

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.No.12701 of 2006 and
M.P.No.14306 of 2006

S. Baskaran

Telephone Mechanic (Cables),
OD South Section,
Karaikal - 609 602.

...Petitioner

Vs

The Sub-Divisional Engineer (Phones),
Bharat Sanchar Nigam Limited,
Karaikal - 609 602.

...Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus to call for the records of the respondent pertaining to his proceeding in Memo No.X/S.B/2005-2006/12, dated 13.03.2006 and to quash the same and consequently to direct the respondent to reinstate the petitioner into service with all monetary and attendant benefits.

For Petitioner : M/s.G. Arul Murugan

For Respondent : Mr.S. Gopinathan

O R D E R

The petitioner has filed this writ petition challenging the punishment imposed by the respondent by reducing in one stage from 6220 to 6070 in the time scale of pay for a period of three years without cumulative effect.

2. The facts leading to the filing of the writ petition are as follows:

The petitioner while he was working as Telephone Mechanic (Cables) in the outdoor (OD), South Section, Karaikal - 609 602. He joined in the service of Bharat Sanchar Nigam Limited (in short "BSNL") (A Government of India Enterprises) in the year 1984 as Telephone Mechanic Cable Operator and thereafter, he was appointed as Telephone Mechanic on 30.07.1994. He retired after putting 21 years of service and he

is discharging his duties to the utmost satisfaction of his superiors. While being so, on 02.12.2005, the respondent entrusted the petitioner to carry out the execution of rearrangement of Primary cable in connection with the construction of new bridge on Arasulur River. Accordingly, the petitioner undertook to carry out the rearrangement of Primary cable due to shortage of laborers, he engaged one assistant on daily wages. While carrying out the work, a bit of 5 Mpr paper core was traced and the same was recovered from earth for the purposes of laying the new cable on the very same place. The recovered cable was handed over to the assistant in order to handover to the stores. However, the assistant in front of the BSNL gate recovered aluminium sheath and the same was warned by the Sub Divisional Engineer. Thereafter, he came to the spot, and warned the assistant and handed over to the stores. Thereafter, the entire recovered cable alongwith aluminium sheath paper was handed over to the stores. However, for the reasons best known to the respondent, they issued a show cause notice on 07.12.2005, calling upon the petitioner to give suitable explanation on the show cause notice on the allegation, the petitioner removed the aluminium sheath with the help of the assistant in front of the BSNL gate and arranged for selling. Thereby, he was asked to submit his reply. After receipt of the show cause notice, the petitioner submitted his reply on 09.12.2005. Though without any work order, the work was entrusted to the petitioner, the petitioner himself arranged an assistant and laid the cable work in the Arasulur Village. In the process, the petitioner recovered the old cable in that place and the same was handed over through the assistant. Accordingly, there is no loss to the respondent. However, the respondent not satisfying with the reply given by the petitioner imposed the impugned punishment on the petitioner, against which the present writ petition is filed.

3. The learned counsel appearing for the writ petitioner would submit that the petitioner has completing 21 years of unblemished service. He is holding some key posts in the Union and there was a dispute in between the Union and the BSNL Management. In order to settle the score against the petitioner, the respondent issued a charge memo. Though the petitioner has given a suitable reply and there is no loss of Revenue to the respondent, the respondent passed the punishment against the petitioner which is unsustainable. In the charge memo, they clearly stated that in the presence of the General Public and BSNL Officials, the petitioner with the help of the assistant removed the aluminium sheath and not selling to private parties. However, no independent witnesses were examined. Based on the reply notice and without examining any independent witnesses the respondent arrived at a conclusion and imposed the punishment which is unsustainable one.

4. The learned counsel for the respondent would submit that the petitioner himself admitted that he engaged an assistant. The assistant removed the aluminium sheath in front of the BSNL gate. The petitioner and the assistant in order to steel aluminium cable and the same was witnessed by the General Public as well as the BSNL staff. Thereby, the respondent issued a show cause notice and imposed only a minor punishment. However, the learned counsel for the respondent fairly conceded, no independent witnesses were examined. Based on the admission of the petitioner, thus, the above minor punishment was passed. The authority himself taken a lenient view to impose a minor punishment and the said decision need not be interfered with, while exercising the jurisdictional power under Article 226 of the Constitution of India.

