be entertained in view of the fact that the enquiry proceedings have been commenced and the same yet to be completed. Still,

there is an opportunity to the delinquent employee to submit his grievances before the enquiry officer and request him to provide the copies of the documents so as to defend the case, and if any such application is made, the same is to be considered.

18. In this view of the matter, the respondents are directed to proceed with the enquiry proceedings as early as possible and conclude the same without causing any further delay.

19. Once disciplinary proceedings are initiated against the employees, it is the mandatory duty on the part of the disciplinary authority to ensure that such disciplinary proceedings are concluded within a reasonable period of time. Considering the nature of the charges, volume of documents and witnesses to be examined time limitation may differ from case to case, however, the authorities competent must be aware of the fact that long pendency of disciplinary proceedings will cause great prejudice to the employees also.

21. Such being the view taken in this regard, no further adjudication on merits are to be undertaken in the writ petition. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

may
To

1. The Chairman
TANGEDCO
Anna Salai, Chennai.
2. The Chief Engineer
Distribution (South)
TANGEDCO, Chennai.

WEB COPY

3.The Superintending Engineer

TANGEDCO,

Kancheepuram Electricity Distribution

Circle

Kancheepuram.

4.The Executive Engineer (Enquiry Officer)

TANGEDCO, Kanchipuram Electricity Distribution Circle

Operation & Maintenance

South, Kanchipuram.

5.The Executive Engineer (Enquiry Officer)

TANGEDCO

Operation & Maintenance

Thiruvallur.

6.The Assistant Executive Engineer (O&M)

Kanchipuram Electricity Distribution Circle

TANGEDCO, Walajabad

Kanchipuram.

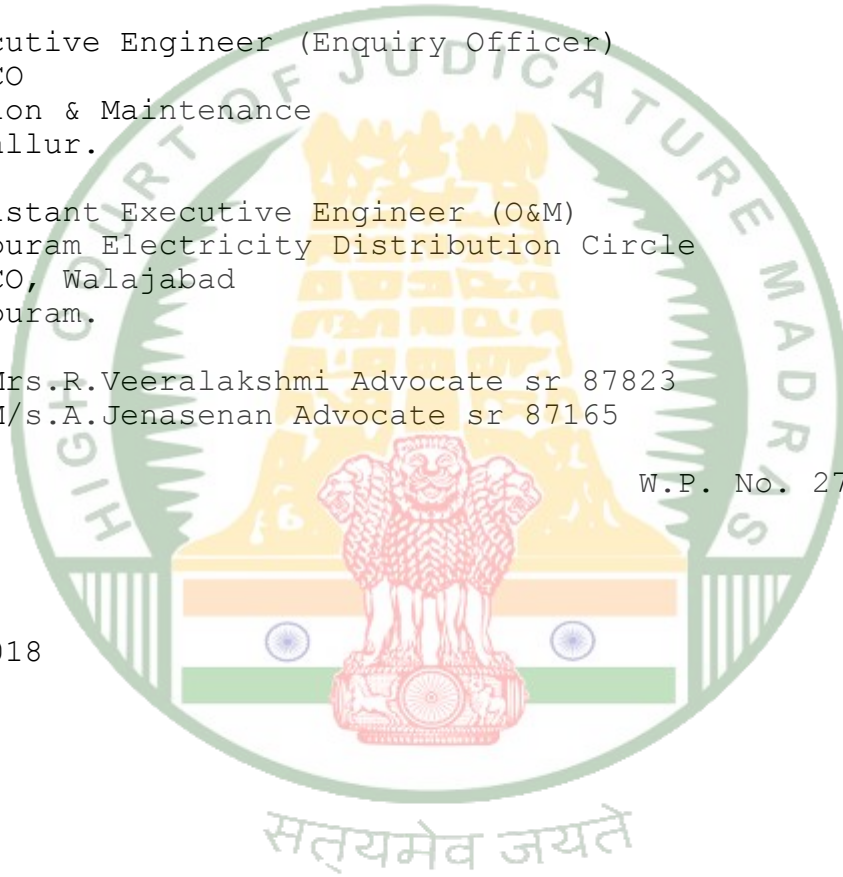
+1 cc to Mrs.R.Veeralakshmi Advocate sr 87823

+1 cc to M/s.A.Jenasenan Advocate sr 87165

W.P. No. 27032 of 2014

sj(co)

aa09/01/2018



WEB COPY