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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10860 of 2008

G.Sivaparakasam

... Petitioner

Vs.

1. The Managing Director,  
Tamilnadu Water Supply and  
Drinage Board, Chepauk,  
Chennai - 600 005.
2. The Executive Engineer,  
TWPB Board Maintenance Division  
Tiruvannamalai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with Proceeding No.44670/Estt(DP)/A2/2001-69 dated 27.03.2008 passed by the first respondent and the consequential proceedings of the second respondent in Proc.No.F.Condtl/1000/EA/2008/Maint/TVM/ dated 31.03.2008 placing the petitioner under continue suspension until further orders by retaining the petitioner in service under FR 56(1) Read with Regulation 58 of the TW AD Board Service Regulation 1972 till the enquiry into the charges are concluded and quash the same and further direct the respondents to permit the petitioner to retire and disburse all the retirement benefits to the petitioner at the earliest point of time.

For Petitioner : Mr.L.Chandrakumar  
For C.Reghurajan

For Respondents : Mr.S.Eraskine Leo  
For R1

Mr.K.Balasubramanian  
For R2



## ORDER

This Writ Petition has been filed to call for the records connected with Proceeding No.44670/Estt(DP)/A2/2001-69 dated 27.03.2008 passed by the first respondent and the consequential proceedings of the second respondent in Proc.No.F.Condtl/1000/EA/2008/Maint/TVM/ dated 31.03.2008 placing the petitioner under continue suspension until further orders by retaining the petitioner in service under FR 56(1) Read with Regulation 58 of the TW AD Board Service Regulation 1972 till the enquiry into the charges are concluded and to quash the same and further to direct the respondents to permit the petitioner to retire and disburse all the retirement benefits to the petitioner at the earliest point of time.

2. The case of the petitioner is that he has been charged by the first respondent with a charge Memo No.44670/Estt/(DPI)/A2/2001-5 dated 08.02.2002 alleging that he has acquired immovable properties during the period of his service as Work Inspector between 01.01.1983 and 31.12.1996 without prior permission from the competent authority and thereby, violated regulation 14(1) of the TWAD Board Officers and Servants conduct Regulations 1972. Due to the said charge, the petitioner has accumulated Rs.3,89,599/- to his known source of Income.

3. The petitioner had contended that he joined in the service of the respondent board on 04.12.1974 as Work Inspector Grade I, included in the TWAD Board General Sub-ordinate service. The petitioner job was not a managerial or administrative work and which comes under the definition of workman as per the Section 2(1) of the Industrial Employment (Standing Orders) Act, 1946 read with Section 2(s) of the Industrial Disputes Act, 1947. Therefore, the petitioner would submit that if at all any charge to be framed against him for any misconduct or misbehavior prescribed in standing order 32 of TWAD Board Standing Orders for Workmen, 1998, it has to be framed and only proceeded with under Standing Order 34 of TWAD Board Standing Orders for Workmen, 1998, certified by the Joint Commissioner of Labour, Chennai on 26.03.1998. But, unfortunately, the petitioner was charged under the Regulation No.14(1) and 9(b) of the TWAD Board Officers and Servants conduct Regulation, 1972, by the respondent. Hence, the petitioner would contend that the said charges are illegal.

4. The petitioner, by letter dated 11.12.2000, had sought for copies of documents from the respondent, but, the same was rejected and hence, the petitioner claims that he had no explanation to offer for the statement of allegations against



him. However, aggrieved by the said order, the petitioner was made to file a Writ Petition in W.P.No.7198 of 2001 before this Court for a direction to the respondent to furnish him the copies of the documents which were made by the respondent board and other officers concerned. On 12.04.2001, this Court has dismissed the said Writ Petition holding that the said prayer cannot be granted. Thereafter, on 01.03.2002, the petitioner had sent a detailed representation to the respondent, requesting them to withdraw the charges and to pass necessary order to that effect. The respondent did not reply to the said letter and instead of that, they appointed an enquiry officer for investigating the charges leveled against the petitioner.

5. The petitioner had also contended that he made a representation on 01.03.2002, stating that the said charge memo is not applicable to him and since he is a workman, only Board standing orders are applicable to him and not the regulations of the board, hence, the initiation of action against him would be void and illegal. Based on the said stand, the petitioner did not give any explanation to the charge memo dated 08.02.2002 and letter dated 03.09.2003 which was issued for attending enquiry on 18.09.2003.

6. The petitioner would further contend that again respondent has issued a notice of enquiry on 08.11.2004 to be conducted on 24.11.2004, but, the petitioner did not attend the enquiry on the said day, however, the enquiry officer, without considering the petitioner, has passed an order and the enquiry report was issued to the petitioner on 18.03.2005 asking him to produce the defence statement within 15 days from the date of receipt of the said memo, to which, the petitioner had sent a detailed reply to the 1st respondent on 23.03.2005 setting out all his valid reasons. Thereafter, on 09.10.2006, he received a letter from the Secretary, stating that he had to give further defence statement within 7 days from the date of receipt of the said letter. To which, the petitioner had sent his reply to the 1st respondent on 10.11.2006 asking him to furnish the copies of the oral evidence of 74 witnesses and 76 documentary evidences. By letter dated 14.12.2006, the Secretary has sent a reply stating that the petitioner is not entitled for the copies of documents, but, he could peruse the documents during the office hours between 26th and 29th December 2006, further, the petitioner was asked to give his defence statement within 15 days from the date of receipt of the said letter.

