

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 33146 of 2013

V.Asokan

... Petitioner

Vs

1.The Tamil Nadu Water Supply  
and Drainage Board,  
Rep.by its Managing Director,  
Kamarajar Salai,  
Chennai - 600 005.

2.The Chief Engineer,  
The Tamil Nadu Water Supply  
and Drainage Board,  
Western Region,  
Coimbatore.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 10.09.2011 in proceeding No.18203/Estt.(DP)/A1/2010 passed by the 1<sup>st</sup> respondent and quash the same and consequently direct the respondent to allow the petitioner to go on voluntary retirement with effect from 03.12.2000, with all consequential benefits.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.M.Arokiyaraj for R.1 & R.2

O R D E R

The instant writ petition has been filed for a Certiorarified Mandamus calling for the records relating to the impugned order dated 10.09.2011 in proceeding No.18203/Estt.(DP)/A1/2010 passed by the 1<sup>st</sup> respondent and quash the same and consequently direct the respondent to allow the petitioner to go on voluntary retirement with effect from 03.12.2000, with all consequential benefits.

2. The writ petitioner joined the services of the Tamil Nadu Water Supply and Drainage Board on 24.09.1980. He was

transferred to Southern Region, Madurai on 14.09.1995 and relieved on 06.12.1995. But, he did not join duty. His transfer orders were cancelled. He was once again transferred on 29.08.1996 and posted to Fluoride Circle, Salem. He did not again join duty. Having disobeyed the transfer orders, two charge memos were framed against the writ petitioner under Regulation 9(b) of the TWAD Board Service Rules. The charges 1 and 2 are read as under:-

" Charge No.1: He was transferred to Southern Region, Madurai vide Managing Director's Proc. No. C4/88492/95 dated 14.09.1995. He was relieved in Urban Division, Coimbatore on 06.12.1995 AN. He did not join duty in Southern Region, Madurai immediately, on his relief at Urban Division, Coimbatore. Purposely, he has applied leave from 07.12.1995 to 30.11.1977. Leave applications for the period 12/1996 and 08/1997 have not been received. Thus, he disobeyed the order of the higher officers in contravention of Regulation 6(i) (vii) (x) (xi) and (xxx) of TWAD Board Employee's (Discipline and Appeal) Regulations, 1972.

Charge No.2: that he had failed to discharge his duties and maintain high standard integrity as expected from an officer of his rank."

3. Enquiry proceedings commenced. The petitioner had applied for voluntary retirement on 03.12.2000. In the enquiry proceedings, both charges are held to be proved. The Disciplinary Authority after considering the enquiry report passed an order dismissal from service on 26.02.2010. The writ petitioner filed an appeal on 31.03.2010. The Managing Director, TWAD Board, Chennai allowed the appeal and set aside the order dismissal from service by an order dated 16.06.2010. The Appellant Authority / TWAD Board however permitted fresh disciplinary action under Regulation 9(b) against the petitioner. A fresh charge memo was issued against the petitioner on 21.07.2010 on the following charges:-

" Charge No.1: That he has failed to join duty in his new station on transfer to Southern Region, Madurai and Consequent on his relief from Urban Division, Coimbatore on 06.12.1995 and after retained in Western Region, he has failed to join duty in Fluoride Circle, Salem and disobeyed the orders of higher officials and thereby committed misconduct as per Regulation 6(i) of TWAD Board Employees (Discipline and Appeal) Regulation 1972.

Charge No.2: That he has failed to submit proper leave application from 07.12.1995 to 07.07.96 in time and after unauthorized long absence from duty from 07.12.1995 to 07.07.1996, he submitted his leave application on 10.07.1996. Thus he has absented

unauthorizedly without sufficient causes. Further he has failed to return to duty on expiry of various spells of leave applied from 07.12.1995 to 30.11.1997 except for the periods 12/96 and 8/97 for which he has not submitted proper leave applications. He was unauthorizedly absented from duty from 07.12.1995 to till date shows his indiscipline in behaviour and habitual negligence and thereby committed misbehaviour and misconduct as per Regulation 6(vii), (x) (xi) & (xxx) of TWAD Board Employees (Discipline and Appeal) Regulation 1972.

