IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.6069 of 2007 and 3061 and 2009

W.P.No.6069 of 2007

T.Chandra Mohan ...Petitioner

Versus

1. The Tamil Nadu Electricity Board
rep. by its Chairman, Chennai-2.

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri District. ... Respondents
Dharmapuri

Prayer: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in his Proceedings dated 9.1.2007 bearing Ku.No.1394/SE/A.D.5/U3/Spl.File/2007, quash the same.

W.P.No.3061 of 2009

T.Chandra Mohan ...Petitioner

Versus

1. The Tamil Nadu Electricity Board
rep. by its Chairman, Chennai-2.

2. The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Vellore.

3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri District. ... Respondents

Prayer: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent relating to his order dated 30.10.2008 bearing No.016817/312/Administration/O2/2008 confirming the order of the 3rd respondent dated 16.6.2008 bearing No.231/Ni.Pi.5/O3/Ko.O.Na.128/08, quash the same.

For Petitioner in both W.Ps. : Mr.Abrar Mohamed Abdullah

For Respondents in both W.Ps. : Mr.Fakkir Mohideen

COMMON ORDER

The Writ Petition in W.P.No.6069/2007 has been filed, challenging the correctness of the Proceedings of the 2nd respondent dated 09.01.2007, thereby directing the petitioner to remit Rs.1,91,259/- to the Board and to quash the same.

2. The Writ Petition in W.P.No.3061/2009 is directed against the order dated 16.6.2008 of the 3rd respondent imposing punishment of stoppage of increment for a period of 3 years with cumulative effect against the petitioner, which was confirmed by order dated 30.10.2008 of the appellate authority.

3. Mr.Abrar Mohamed Abdullah, learned Counsel appearing for the petitioner would submit that when the petitioner was serving as a Commercial Inspector in the respondent Board at Hosur, he was directed to encash a cheque for Rs.2,81,259/- for the purpose of disbursing salary to the employees for the month of July, 2005 on 01.08.2005. Accordingly, he went to the bank and enchashed the said Cheque from the Indian Bank, Hosur Branch and kept the money inside the box attached with his motorcycle. While he was returning to his office with the said money, he found that the box had been broken open and the money was also stolen by someone on the way to his office. Therefore, he immediately lodged a police complaint and the same was also registered in Crime No.404/2005 on the file of the Hosur Town Police Station. Subsequently, the same was also culminated into a final report and was taken on file as C.C.No.375/2006 on the file of the learned Judicial Magistrate No.II, Hosur. Later on, upon investigation by the police, the real accused Venugopal was arrested and a sum of Rs.90,000/- was also recovered from him and the said accused Venugopal has also confessed the fact that he had stolen the said amount of Rs.2,81,259/- from the petitioner's motor cycle. While so, when the case was pending on the file of the learned Judicial Magistrate No.II, Hosur, the respondent department initiated departmental proceedings against the petitioner by issuing a Charge Memo dated 02.08.2005 containing three charges. On receipt of the charge memo, the

petitioner submitted a detailed explanation denying the charges. However, not having satisfied with the explanations submitted by the petitioner, the Disciplinary Authority appointed an Enquiry Officer, who also on completion of the enquiry, found the petitioner guilty of all the three charges. Thereafter, the petitioner was also furnished with a copy of the Enquiry Report and thereupon, he gave his further explanation denying the charges. On receipt of the written representation given by the petitioner to the Enquiry Officer, the Disciplinary Authority, namely, the 3rd respondent herein has passed an order dated 16.6.2008 imposing the punishment of stoppage of increments with cumulative effect for a period of three years. Thereafter, the 3rd respondent again sent a Memo dated 9.1.2007 asking the petitioner to repay a sum of Rs.1,91,259/- within 15 days from the receipt of the said memo. Questioning the said memo, the second Writ Petition in W.P.No.3061/2009 has been filed in which this Court was pleased to grant an order of stay of recovery till the enquiry proceedings are completed, pending disposal of the writ petition.

