

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.02.2019

CORAM:
THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.25953 of 2009
and
MP.No. 1 of 2009

M.Sudalai

.. Petitioner

Vs

1.Tamil Nadu Electricity Board,
Rep. By its Chairman,
144, Annasalai,
N.P.K.R.R. Maligai,
Chennai - 2.

2.The Chief Engineer,
Transmission, TNEB,
144, Annasalai, VI Floor,
Chennai - 2.

3.The Superintending Engineer,
General Construction Circle - I,
TNEB, Chennai - 12.

4.The Executive Engineer,
T.L.C., TNEB,
Senneerkuppam,
Poondhamalli,
Chennai - 52.

5.The Assistant Executive Engineer,
TLC, General Construction Circle,
TNEB, Pennalur Village,
Sriperumpudhur Taluk, Kanchipuram Dist.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondents, the impugned order of the 3rd respondent in Memo No.243/Adm.t/A1/FDP/2008, dated 28.04.2008 as confirmed by the second respondent in his impugned Memo No.1163/T/T.246/2009-1, dated 18.08.2009 and quash the same and direct the third respondent to refund the amount of Rs.1,98,876/- recovered from the petitioner with interest.

For petitioner : Mr.S.Muthukrishnan
For Respondents : Mr.P.R.Dhilip Kumar

ORDER

The present writ petition is directed against the impugned proceedings dated 18.08.2009 of the second respondent / the Chief Engineer, Transmission, Tamil Nadu Electricity Board (TNEB), Chennai, confirming the proceedings dated 28.04.2008 of the third respondent / the Superintending Engineer, TNEB, General Construction Circle - I, Chennai, directing to recover a sum of Rs.1,98,876/- in one lumpsum from the petitioner's DCRG amount.

2. It is submitted by the learned counsel for the petitioner that the petitioner was appointed as Stores Supervisor on 25.07.2002 in TLC Sub Stores, Sriperumpudhur General Circle, Chennai. In the said store, one Mr.R.Baskar, S.C. Grade-II was the incharge, however, after he was relieved from the said place, it is stated, the petitioner was forced to take the custody of the said Store. Subsequently, while working in the said place, the petitioner had applied for Earned Leave from 09.07.2005 to 17.07.2005 and after the leave period, when the petitioner visited the open yard of the said Store, it was found that some of the materials were missing and intimated the same to the fifth respondent / the Assistant Executive Engineer, T.L.C. General Construction Circle, TNEB, Sriperumpudhur. However, the fifth respondent, after a lapse of 24 days, gave a police complaint on 12.08.2005 and thereafter, a case was registered in Crime No.356/2005 on the file of the Sub-Inspector of Police, Sriperumpudhur Police Station. On the same day itself, the Sub-Inspector of Police, without even conducting any enquiry, closed the said complaint. Based on the said report, the petitioner was issued with a charge memo dated 16.04.2008 containing the following charges:-

"Charge - I

Thiru.M.Sudalai, Stores Supervisor/TLC Stores/Sriperumbudur, has reported to the Assistant Executive Engineer/Transmission Line Construction/Sriperumbudur that he visited the stores yard on 20.07.2005 and some of the materials were found theft. As per the Assistant Executive Engineer/Transmission Line Construction/Sriperumbudur instructions he engaged some contract labourers and list out the materials which were found theft. He prepared a list of all materials which were found theft and as per his report, the Assistant Executive Engineer/Transmission Line Construction/Sriperumbudur has made a complaint to the Sub-Inspector of Police/Sriperumbudur Police Station on 12.08.2005 and the crime was registered as

No.356/2005 on 12.08.2005. The Sub Inspector of Police / Sriperumbudur has informed that on completion of investigation it was concluded that there was no possibility of theft at Sriperumbudur stores and there was no evidence to show the materials have been stolen. The police has therefore closed the file pertaining to Crime No.356/2005 as Mistake of Fact.

This shows Thiru.M.Sudalai, Stores Supervisor/TLC Stores/Sriperumbudur has made a false information to his higher authorities and misguide the administration of making false complaint as if a theft had occurred even though he himself is fully aware that no theft had occurred. This is MIS-CONDUCT as per Clause - 19 (iii) standing orders applicable to workmen engaged in clerical department.

Charge - II

Thiru.M.Sudalai, Stores Supervisor/TLC Stores/Sriperumbudur holding the custodian of stores has misappropriation of Board's materials to the tune of Rs.1,98,876/- as per the statement enclosed and made up the above misappropriated stores materials as THEFT. He is therefore failed in discharging his duties and thereby the Board has caused heavy loss to the tune of Rs.1,98,876/-. This is MISCONDUCT as per Clause 19(iii) of standing orders applicable to workmen engaged in clerical department.

