

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1635 of 2017
and CMP Nos.21306 & 21307 of 2017

N.Ragavendran ... Appellant

versus

The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai 600 005. ... Respondent

Appeal filed against the order passed by this Court dated 24.08.2017 passed in WP No.22679 of 2017.

W.P.No.22679 of 2017 filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in the order bearing Charge Memo No.13464/Estt.(DP)/A1/2015-1 dated 18.05.2015 and the order bearing Proc.No.13464/Estt.(DP)/A1/2015 dated 20.07.2017 passed by the respondent and quashing the same.

For Appellant :Mr.M.Radhakrishnan

For Respondent :Mr. S.Thamizharasi

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 24.08.2017 made in WP No.22679 of 2017, in and by which, the learned Single Judge dismissed the Writ Petition filed by the appellant seeking to quash the charge memo dated 18.05.2015 and the proceedings dated 20.07.2017 appointing an enquiry officer to conduct the enquiry pursuant to the charge memo.

The Writ Petition came to be filed in the following factual backdrop:

2. The Respondent Board had employed several persons on a temporary basis and in the year 2010 the Respondent Board had resolved to regularize the services of about 128 employees, who were working on temporary basis. In the mean time one of the employee viz. Gomathi Sankaran had filed a Writ Petition in WP No.32839 of 2002 in this Court and this Court had directed the regularization of her services by its order dated 19.12.2009. In view of the said order, the number of employees to be regularized increased to 129 from 128. About 23 employees who were temporarily employed by the Respondent Board had approached the Designated Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) 1981 Act, (hereinafter referred to as "the 1981 Act"), seeking permanent status contending that they have completed continuous service of 240 days in 12 calendar months i.e., 480 days in two consecutive calendar years. The Competent Authority passed orders on 30.10.2000 and 13.11.2000 directing conferment of permanent status on these 23 employees. The said awards were not implemented by the Respondent Board. While the employees approached this Court in WP Nos.9352 and 9354 of 2002 seeking implementation of the award, passed by the Designated Authority, under the 1981 Act, the Respondent Board challenged the awards in WP No.6000 of 2005 and 4205 of 2005 before the Madurai Bench of this Court.

3. The said Writ petition filed by the respondent Board came to be dismissed on 19.11.2009. Consequently, on 22.12.2009 the Principal Bench allowed the Writ Petitions filed by the employees in WP No.9352 and 9354 of 2002. The order of the learned Single Judge in WP No.6000 and 4205 of 2005 were challenged by the Respondent Board in Writ Appeal (MD) Nos.665 and 666 of 2010 before the Division Bench at Madurai. These Writ Appeals were partly allowed by the Division Bench directing regularization of the 23 workmen with effect from 01.04.1998, the date on which they joined the Respondent Board in the time scale of pay, with monetary benefits from 01.08.2006, as per G.O.Ms.No.111, Municipal Administration Water Supply Department, dated 29.09.2006. It is claimed that the Respondent Board had challenged the said order of the Division Bench dated 10.12.2010 made in WA (MD) Nos.665 and 666 of 2010 before the Hon'ble Supreme Court and the said challenge had also failed.

4. After the Writ Appeals were disposed of by the Madurai Bench of this Court on 10.12.2010, it appears that the Legal

Department of the appellant Board had recommended implementation of the orders of the Bench. It is also seen that the Contempt Petition was filed in this Court against the Respondent Board for non implementation of the orders made in WP No.9352 of 2002.

In the said Contempt Petition, this Court had issued a direction to the Respondent Board, to implement the order passed by the Division Bench in WA (MD) Nos.665 and 666 of 2010. Consequent upon the orders in the Contempt Application proceedings were drawn on 08.02.2012 for regularising the services of the 23 employees who were parties to the above proceedings in Writ Appeal (MD) Nos.665 and 666 of 2010. Then Managing Director of the Respondent Board by his proceedings in Proceedings No.53765/WCE5/2006 dated 08.02.2012 had approved the regularization of the services of the individuals, as per the directions of the Division Bench of this Court in WA Nos.665 and 666 of 2010. Subsequently, it appears that the regularisation of services of the other workmen who are similarly placed was also taken up by the Respondent Board and the Board had decided to regularise the services of the other workmen who are also similarly placed. It is at this juncture, the respondent Board chose to issue a charge memo dated 18.05.2015 containing the following charges against the appellant.