4. Adding further, the learned Counsel for the petitioner submitted that this is an admitted fact that while the petitioner was returning from the Indian Bank, Hosur Branch, after encashing a cheque for a sum of Rs.2,81,259/-, one Venugopal had stolen the same by breaking open the box in his motorcycle parked in front of the bank where the money was kept in and subsequently, when a police complaint was also lodged by the Assistant Executive Officer, the same was also registered as Cr.No.404/2005 on the file of the Hosur Town Police Station and pursuant to the investigation conducted by the police, the accused Venugopal was also arrested and a sum of Rs.90,000/- also was recovered from him and this apart, the said accused also had clearly confessed the fact that he had stolen the entire amount of Rs.2,81,259/- from the petitioner's motor cycle parked in front of the bank and recording the same the charge sheet has also been filed not only along with the confession statement of the accused that he had stolen the money from the petitioner, but also recording his statement to the effect that the way in which he has spent the money at Bangalore and Goa. When the case of the petitioner that when he was noway responsible for misappropriation, that commission of theft of the money has been accepted and this could be seen from the confession statement made by the accused Venugopal and the recovery of Rs.90,000/- also fortifies the case of the petitioner, the charge memo issued against the petitioner containing three charges is wholly unsustainable in law.

5. Explaining further, the learned Counsel for the petitioner submitted that only some of the acts and omissions shown under Standing Order No.30 should be treated as

misconduct. But neither of the acts and omissions mentioned under Standing Order No.30 can be put against the petitioner. The reason being that the Standing Order 30(i) says that wilful insubordination or disobedience, whether alone or in combination with another or others of any lawful and reasonable order of a superior would constitute misconduct. The act of the petitioner has not brought under Standing Order No.30 (i). Similarly, the Standing Order 30(iv) deals with theft, fraud or dishonesty in connection with the Board's property or business. The allegation against the petitioner has not been brought under Standing Order 30(iv) since the money stolen by Venugopal has been proved by his own confessional statement and the subsequent recovery of Rs.90,000/- from the said accused. Even the Standing Order 30(x) deals with habitual negligence or neglect of work. None of the parties mentioned in the charge memo shows that the petitioner has committed habitual negligence or neglect. This crucial aspect has been completely overlooked by both the Enquiry Officer as well as by the Disciplinary Authority, while considering the request of the petitioner along with the report of the Enquiry Officer, he pleaded. If for any reason, the accused Venugopal was not nabbed by the police, consequently, had the said accused Venugopal not confessed before the police followed by the recovery of Rs.90,000/-, the respondents were perfectly right in prosecuting the petitioner departmentally whereas the accused who had stolen the money of Rs.2,81,259/- has admitted the same and recovery of Rs.90,000/- has proved the innocence of the petitioner.

6. The learned Counsel for the petitioner also submitted that in the present case, when the petitioner having lost the amount of Rs.2,81,259/- that he had kept in the box attached with his motorcycle after returning from the Indian Bank, Hosur, he lodged a criminal case in Crime No.404/2005 on the file of the Hosur Town Police Station. Subsequently, on the basis of the investigation, the said accused Venugopal was also nabbed and after getting the confession statement, a sum of Rs.90,000/- was also recovered based on which a final report was also filed on the file of the learned Judicial Magistrate No.II, Hosur in C.C.No.375/2006. Therefore, the question of finding fault with the petitioner for having lost the money which occurred beyond his control cannot be justified, hence, the impugned order dated 16.06.2008 thereby imposing punishment of stoppage of increment for 3 years with cumulative effect has no legs to stand. Secondly, the consequential memo issued against the petitioner by the 2nd respondent dated 9.1.2007, asking him to repay a sum of Rs.1,91,259/- also has to go since the petitioner is no way connected with the loss of the money and the said accused Venugopal has stolen the money and that has been established by his confession statement followed by the recovery of Rs.90,000/- from him.

