

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.22608 of 2009 and
M.P.No.1 of 2009

K.T.Kumaravel

... Petitioner

Vs

Tamil Nadu Electricity Board
rep. by its
Superintending Engineer-Purchase & Administration,
Ennore Thermal Power Station,
Chennai-600 057.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order in Memo No.CR.101 /128 /SE /P&A/ETPS / Adm.I/A.4/F.KTK/2009, dated 31.7.2009 passed by the respondent and quash the same.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.P.R.Dhilipkumar,
Standing Counsel

O R D E R

Questioning the correctness of the order dated 31.7.2009 passed by the respondent, thereby imposing a punishment of stoppage of increment for two years without cumulative effect for the proven charge against the petitioner that he remained unauthorisedly absent from duty from 08.03.2009 to 09.06.2009, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that the petitioner joined the respondent Board on 08.12.1988 F.N. as Assistant Engineer (Mechanical). Subsequently, he was promoted as Assistant Executive Engineer (Mechanical) in the year 2009. On such capacity, while he was working in Ennore Thermal Power Station, he was vindictively treated by the Superintending Engineer (Mechanical) for which he also sent more than one complaint against him. Therefore, he was transferred from Ennore to Kunda.

3. The learned Counsel for the petitioner further submitted that the petitioner went on medical leave from 28.3.2009 because he was under intense mental stress. When he came to know that he had been transferred to Kunda, though, neither the order of transfer nor the relieving order was served on him, however, he went to meet the Chief Engineer (Hydro), Kunda on 29.3.2009 at about 01.30 p.m. and prayed for issuance of reposting orders to him that would show the petitioner's bonafide intention to work in the office and also would indicate his desire not to avoid any inconvenient transfer because he was having two sons both were studying in Trichy and his wife was also stationed in Trichy to look after them.

4. The learned Counsel for the petitioner also submitted that thereafter, the petitioner received a Memo No.CR.72 /SE / P&A/ETPS/ Admn.I/A.4/F.KTK/2009-3 dated 10.6.2009 from the respondent. Immediately, he has also submitted his explanation on 13.6.2009. The petitioner has not received the Memo dated 7.5.2009 containing charges against him and he has also pointed out to the respondent that he never received any communication from the Dean, Stanley Medical College, calling upon him to appear before the Medical Board and in that letter, he had also mentioned that he has very much attended duty upto 26.3.2009. The entries in the Attendance Register will also speak for themselves that the petitioner attended duty upto 26.3.2009. While so, all of a sudden, the petitioner was issued with the impugned order dated 31.7.2009 imposing punishment of stoppage of increment for a period of two years without cumulative effect. The impugned order does not deal with the contentions raised by the petitioner. Since the petitioner complained of non-receipt of the relevant communications, the respondent, without referring to the contra materials, has chosen to come to a mechanical conclusion against him in the impugned order.

5. The learned Counsel for the petitioner further submitted that the petitioner has already submitted a Leave Application on medical grounds. Therefore, the charge of unauthorized absence cannot lie against him and the impugned order of punishment has been passed without any basis or evidence and no reasonable man could have come to any adverse conclusion against him on the basis of the available materials. It is also stated that admittedly, before passing the impugned order of punishment of stoppage of increment for two years without cumulative effect, no enquiry was held. Such an approach is against the law laid down by the Hon'ble Supreme Court in O.K.Bhardwaj vs. Union of India and Others reported in (2001) 9 Supreme Court Cases 180 wherein it is held that if the charges are factual and if they are denied by the delinquent

employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with. This apart, the learned Counsel has also referred to the report of the Medical Board to say that the petitioner's Medical Leave was also approved by the competent Medical Board for the period from 28.03.2009 to 19.06.2009. Therefore, when the Medical Board has recommended the leave period from 28.03.2009 to 19.06.2009 as leave other than leave on medical grounds, the respondent ought not to have framed charge against the petitioner and the said charge is also not legally maintainable.

6. Concluding his arguments, the learned Counsel for the petitioner referring to a copy of the counter affidavit served upon him stated that the stand taken by the respondent in his counter affidavit that the petitioner did not attend duty upto 26.03.2009 is wholly unacceptable and unjustifiable since the report of the Medical Board clearly shows that the Medical Board has recommended the leave period from 28.03.2009 to 19.06.2009. Therefore, the impugned order is liable to be quashed.

7. But this Court is unable to find any merit on the said submissions of the learned Counsel for the petitioner. The reason being is that the counter affidavit clearly shows that the petitioner failed to attend duty upto 26.03.2009 for which he was treated as unauthorized absentee. While so, by showing the report of the Medical Board recommending his leave period from 28.03.2009 to 19.06.2009 is no way supporting the case of the petitioner. At the risk of repetition, it has been mentioned that when the petitioner remained unauthorisedly absent from duty upto 26.03.2009, he has not produced any evidence to show that he attended the office upto 26.03.2009. Moreover, the impugned order also shows that when the Chief Engineer/Ennore Thermal Power Station inspected the Dredging Division on 08.03.2009 and on 09.03.2009, an explanation was called for from the petitioner by the Superintending Engineer/MM-II/ETPS for his unauthorized absence from 8.3.2009, vide Memo dated 12.3.2009, a statement also has been given by the petitioner in his letter dated 13.06.2009 that he had been regularly attending the office and attended his work upto 26.3.2009. This was found against him holding that his statement that he had regularly attended the office and attended his work upto 26.3.2009 is totally false and apart from truth.

8. Coming to the next aspect whether the petitioner is entitled for hearing before passing the impugned order, admittedly, departmental proceedings were initiated against the petitioner under Regulation 8(a) of the Tamil Nadu Electricity Board Employees (Discipline and Appeal) Regulations. Since Regulation 8(a) deals with initiation of departmental

proceedings by imposing minor penalties and the rule does not contemplate holding of any enquiry and this apart, in the counter affidavit filed by the respondent, it has been stated that the petitioner was in the habit of committing misconduct and suffered four punishments earlier, in view of the past records going against the petitioner, although the respondent initiated action for major penalty, they have initiated departmental proceedings only under Regulation 8(a) by imposing a punishment of stoppage of increment for two years without cumulative effect. Therefore, I find no merit in the present Writ Petition.

9. In the result, the petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.S)

//True Copy//

Sub Assistant Registrar

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To

Superintending Engineer-Purchase & Administration,
Tamil Nadu Electricity Board
Ennore Thermal Power Station,
Chennai-600 057.

+1cc to Mr.R.Thiyagarajan, Advocate, S.R.No. 38626

+1cc to Mr..R.Dhilip Kumar, Advocate, S.R.No. 38439

W.P.No.22608 of 2009

RSK(CO)
GN(28/05/2019)

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