IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved : on 28.03.2018
Orders Delivered: on 04.06.2018

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition No.26 of 2018
and
W.M.P. No.31 of 2018

V.Murugesan ... Petitioner

vs.

1.The Chairman,
Tamil Nadu Generation and
Distribution Corporation,
TANGEDCO, 144, Anna Salai,
Chennai 600 002.

2. The Superintending Engineer,
TANGEDCO,
Udumalai Electricity
Distribution Circle,
Udumalaipet.

3. The Chief Engineer/Distribution,
TANGEDCO, Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.K.Raju,
for Mr.M.Sivavarthanan.

For Respondents : Mr.P.R.Dhilipkumar.

ORDER

The petitioner herein seeks for issuance of a writ of certiorarified mandamus to call for the records of the third respondent in Memo No.0004552/276/AB-2/Asst(3)/ FILE D.P/2017-2, dated 22.04.2017, quash the proceedings, dated 22.04.2017, as against the petitioner and consequently direct the respondents to restore the status of the petitioner prior to issuance of charge memo, dated 22.04.2017, by posting him at Dharapuram Rural Station.

2. Mr.K.Raju, learned counsel for the petitioner submitted that the petitioner joined the services of the Tamil Nadu Electricity Board (TNEB) in the year 1987 and got promotion as Junior Engineer Grade-II in the year 2000 and, after two

years, due to his hard work and devotion to duty, he was given further promotion as Junior Engineer-Grade-I in 2002 and posted in Kadambarai Generation Circle. After serving there for about 5 years, he was again transferred to Kundadam Sub-Station, however, within 15 months, he was again transferred to Dharapuram-Rural on 09.06.2014. Again, on 12.05.2015, he was further transferred to Lines Section/Hills Area/Pollachi within one year. Faced with frequent transfers, the petitioner had filed Writ Petition No.15853 of 2015, challenging the transfer order, dated 06.05.2015. Agreeing with the claim of the petitioner that he was subjected to frequent transfers, this Court, by orders dated 05.06.2015, had granted an order of interim stay of operation of the transfer order. By virtue of such order of stay, the petitioner continued his service as Junior Engineer Grade-I at Dharapuram and was discharging his duties sincerely without room for any complaint. Enraged by the order of stay obtained by the petitioner from this Court against the order of transfer, the 2nd respondent/Superintending Engineer, TANGEDCO, Udumalaipet, in an effort to victimize the petitioner, without there being any basis, leave alone any allegation, issued a temporary suspension order, dated 01.12.2016, ironically, without even serving any charge memo. Again, the petitioner was constrained to come to this Court by filing Writ Petition No.43924 of 2016, challenging the suspension order dated 01.12.2016. However, the second respondent reinstated the petitioner by revoking the suspension order and posted him at Kundadam Sub-station on 06.05.2017 and the petitioner also joined duty. In view of revocation of the suspension order, the writ petition in W.P. No.43924 of 2016 was closed by orders dated 09.08.2017. According to the learned counsel for the petitioner, for the reason that the petitioner challenged the transfer order and obtained an order of interim stay, he was unnecessarily placed under suspension and when he challenged the order of suspension in W.P. No.43924 of 2016, the said order was revoked, thereby, it is apparent that he was targeted and victimized.

Proceeding further, learned counsel would submit that, while so, the petitioner has been issued with the impugned charge memo by proceedings, dated 22.04.2017, of the third respondent under Rule 8(b) of the Board (Disciplinary and Appeal) Rules and the said proceedings were served on the petitioner only on 06.05.2017. The charges levelled against the petitioner are that, while working as Junior Engineer-Grade I at Dharapuram, he failed to properly inspect the employees under him and as a result, one S.Senthilvel, Assessor, has misappropriated a sum of Rs.5,95,646/- out of the amount collected from the consumers and that the loss to the Board could have been avoided if the petitioner had properly inspected the records and the officials working in his Section.