"Charge No.1: that he has grossly failed to scrutinize the Legal Cell proposal to implement the order of W.A. (MD) No.665 & 666/2010 dated 10.12.2010 and thereby committed misconduct under Regulation 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.2: that he has failed to defend the case in appropriate forums and thereby had failed to exhaust the legal procedures and thereby committed misconduct under Regulation 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.3: that he had failed to go through the guidelines issued in G.O.Ms.No.111 dated 29.9.2006 and simply implemented the legal cell note without examining the case, regularizing the services of certain consolidated pay drawing staff with effect from 1.4.98 and thereby committed misconduct under Regulation 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.4: that he had grossly failed to analyse the case which has led to huge financial commitment to Board and thereby committed misconduct Regulation 6 (x) and 6(xl) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.5: that his action has caused a cascading effect which has resulted in serious labour issues and huge financial commitment to Board and Government and thereby committed misconduct under Regulation 6(x) and 6 (xl) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.6: that he has failed to show devotion to duty and high standard of integrity as expected from an Officer of his rank as per Regulation 3 of TWAD Board Officers' and Servants' Conduct Regulations, 1972."

5. The appellant had also submitted his explanation. The statement of allegations/imputation of misconduct that was annexed to the charge memo dated 18.05.2015 shows that the Note Order from the Legal Cell was submitted to the Managing Director of the respondent Board on 07.02.2012 and based on that Note the Managing Director has passed the order dated 08.02.2012 directing regularization and a compliance report was also submitted to this Court on 10.02.2012. The appellant was working as a superintendent in the Head Office of the respondent Board during the relevant period. Inasmuch as the learned Single Judge had dismissed the Writ Petition at the admission stage itself, we had required the respondent Board, to produce the files relating to the proceedings of the Managing Director dated 08.02.2012 as well as the subsequent proceedings which resulted in issuance of the charge memo.

6. The learned counsel appearing for the respondent Board had produced the file relating to regularisation of the 23 persons who were covered by the orders of this Court made in WA (MD) Nos.665 and 666 of 2010. The Proceeding issued by the Managing Director on 08.02.2012 refers to the orders of this Court made in Contempt Petition No.1389 of 2010 dated 27.01.2012 and Writ Appeal Nos.665 and 666 of 2010 dated 10.12.2010, orders in Writ Petition Nos.6000 and 4205 of 2005 dated 19.11.2009

filed against the orders dated 30.10.2000 and 13.11.2000. Orders of the Managing Director in Law Office file No.1359/LC/a (A)/2010 dated 07.02.2012 and the proceedings of the Executive Engineer EE/RWS Dn/Theni Lr. No.F/Consolidated Staff/A2/RWS/Theni/2012 dated 08.02.2012. It is also seen that these proceeding is preceded by the Note of the Legal Cell of the respondent Board, which opines that the orders of the Court should be complied with.

7. The original proceeding dated 08.02.2012 forms part of the file produced by the learned counsel for the respondent Board. In the proceedings dated 08.02.2012 nearly six officers are shown as Counter Signing Officers. In which five officers have signed and the column meant for the superintendent, that is the appellant herein, it is stated as CL (casual leave). Therefore, it is clear that the appellant was on casual leave on 08.02.2012 when the proceedings were drawn up and issued regularising the 23 employees. A reading of the charges as well as the statement of allegations annexed to the charges clearly demonstrates that action is sought to be taken against the appellant for the regularisation of the 23 employees by the then Managing Director on 08.02.2012.

8. The statement of charges would show that the Legal Cell had submitted a Note on 07.02.2012 to the Managing Director, TWAD Board and orders passed by the Managing Director in the Legal Cell Note are detailed below:

(a) "The services of the 17 + 6 employees shall be regularized by Managing Director, w.e.f 1.4.1998, in the time scale of pay (i.e.) the date on which they have joined in TWAD Board (honorarium pay) by giving them monetary benefit from 1.8.2006. In as much as the proposal for regularization is pending with the Government, the Government may be informed accordingly, in view of the urgency involved in the matter, since a compliance report has not be submitted to the Court before 10.2.2012.

(b) They may be given monetary effect (sic) from 1.8.2006 as ordered in G.O.Ms.No.111, dated 29.9.2006 duly complying with the orders of the Division Bench of the Hon'ble High Court."

9. The statement of allegations further states that based on the orders given in the Note Order file of the legal Cell by the then Managing Director on 07.02.2012, proceedings were issued by the Worked Charged Establishment Section on 08.02.2012 without

analyzing the legal cell Note and without insisting on the Legal Cell to take necessary follow up action for Review Petition or to file Special Leave Petition in the Hon'ble Supreme Court as opined by the Legal Advisor of the TWAD Board and without getting Government approval, violating the procedure, irregular regularisation has been made and simply orders were issued by the Worked Charged Establishment Section.