7. It is further contended by the petitioner that the first respondent, the Managing Director, had issued the charge memo only on 08.02.2002, further, the Enquiry Officers had conducted



the enquiry in the absence of the petitioner, even though he had set out his valid reason that the charges were framed under the Regulation 9(b) of the TWAD Board Employees (Discipline and Appeal) Regulations, 1972 and that Regulation will not be applicable to him. Hence, the petitioner, challenging the same, has filed W.P.No.26108/03 before this Court and which was pending for final disposal.

8. The petitioner would further contend that the Secretary has issued a Memo No.44670/Estt/DP/A2/2001 dated 14.12.2006 asking him to peruse the documents connected with the enquiry in TWAD Board, Head Office, Chennai, in any one of the working days and rejected the claim of his request for the copies of the documents and further, the petitioner was asked to furnish defence statement within 15 days from the date of receipt of the said memo. Hence, the petitioner has filed another Writ Petition in W.P.No.7063/2007 before this Court, to quash (i) Memo.No.44670/Estt/(DP)/A2/2001-38 dated 08.03.2005 (ii) Memo.No.44670/Estt/(DP)/A2/2001 dated 09.10.2006 (iii) Memo.No.44670/Estt/(DP)/A2/2001 dated 14.12.2006 passed by the Secretary and to direct the respondents not to proceed further in connection with the charge Memo.No.44670/Estt/(DP/1)A2/2001-5 dated 08.02.2002 issued by the first respondent till the disposal of W.P.No.26108/2003. Further, the interim stay granted by this Court on 27.02.2007 in M.P.No.1/2007 which is still in force. Meanwhile, when the petitioner had attained superannuation and due to retire on 31.03.2008, the respondent had issued a Memo No.44670/Estt(DP)/A2/2001-69 dated 27.03.2008 calling upon him to give a defence statement and hence, the petitioner has filed W.P.No.9289/2008 before this Court and this Court was pleased to grant an interim stay of the operation of Memo in M.P.No.1/08 in W.P.No.9289/2008 and the matter was posted for further hearing on 28.04.2008.

9. The petitioner would also contend that he charged only with misconduct and misbehavior, for which, only departmental disciplinary proceedings are pending and no criminal proceedings are pending against him. Therefore, placing him under suspension by invoking Regulation 10(a) (ii) of the TWAD Board Employees (Discipline and Appeal) Regulation, 1972 is not at all maintainable since provisions of TWAD Board Employees (Disciplinary and Appeal) Regulations, 1972 are not at all applicable to him and only Board standing orders are applicable.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.



11. The respondent board has not filed any counter but agreed with the contention of the learned counsel for the petitioner that wrong proviso and act have been invoked while issuing the charge memo and hence, a fresh charge memo will be issued invoking the Board standing orders.

12. The learned counsel for the petitioner has also produced the order dated 24.04.2018 passed by this Court in W.P.No.26108 of 2003 filed by the petitioner, wherein, the said charge memo has been quashed and accordingly, the Writ Petition was allowed giving liberty to the respondent to issue fresh charge memo invoking Board standing orders.

13. Based on the above submissions, it is to be decided whether the charge memo issued to the petitioner, invoking Regulation 10(a) (ii) of the TWAD Board Employees (Discipline and Appeal) Regulation, 1972 is maintainable or not or whether the charge memo ought to have issued invoking standing orders.

14. From the above facts and circumstances, this Court is of the view that since the petitioner was a workman of the respondent board, the charge memo issued by invoking Regulation 10(a) (ii) of the TWAD Board Employees (Discipline and Appeal) Regulation, 1972, is not maintainable and the respondent has to charge the petitioner only under the Board Standing Orders of the TWAD Board. Hence, the said charge memos issued by the respondents are liable to be quashed and the same is quashed.

15. The Writ Petition is partly allowed. The proceedings of the first respondent dated 27.03.2008 and the consequential proceedings of the second respondent dated 31.03.2008 are quashed. However, liberty is given to the Department to proceed further if they decide so, by applying correct provision and orders. Insofar, as the prayer regarding permission to retire and disbursement of the retirement benefits, it is for the department to consider the same, after the disposal of the proceedings, if any, to be initiated under correct provisions and orders and after the enquiry to be conducted in that regard, if they are so advised. No Costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



To

WEB COPY

1. The Managing Director,  
Tamilnadu Water Supply and  
Drainage Board, Chepauk,  
Chennai - 600 005.
2. The Executive Engineer,  
TWPD Board Maintenance Division  
Tiruvannamalai.

W.P.No.10860 of 2008

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srg 31/07/2018