In an effort to demonstrate that the petitioner is in no way responsible for the misappropriation committed by one S.Senthilvel, Assessor, learned counsel for the petitioner would submit that it is the Revenue Supervisor of the Section concerned who failed to inspect the records & receipts periodically and also failed to tally the amount collected from the consumers. It is stated with emphasis that the petitioner, who is serving as Junior Engineer Grade-I, had not been given any responsibility or duty by any Circular to supervise the Assessor. In other words, when there is no duty or responsibility fastened on the petitioner to monitor collection of amounts by the assessor from the consumers and such responsibility is fastened on the Official concerned in the Revenue Unit, the petitioner cannot be issued with the impugned charge memo. Learned counsel would point out that it is either the Revenue Supervisor or the Assistant Accounts Officer of the Revenue Branch who alone will be able to find out whether the payments made by the consumers are properly brought into account.

Continuing his arguments, learned counsel has submitted that the Wage Revision and Work Load Settlement Board Proceedings, dated 01.12.2011, (hereinafter referred to '***Board Proceedings***') clearly shows that the duties of overseeing the work of Inspector of Assessment and that of the Assessor are given to the Revenue Supervisor and not to the Junior Engineer-Grade I, viz., the petitioner herein. Therefore, R3/Chief Engineer-Distribution, TANGEDCO, Coimbatore, before issuance of the Charge Memo, ought to have seen that the Board Proceedings, dated 01.12.2011, fixed the duties and responsibilities of overseeing the works of Assessor, in particular revenue collection made by the Assessors and also the Inspector of Assessment, only upon the Revenue Supervisor and not on the Junior Engineer/petitioner. He would repeat and reiterate that, as per the Board Proceedings, dated 01.12.2011, the duties of Assessor and the Revenue Supervisor are well defined, making it clear that only the Revenue Supervisor of a Section is responsible for checking the daily collection made by Assessors and Inspector of Assessment with reference to collection statement, hence, the Revenue Supervisor alone is responsible for the cash received from the Assessor and the Inspector of Assessment. Further, the cheque realization and the follow-up action for the dishonor of cheques are also entrusted to Revenue Supervisor. That being so, as per the Board Proceedings, when the petitioner has no role either in the matter of collection of electricity consumption charges from the consumers or monitoring the revenue collection done by the Assessor, the charge memo should have been issued only against the officials concerned in the Revenue Branch and not against the petitioner, who, in now way, is connected to the issue.

It is submitted that the next promotion avenue of the petitioner being Assistant Executive Engineer and, in regular course, his name is to be included in the panel for the year 2018, due to the frivolous charge memo with charges not even relating to the official duties of the petitioner, his name will not be included in the promotion panel and, as a result, he may lose his right to be considered for next promotion and that has caused great prejudice to him. Once again, in order to demonstrate that the charge memo was issued against the petitioner to victimize him, learned counsel for the petitioner would submit that he was repeatedly transferred and at one stage, when he challenged the transfer order, because of the stay granted in his favour, he was placed under suspension and when that suspension order was challenged, during the pendency of the case before the Court, the suspension order was revoked and after the petitioner resumed work, once again, he is charged with the impugned proceedings that too without any connection or relevance to his official works and this would undoubtedly depict the vindictive approach of the respondents and the ongoing victimization suffered by the petitioner. It is ultimately pointed out by the learned counsel for the petitioner that Assessor/S.Senthilvel, who committed misappropriation, had deposited the entire amount of Rs.5,95,646/- to the Board during December, 2016 itself. That being so, instead of proceeding against the said Assessor and the Revenue Supervisor, who miserably failed to supervise the Assessor, the action of the respondents in pointlessly targeting the petitioner shows clear arbitrary exercise of power, hence, the entire impugned proceedings, being unreasonable and without any basis, are liable to be quashed by this Court, he pleaded.

While concluding the submissions, learned counsel placed on record a Division Bench Decision of this Court in ***T.Sundaramurthy v. The Government, Commercial Taxes and Registration Department (2015-2-LLN-230)***, for the proposition that mere allegation of causing financial loss against person exercising quasi-judicial powers is not legally sustainable. Drawing support from yet another decision of this Court in **P.Shaheen and others vs. State of Tamil Nadu (2014(5)CTC-444),** learned counsel would highlight the ratio laid down therein to the effect that a charge memo can be quashed on the ground of being vague and for non-application of mind. Since the present charge memo suffers from utter non-application of mind and arbitrariness, the prayer sought for may be granted, learned counsel pleaded.