7. A detailed counter affidavit has been filed by the Superintending Engineer, Tamil Nadu Electricity Board, Dharmapuri in both the cases.

8. Mr.Fakkir Mohideen, learned Standing Counsel appearing for the respondents submitted that when the petitioner was deputed to go to Indian Bank, Hosur to withdraw the money for disbursement of the salary for the employees for July, 2005 on 01.08.2005, after encashing the cheque for a sum of Rs.2,81,529/-, he has not remitted the same to the office, thereby he has committed an offence under the Standing Order 30 (iv) of the Tamil Nadu Electricity Board Standing Orders in respect of workmen other than those engaged in clerical work. Therefore, he was issued with a Charge Memo. The second charge is to the effect that the petitioner had not taken with him any other employee for the purpose of safety when he had gone to the bank for encashing the cheque amount, the enquiry revealed that he has committed an offence under Standing Order 30(i) of the Board. The third charge is to the effect that the petitioner ought to have used the Board's vehicle to go over to the bank, but he went on his own motorcycle and encashed the cheque and he had not taken with him any employee for safety purpose, thereby he has committed an offence under Standing Order 30(x) of the Board. The Tamil Nadu Electricity Board Manual shows that for the remittance of revenue collections and drawal of cash towards pay bill of establishment, etc. by the Cashiers in Central Offices of the Operating Systems and Circle Offices, the following agency should be employed:

(a) For sums below Rs.500/-	A Single Person
(b) For sums Rs.500/- or above but less than Rs.1,000/-	Two persons or a Clerk
© For Rs.1,000/- and above but below Rs.5,000/-	A Clerk and a Peon
(d) For sums exceeding Rs.5,000/- but not Rs.20,000/-	Cashier and a permanent Senior Clerk accompanies by a permanent or senior peon.

Note : Departmental vehicles may be requisitioned in cases (b), © and (d).

9. Intervening at this stage, the learned Counsel for the petitioner submitted that this Board Manual has not even formed part of the charge memo and the petitioner was not even put on notice either during enquiry or at least after the report submitted by the Enquiry Officer and before submitting his written representation to the report of the Enquiry Officer, hence, the same cannot be put against the petitioner at this

stage.

10. Continuing his arguments, the learned Standing Counsel for the respondents submitted that the Enquiry Officer while dealing with all the three charges, has found the petitioner guilty of all the charges and submitted a detailed report holding him guilty under all the charges. Thereafter, he has also been furnished with a copy of the report of the Enquiry Officer calling upon him to submit his written explanation for the same. Accordingly, he has submitted a written representation stating that he would be given a chance to mend his ways that shows that the petitioner has admitted the charges. Therefore, the Disciplinary Authority accepting the report of the Enquiry Officer holding him guilty of all the charges, imposed the punishment of stoppage of increment for 3 years with cumulative effect and aggrieved by the order imposing punishment, the petitioner has also preferred an appeal before the Appellate Authority. The Appellate Authority, also considering the Memorandum of Appeal, finding no merits, dismissed the appeal. Consequently, the petitioner has come to this Court. The learned Standing Counsel further submitted that since the Apex Court in the case of Bank of India and another vs. Degala Suryanarayana reported in AIR 1999 Supreme Court 2407 has held that mere conjecture or surmises cannot sustain the finding of guilty even in departmental enquiry proceedings and strict rule of evidence are not applicable to departmental enquiry proceedings and the only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer, no case was made out to interfere with the impugned orders passed by the Enquiry Officer, hence, the present Writ Petitions are liable to be dismissed, it is pleaded.