10. It is not known, as to how the Superintendent in the Head office of the respondent Board could be held responsible for the action of the legal cell, the Managing Director and the work charged establishment. The note to the legal cell by the Managing Director was made on 07.02.2012 and immediately on the next day on 08.02.2012, the work charged establishment has prepared the proceedings and the Managing Director had issued the proceedings on 08.02.2012 regularising the 23 employees. The appellant who was admittedly on casual leave on 08.02.2012 cannot at any stretch of imagination be held responsible for the above acts done by the legal cell, the Managing Director and the Worked Charged Establishment. It is also seen that based on the order dated 08.02.2012 proposals were sent by the Joint Chief Engineer for regularising the services of balance 106 consolidated pay employees on the ground that they should not be discriminated in the matter of regularisation. There is nothing to show that the appellant had a role in the regularisation of the remaining 106 employees.

11. The charges framed which have been extracted above also demonstrate that the appellant who was a superintendent as on the date, viz. 08.02.2012 had no role to play in the entire process of regularisation. He has been blamed for not scrutinising the legal cell's proposal. The Legal Cell's proposal was based on the note by the Managing Director dated 07.02.2012 and the orders came to be passed by the Managing Director on the very next day viz. 08.02.2012. Admittedly, the appellant was on leave on both these days and therefore, there is no question of his failing to scrutinize the legal cell's proposal.

12. The second charge is that he has failed to defend the case in appropriate Courts and thereby had failed to exhaust the legal procedures. The claim of the temporary employees for being made permanent, commenced sometime in the year 2000 and awards were passed by the Designated Authority in October and November 2000, the said awards were challenged by the TWAD Board in WP Nos.4205 and 6000 of 2005 before the Madurai Bench. The Writ Petitions were dismissed on 19.11.2009. Consequent upon the

said dismissal, the Writ petitions filed by the employees before the Principal Bench were allowed on 22.12.2009. The appeals filed by the TWAD Board in WA (MD) Nos.665 and 666 of 2010 came to be disposed of by the Division Bench, partially modifying the order of the learned Single Judge and that of the Authority, under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act 1981. This Court in Contempt Petition No.1389 of 2010, by order dated 27.01.2012, directed the respondent Board to comply with the orders of the Division Bench made in WA Nos.665 and 666 of 2010. All that has been done by the respondent Board by its order dated 08.02.2012 is only to comply with the orders of the Division Bench of this Court.

13. A careful examination of the above facts would reveal that the unfortunate appellant had been charge sheeted for the alleged compliance with the orders of this Court. On facts, from the file, it is seen that the appellant had no role to play in the compliance of the orders of this Court which took place on 07.02.2012 and 08.02.2012. The decision appears to have been taken up the highest level, on the recommendation of the legal cell, by the Managing Director, we are at a loss understand, what role a Superintendent could have played in such decision making process. We are therefore of the considered opinion that the entire charge memo has been laid only to spite the appellant because the then Managing Director was forced to appear before this court in the Contempt Petition.

14. The learned counsel for the respondent Board would contend that the charge memos have been issued to various officers who have been working at the Head Office at the relevant point of time and all of them are facing the enquiry, therefore the appellant's case cannot be an exception. We are not concerned with those who have not approached this Court, once it is brought to the notice of this Court that the appellant is being targeted for no fault of his, we do not think that we should be silent spectators and allow victimisation of the officials by the Board. We are therefore of the view that the very framing of charges is activated by mala fides and the same done only to cover up the misdeeds of the Higher Officials who had active role to play in the regularisation process. We are now informed that the appeal filed by the Board against the orders of the Division Bench made in WA Nos.665 and 666 of 2010 have also been dismissed by the Supreme Court.

15. In the above factual scenario, we do not think that any useful purpose will be served by proceeding with the enquiry on the basis of the charge memo dated 18.05.2015. We are therefore

convinced that the charge sheet itself is liable to be quashed, since it does not reveal any delinquency as against the appellant. A perusal of the file also shows that except being a superintendent in the head office of the Board, the appellant had no role to play in any of the decisions that were taken by the Managing Director on 08.02.2012 or subsequently on regularisation of the temporary employees.

16. In view of the foregoing reasons, the intra Court Appeal is allowed. The Writ Petition in WP No.22679 of 2017 will stand allowed, the charge memo dated 18.05.2015 and the consequential proceedings dated 20.07.2017 appointing an Enquiry Officer will stand quashed. However, in the circumstances, there will be no orders as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jv
To

The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai 600 005.

+1cc to Mrs.S.Thamizharasi, Advocate Sr.53627

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