3. Reiterating the stand taken by the Board in the counter affidavit, learned counsel for the respondents would submit that since complaint petitions have been received from the public against the petitioner, he was transferred with the approval of Chief Engineer/Personal/Chennai, vide Memo No.025183/G13/G132/2015-1, dated 25.04.2015 to Lines/Hills/Pollachi (non sensitive post) of Udumalpet Electricity Distribution Circle,

Udumalpet. The said order of transfer was challenged by the petitioner in W.P. No.15853 of 2015 and an order of interim stay of operation of the transfer order was issued, based on which, he was allowed to continue in the same place and subsequently, he was temporarily suspended by the Superintending Engineer/Udumalpet Electricity Distribution Circle/Udumalpet, on 01.12.2016 as per the Tamilnadu Electricity Board Employees' Discipline and Appeal Regulation (9) for not following the Board's Rules. Again, the order of suspension was revoked on 06.05.2017. Subsequently, as one S.Senthilvel, Assessor, working under the control of the petitioner's Section O&M/Rural/Dharapuram, has misappropriated the Board's money collected by him to the tune of Rs.5,95,646/- towards Electricity Consumption Charges from the consumers, the petitioner was issued with the impugned charge memo. Therefore, the petitioner has no locus standi to challenge the correctness of the charge memo and he can very well appear before the Enquiry Officer and explain/substantiate how the charge memo issued against him is wrong/baseless. So submitting, he pleaded for dismissal of the writ petition.

4. This Court is at a loss to understand the stand taken in the counter affidavit which does not contain a single line of reasoning to justify the correctness of the impugned charge proceedings. In other words, when the petitioner has questioned the charge memo on the ground of vagueness, non-application of mind and ulterior motive to victimize the petitioner by stating that there is no Rule/Regulation/Circular entrusting the responsibilities or duties on the petitioner/Junior Engineer to supervise the functioning of the Assessor or Revenue Supervisor or any other staff in the Revenue Unit of the Section, the respondents have not controverted any of the grounds taken by the petitioner to quash the impugned charge proceedings. It is the claim of the petitioner

that, when the Board Proceedings, dated 01.12.2011, provides that the Revenue Supervisor of a Section is responsible to ensure that no misappropriation takes place in the Section, the Revenue Supervisor concerned should have been called upon to participate in the enquiry to meet the allegations. Thus, as per the Board Proceedings, when there was no responsibility fixed upon the Junior Engineer to monitor the Revenue Unit, in particular the day-to-day affairs of the Assessor whose monitoring officer is only the Revenue Supervisor as clearly spelt out in the Board Proceedings, it is not known as to how the 3rd respondent proceeded against the petitioner with the impugned charge proceedings. In this context, it is relevant to extract below the relevant portion from the Board Proceedings dated 01.12.2011, covering the duties of Revenue Supervisor:-

"**DUTIES OF REVENUE SUPERVISOR**

....

3)Checking daily collection made by

Assessors and Inspectors of Assessment with reference to collection statement (computer generated).

4) Attending to collection of Miscellaneous charges and arrears of CC Charges in the absence of Inspector of Assessment on need basis.

5) Receiving cash from Assessors and Inspector of Assessment daily for safe custody.

6) For remittance of cash collected by Assessors/Inspector of Assessment promptly as per the rules in force and verification of the remittance challan **to ensure that there is no misappropriation of collection amount**.

7) watching the cheque realization and taking follow up action to for the dishonored cheques and making reversal entry in the computer immediately on return of cheque by the bank.

8) Ensuring prompt disptch of all the Bank Remittance Challan to Revenue Branch once in a week.

9).........

10) Overseeing the work of Inspector of Assessment and Assessor/Assessor

Gr.II.

11).........

12).........