Charge No.3: That he has failed to regularize the shortage of materials / as well as the loss of materials pointed out in SVR / IA Report to the value of Rs.3,86,919/- during his service rendered by him in Urban Division, Madurai, Urban Sub Division, Udumalpet and RWS Division, Virudhunagar. Even though he had been reminded frequently by Executive Engineer, TWAD Board, Urban Division, Coimbatore through his letters dated 18.04.2006, 15.11.2006, 04.02.2007, 16.04.2007, 07.08.2007 and 22.10.2007 he had not responded and thus causing pecuniary loss to Board by gross negligence of his duty and thereby committed misconduct Under Regulation 9 (xi) of TWAD Board Employees (Discipline and Appeal) Regulation 1972.

Charge No.4:- That he has failed to show devotion to duty and maintain a very high standard of integrity as expected from an officer of his rank and thereby violated Regulation 3 of TWAD Board Officer's and Servant's conduct Regulation 1972."

4. The order dated 16.06.2010 permitting the disciplinary authority to proceed afresh and the charge memo dated 15.10.2011 were challenged in WP.No.18010 of 2010. The Hon'ble High Court vide its order dated 15.10.2011 quashed the order dated 16.06.2010 and charge memo dated 21.07.2010. The Hon'ble High Court remitted the case back to the Appellate Authority to consider the appeal filed by the petitioner on merits.

5. The Managing Director, TWAD Board by order dated 10.09.2011 passed an order by modifying the punishment from dismissal of service to the compulsory retirement and also ordered recovery of the sum of Rs.94,890/- from the DCRG of the petitioner. It is this order dated 10.09.2011 which is under challenge in the present writ petition.

6. Heard the counsel for the parties.

7. The learned counsel for the petitioner would contend that once the order dated 16.06.2010 permitting the Chief Engineer to initiate a fresh enquiry and charge memo dated 21.07.2010 has been quashed. The Appellate Authority could not proceed ahead on any charge, since there was no charge which had been framed against the petitioner. He would submit that what for the Appellate Authority had considered was only the application for voluntary retirement filed by the writ petitioner.

8. On the other hand, the learned counsel for the respondent TWAD Board would contend that the petitioner does not qualify the requirement for voluntary retirement. He further submits that what the Appellate Authority was hearing an appeal against the order of dismissal dated 26.02.2010.

9. I am afraid, the counsel for the respondent is not correct in contending that the Appellate Authority was hearing an appeal against the order of dismissal dated 26.02.2010. The Appellate Authority by its order had set aside the order of dismissal. The Appellate Authority had directed de-novo enquiry. It is that portion which permitted de-novo enquiry by the Appellate Authority and the charge memo was challenged in WP.No.18010 of 2010. The Hon'ble High Court by its order dated 15.02.2011 set aside the order of Appellate Authority permitting fresh proceedings under Regulation 9(b). What this Court therefore set aside is the order of Appellate Authority permitting the de-novo enquiry. The net result is that there was no charge which was there against the petitioner.

10. The Appellate Authority had only to consider as to whether the Appellant could be entitled to the voluntary retirement under the Voluntary Retirement Scheme. The Appellate Authority has not addressed the question at all. The Appellate Authority proceeded ahead on the two charges which had been framed against him on 13.01.1998 which had been set aside by the Managing Director, TWAD Board by an order dated 26.02.2010 and it was for beyond the charges and passed in order for recovery of Rs.99,980/- from DGRG. The order dated 10.09.2011 therefore cannot be sustained. The matter is remanded back to the Appellate Authority to consider as to whether the Appellant is entitled to voluntary retirement under the Voluntary Retirement Scheme on merits.

11. Since it is a old matter, I request the Managing Director of the TWAD Board, Chennai to consider as to whether the Appellant is entitled to voluntary retired or not within a period of six weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. There shall be no order as to costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsp/pkn  
To

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

2.The Chief Engineer,  
The Tamil Nadu Water Supply  
and Drainage Board,  
Western Region,  
Coimbatore.

+1cc to Mr.M.Arokiyaraj, Advocate, S.R.No.84628

+1cc to Mr.R.Thiagarajan, Advocate, S.R.No.84708

NMI (CO)  
GSP (31/12/2018)

W.P.No. 33146 of 2013

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