Charge-III

Thiru.M.Sudalai, Stores Supervisor/TLC Sub-Stores/Sriperumbudur is custodian of Transmission Line Construction Sub Stores/Sriperumbudur and misappropriation of the stores materials in his custody to the tune of Rs.1,98,876/- He is solely responsible for the loss of the above materials to the tune of Rs.1,98,876/-. Therefore, causing loss of the properties of TNEB is MIS-CONDUCT as per Clause 19(iii) of standing orders applicable to workmen engaged in clerical Department of TNEB."

On receipt of the above said charge memo, the petitioner had submitted his explanations on 25.04.2008 denying all the charges levelled against him. Thereafter, the Enquiry Officer was appointed, who, after completing the enquiry, submitted his report on 03.11.2006 holding him not guilty of all the charges. However, accepting the report of the Enquiry Officer, instead of

dropping the charges, the third respondent has passed the impugned order of recovery dated 28.04.2008. Therefore, it is further contended that when the second charge that the petitioner has misappropriated the Board's materials to the tune of Rs.1,98,876/- was found false, the impugned order seeking to recover the said sum is wholly unjustified. When the report submitted by the Enquiry Officer clearly says that the petitioner was not responsible for the loss of Rs.1,98,876/-, passing of the impugned order of recovery seeking to recover the said sum from the petitioner's DCRG amount is wholly impermissible in law, therefore, the impugned orders passed by the respondents 2 and 3 are liable to be set aside.

3. Learned standing counsel appearing for the respondents submitted that as per the report submitted by the Enquiry Officer, although the petitioner was not found guilty of all the charges, still the third respondent, taking note of the fact that the petitioner was responsible for the loss as custodian of the stores, had passed the present impugned proceedings to recover a sum of Rs.1,98,876/- from his DCRG amount.

4. But, this Court is unable to find any merit on the above said submission, the reason being that on 18.07.2005, the petitioner had reported for duty after the expiry of Earned Leave availed by him and on the same day itself, when he visited the Store, he noticed the missing of some of the materials, therefore, on the same day itself, he requested the fifth respondent to lodge a police complaint. However, the fifth respondent, after a lapse of 24 days, gave a police complaint only on 12.08.2005 and thereafter, a case was registered in Crime No.35 of 2005 for an offence under Section 379 Cr.P.C. by the Sriperumpudhur Police Station. But, surprisingly, it is seen that, on the same day itself, the Sub-Inspector of Police, without conducting proper investigation, had closed the said complaint. Subsequently, the Enquiry Officer, after perusing all the above said facts, submitted his report on 03.11.2006 holding the petitioner not guilty of all the charges. Indisputably, when the petitioner was fully exonerated from all the charges levelled against him by the Enquiry Officer, it is not known as to why the third respondent has passed the present impugned recovery proceedings, that too, without issuing notice to the petitioner before passing such recovery proceedings. When the petitioner was able to establish before the Enquiry Officer that he has not misappropriated Board's materials to the tune of Rs.1,98,876/-, the impugned proceedings of recovery passed by the respondents 2 and 3 are not only unjustified, but also in violation of the principles of natural justice. Thus, on this count, the impugned proceedings passed by the respondents 2 and 3 are set aside.

5. In fine, for the reasons stated above, the writ petition is allowed with a direction to the third respondent to refund the amount of Rs.1,98,876/- recovered from the petitioner within a period of two weeks from the date of receipt of a copy of this order. No Costs. M.P.No.1 of 2009 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chairman,
Tamil Nadu Electricity Board,
144, Annasalai,
N.P.K.R.R. Maligai,
Chennai - 2.
- 2.The Chief Engineer,
Transmission, TNEB,
144, Annasalai, VI Floor,
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- 3.The Superintending Engineer,
General Construction Circle - I,
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T.L.C., TNEB,
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Poondhamalli, Chennai - 52.
- 5.The Assistant Executive Engineer,
TLC, General Construction Circle,
TNEB, Pennalur Village,
Sriperumpudhur Taluk, Kanchipuram Dist.

+1cc to Mr.S.Muthukrishnan, Advocate, S.R.No.14265

+1cc to Mr.P.R.Dhilipkumar, Advocate, S.R.No.13311

W.P.No.25953 of 2009

RR(CO)

rrs 21/03/2019