13)To be more vigil and **<u>to ensure that no misappropriation takes place in the Section</u>**. "

Clause Nos.6 and 13 extracted above would basically undo the entire case of the respondents, for, these two clauses are so clear in demarcating the work boundaries in the Revenue Unit, in particular about the monitoring over the Assessor by specifying that it is the duty of the Revenue Supervisor not only to ensure that there is no misappropriation of amount collected by the Assessors/Inspectors of Assessment but also to ensure that no misappropriation takes place in the Section. In addition thereto, one another proceedings of the Board, dated 09.12.2014, issued by the Superintending Engineer, Udumalaipet Distribution Circle, shows that if there is any flaw in collection of the Electricity Bill amount received from the consumers, the responsibility would lie only upon the Revenue Supervisor or Assistant Revenue Officer. Thus, when the Board Proceedings, dated 01.12.2011 and another proceedings, dated 09.12.2014, nowhere say that the Junior Engineers Grade-I or Grade-II are given duties or responsibilities to oversee the works of the Assessor or any other staff in the Revenue Unit of the Section, it is glaring that the charge memo not only suffers from utter non-application of mind but also wholly unsustainable in law. Another feature to be pointed out is, when the writ petition has been filed enclosing copies of the Boards proceedings, dated 01.12.2011, and the subsequent proceedings dated 09.12.2014, specifying the duties and responsibilities which show that the person to be blamed for not monitoring the misappropriation is the Revenue Supervisor, the respondents have neither justified in the counter affidavit about their action in having targeted the petitioner nor submitted any other proceedings before this Court to show that Junior Engineer-

Grade I is also entrusted with the task of monitoring the works of the Assessor which he failed to do. For the sake of argument, even if it is assumed that the petitioner has been entrusted with the duties of monitoring proper remittance of electricity consumption charges received by the Assessor, the respondents cannot proceed against the petitioner by virtue of the ratio laid down in T.Sundaramurthy's case (cited supra), wherein, it is categorically held that mere allegation of causing financial loss against a person exercising the quasi judicial powers cannot hold water. Relevant portion from the said decision is given below for ready reference:-

> " 10. Apart from the above, this Court had held in catena of decisions that without anything more, a mere allegation of causing financial loss against a person exercising the quasi judicial powers cannot hold water. Therefore, on both grounds namely that the only allegation of causing financial loss is not supported by any other allegation and also on the ground that the same was made on the basis of a Circular demanding double stamp duty which has come to be set aside by this

> Court, we are of the view that the impugned charge memo cannot be sustained. "

While dealing with a charge memo based on vague charges, in the decision reported in ***2015-8-MLJ-25 (Dr.G.Natarajan vs. District Collector, Madurai)***, I have also held that a charge memo issued against a delinquent officer should be precise, definite on the charge for which the delinquent is required to explain, because, in the charge memo, the disciplinary authority must make out a prima facie case to have an enquiry conducted against the erring official. In the case on hand, learned counsel for the petitioner has well demonstrated on the basis of the Board proceedings dated 01.12.2011 and another proceedings dated 09.12.2014 that the petitioner serving as Junior Engineer-Grade I was not assigned with any duty of supervision or monitoring over the Assessor. Further, the proceedings of the Board self-speak that proper person responsible in terms of monitoring over the Assessor to ensure that no misappropriation takes place is the Revenue Supervisor. Therefore, this Court has no hesitation to come to the rescue of the petitioner, who is victimized for challenging the transfer order, whimsically placed under temporary suspension and now slapped with the impugned charge proceedings on baseless allegations. Since the approach of Respondent No.3 in issuing the impugned proceedings without any basis and without application of mind is reprehensible, this Court deems it a fit case to impose costs of Rs.25,000/- (Rupees Twenty Five Thousand only), payable by R-3 to the petitioner within four weeks.

5. In fine, the writ petition is ordered, as prayed for, with costs as aforementioned. Connected Miscellaneous Petition stands closed.

04.06.2018.

Speaking Order/Non speaking order.

To

1.The Chairman, Tamil Nadu Generation and Distribution Corporation,
TANGEDCO, 144, Anna Salai, Chennai 600 002.

2. The Superintending Engineer,
TANGEDCO, Udumalai Electricity Distribution Circle, Udumalaipet.

3.The Chief Engineer/Distribution,
TANGEDCO,Coimbatore.

T.Raja, J.

Pre-Delivery Order in

WP No.26/2018.

04.06.2018.