11. But, this Court is unable to agree with the reasons given in the impugned order or the documents placed before this Court by the learned Standing Counsel for the respondents for the following reasons. Firstly, it is not in dispute that the petitioner while serving as a Commercial Inspector in the respondent Board on 01.08.2005 was deputed to visit the Indian Bank, Hosur to encash a cheque for a sum of Rs.2,81,259/- for the purpose of disbursing salary to the employees for the month of July, 2005. When the petitioner went to the Indian Bank, Hosur Branch after encashing the cheque, he kept the amount of Rs.2,81,259/- in the side box of his motorcycle. On his returning to his office, he found that the box was broken open and the money was also stolen by someone. Secondly, this was immediately informed to the Assistant Executive Officer who also immediately lodged a complaint on the file of the Hosur Town

Police Station and a case has also been registered in Crime No.404/2005. Thirdly, the Inspector of Police investigated the case and nabbed the accused Venugopal who admitted the commission of the offence stating that he only committed the theft of the money of Rs.2,81,259/- from the petitioner's motor cycle and then he went to Goa and that he had spent all the money except Rs.90,000/- and the same has been recovered. When the said accused also has clearly confessed that he has stolen a sum of Rs.2,81,259/- from the petitioner and subsequently, based on the confession statement of the accused Venugopal followed by the recovery of Rs.90,000/- from him, a final report was also filed in C.C.No.375/2006 on the file of the learned Judicial Magistrate No.II, Hosur, unfortunately, when the case was pending trial, the said accused Venugopal died and hence the criminal case against him also stood abated. If the criminal case proceeded further before the said court, the court would have recovered the balance money from the said accused. But for the sudden death of the accused Venugopal, although, the police was able to recover only a sum of Rs.90,000/-, balance amount could not be recovered.

12. The entire episode from the date of registration of the F.I.R. in Crime No.404/2005 on the file of the Hosur Town Police Station which has been culminated into filing a final report and taken on file in C.C.No.375/2006 on the file of the learned Judicial Magistrate No.II, Hosur clearly shows that the petitioner has no way connected with the allegation of misappropriation of a sum of Rs.2,81,529/-. Therefore, the charge memo issued against the petitioner, in my considered view cannot be legally sustainable. Having recovered a sum of Rs.90,000/- and after nabbing the accused Venugopal, a confession report also has been obtained, but due to his sudden demise during the pendency of the trial, the criminal case against him also stood abated, but, if he were alive, the course of trial would have been different. Therefore, this Court is not able to find any substance in the initiation of the departmental proceedings against the petitioner. Secondly, the charge memo also has been erroneously issued on the pretext that the petitioner has made out an offence of misconduct under Standing Order 30, 30(i), 30(iv) and 30(x) which are given as under :

> ''30. Acts and Omissions constituting misconduct:
>
> The following acts and omissions shall be treated as misconduct:
>
> (i) wilful insubordination or disobedience, whether alone or in combination with another or others of any lawful and reasonable order of a superior.
>
> ....
>
> (iv) Theft, fraud or dishonesty in connection with the Board's property or business.

...
(x) Habitual negligence or neglect of work.''

All the above Standing Orders also do not show any supporting ground in favour of the respondents. When the Standing Order 30(i) deals with wilful insubordination or disobedience, whether alone or in combination with another or others of any lawful and reasonable order of a superior would constitute misconduct the Standing Order 30(iv) deals with theft, fraud or dishonesty in connection with the Board's property or business. But the petitioner was nowhere charged that he has committed misconduct or theft or dishonestly. If we come to Standing Order 30(x) which deals with habitual negligence or neglect of work, when the charge memo fails to show that the petitioner at any point of time has committed habitual negligence, in all fairness, the charge memo would not have been issued against the petitioner.

13. In the result, both the writ petitions are allowed and the impugned orders are quashed. It is needless to mention that in view of allowing of both these writ petitions, the respondents shall grant the consequential benefits to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this Order. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board
Chennai-2.

2. The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Vellore.

3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri District.

+1cc to Mr.M.Fakkir Mohideen, Advocate SR.No.13313

+1cc to Mr.M.Fakkir Mohideen, Advocate SR.No.13312(20/06/2019)

+1cc to Mr.Abrar Mohamed Abdullah, Advocate SR.No.12698 (20/06/2019)

W.P.Nos.6069 of 2007
and 3061 and 2009

BR(CO)
GMY(20/03/2019)