5. Heard both sides.

6. Admittedly the petitioner is an employee of the respondent and he was entrusted the work without any work order for selling the cable in Arasulur bridge. The petitioner being a Cable Mechanic in the particular area, he was entrusted to laying the cable work in the Arasulur river. Accordingly, in the process of laying the cable in Arasulur Village, he recovered the old unused cable and the same was handed over to the respondent stores. Even on perusal of the charge memo there is no revenue loss levelled against the petitioner. The only allegation is that the petitioner and his labour removed the aluminium sheath in front of the BSNL gate and arranged for selling and the Sub Divisional Engineer clearly stated that the petitioner and the assistant removed the aluminium cable and arranged for selling the aluminium cable in the presence of the General Public and duty staff. However, either General Public or duty staff were examined to prove the guilt committed by the petitioner. However, based on the reply, the above said impugned order was passed. Even on perusal of the reply, the petitioner did not admit the guilt and the petitioner himself clearly stated that there is no monetary loss to the respondent with the aluminium sheath and the entire cable was handed over to the respondent.

7. In view of the above without examining the independent and official witness, who were present at the time of occurrence, the respondent arrived a conclusion, as if the petitioner committed a guilt is not sustainable one. No material was placed before this Court to establish that the petitioner has arranged to sell the aluminium cable. Accordingly, I am inclined to interfere with the impugned order and the punishment imposed by the respondent is liable to be set aside.

8. Accordingly, the Writ Petition is allowed and the impugned order dated 13.03.2006 is hereby set aside. No costs.

Sd/-
Assistant Registrar(CS V)

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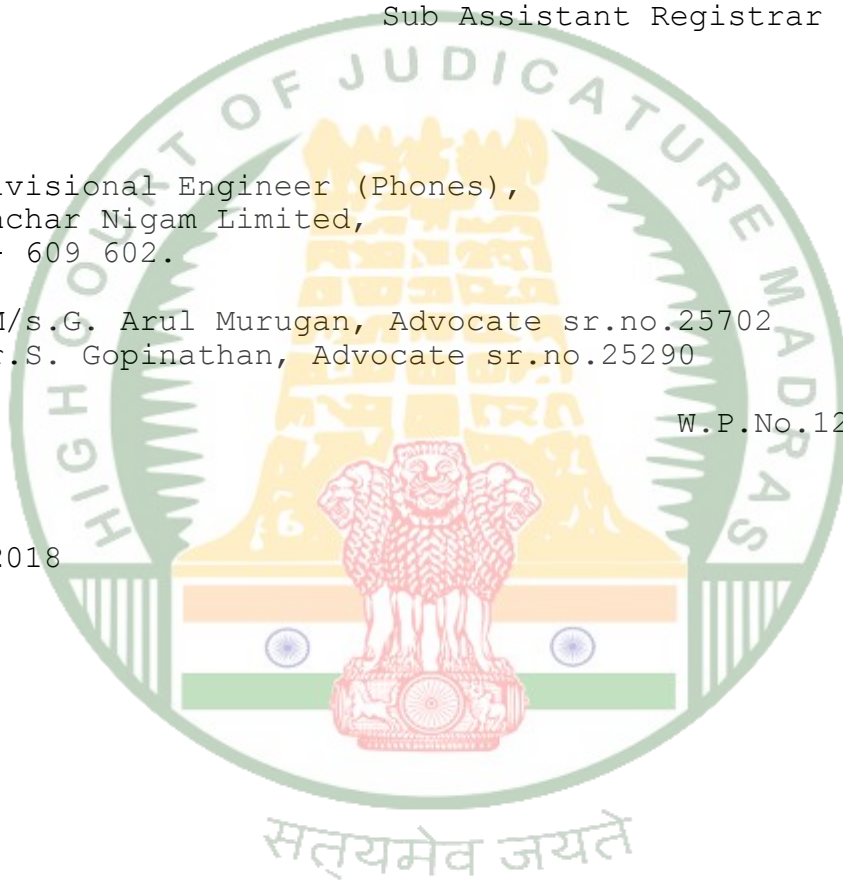
Sub Assistant Registrar

To
The Sub-Divisional Engineer (Phones),
Bharat Sanchar Nigam Limited,
Karaikal - 609 602.

+1cc to M/s.G. Arul Murugan, Advocate sr.no.25702
+1cc to Mr.S. Gopinathan, Advocate sr.no.25290

W.P.No.12701 of 2006

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