

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No. 3141 of 2018
and
W.M.P.No.3856 of 2018

S.P.R.Illamparuthi

...Petitioner

vs

1. Tamilnadu Generation and Distribution Corporation Limited,
(TANGEDCO)
Rep by its the Secretary,
144, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Chennai Electricity Distribution Circle (North)
144, Anna Salai,
Chennai - 600 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records from the 1st respondent in his proceedings in Memo.No.45386/A5/A51/2017-1 dated 27.11.2017 and quash the same.

For Petitioner : Ms.Rohini Ravikumar

For Respondents : Mr.P.R.Dhilip Kumar
Standing Counsel

O R D E R

The charge memo dated 27.11.2017 issued against the writ petitioner is under challenge in the present writ petition.

2. The writ petitioner was lastly working as an Executive Engineer and retired from service on attaining the age of Superannuation on 31.12.2016. The charges are framed in proceedings dated 27.11.2017 as follows:-

" Statement of substance of allegations namely imputation of misconduct or misbehaviour based on

which the charge is proposed to be framed against Th.S.P.R.Ilamparuthi, then Executive Engineer/O&M/Tondiarpet (retired on 31.12.2016);

Charge;

That Th.S.P.R.Ilamparuthi, then Executive Engineer/O&M/ Tondiarpet (now retired), who was appointed as Inquiry Officer to inquire into the charges framed against Th.M.Sugumar, then Assistant Engineer/O&M/Medur (now Assistant Engineer/110 KVSS/Durainallur) in connection with certain lapses committed by him, had conducted the inquiry in a hasty manner and submitted his findings. He had concluded that the Inspector of Assessment, Revenue Supervisor, Foreman, Commercial Assistant and Commercial Inspector alone are responsible for entering wrong readings in the Computer and also for the missing meters in the office. He did not consider the duties and responsibilities of the Assistant Engineer. He had not compared the reading and MD with downloading data from CMRI. He had not given opportunity to the Assistant Executive Engineer/Enforcement / North as Board-side witness. He had not considered the revenue loss mentioned in the charges framed against Thiru.M.Sugumar Assistant Engineer and conducted inquiry without the main evidence of AEE/Enforcement/North/Chennai and came to a conclusion on his own that the charges were not proved. Further, it is also noticed that the revenue loss occurred has not been collected so far. Hence, it is found that the inquiry has not been conducted satisfactorily by Thiru.S.P.R.Ilamparuthi, then Executive Engineer/O&M/ Tondiarpet (now retired). Due to the hasty Conclusion by the Inquiry Officer, the charges framed against the Th.M.Sugumar, then Assistant Engineer/O&M/Medur have been dropped.

Thus, Th.S.P.R.Ilamparuthi, then Executive Engineer/O&M/Tondiarpet (now retired) (i) has failed to maintain absolute integrity and devotion to duty; and (ii) has failed to observe rules of procedure in all matters and also abide by

rules, regulations, orders and circulars that may be issued from time to time by the Board or by any appropriate officers of the Board; and thereby contravened regulations 3(a) and 3(c) of the Tamil Nadu Electricity Board Employees' Conduct Regulations. "

3. Annexure-II to the charge memo provides statements of allegations namely imputations is misconduct in respect of the charges framed against the writ petitioner. Thus, there is no infirmity as such in respect of the Charge memo issued against the writ petitioner. Further, the charge memo was issued within the time limit prescribed under the rules. Thus, the writ petitioner has to submit his explanations/objections and establish his innocence or otherwise before the competent authorities concerned.

4. The learned counsel for the writ petitioner Vehemently contended that the writ petitioner is innocent of all the allegations and he acted only as an enquiry Officer in capacity as an enquiry officer. He performed his duties and responsibilities and the final decision was taken by the disciplinary authority and therefore, the writ petitioner held responsible and consequently, the impugned Charge memo is liable to be scrapped.

5. The learned counsel for the petitioner relying the procedures contemplated in respect of the finalization of disciplinary proceedings contended that the enquiry Officers report is not binding on the disciplinary authority and even in case of disagreement, the disciplinary authority is empowered to deviate the findings of the enquiry. Therefore, the writ petitioner cannot be held responsible or accountable in respect of the enquiry report submitted by him.

6. This Court is unable to agree with the contention, in view of the fact that the responsibility and accountability and the exercise of duties are interconnected. All the Public officials are excepted to perform their duties and responsibilities diligently and even, there is a possibility of of irregularity and illegality, while conducting enquiry proceedings by the Enquiry Officer. Simply because an official is appointed and the enquiry Officer once again, come to the conclusion that his report is not a final one and therefore, he cannot be held responsible. The manner in which the enquiry officer conducted an enquiry is also the point to be considered by the higher authorities, while dealing with the enquiry report. All public officials are bound to maintain the duties and responsibilities and accountabilities, while exercising their powers as public servant. This being the principles to be

followed, the very contention raised on behalf of the writ petitioner on merits deserves no merit consideration.

7. The writ petition cannot be entertained against the Charge memo, so as to adjudicate the merits and demerits of the issues raised in the charge memo. This Court cannot go to the merits of the case and appreciate the same for the purpose of quashing the charge memo. All such merits and demerits are to be adjudicated before the enquiry Officer to be appointed and by producing documents and by adducing evidences, is required. Such an exercise cannot be done in a writ proceedings under Article 226 of the Constitution of India. Thus, it is left open to the writ petitioner to submit his objections/explanations and establish his innocence before the competent authorities concerned.

8. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

9. Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

10. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out

or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

11. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

12. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

13. The present writ petition is filed mainly relying on the merits of the Charges, which deserves no consideration by this Court. All such merits objections/explanations and documents are to be established before the competent authorities, while undertaking the process of disciplinary proceedings. This being the principles to be followed, it is left open to the writ petitioner to participate in the departmental disciplinary proceedings and establish his innocence or otherwise by availing the opportunities to be provided by the competent authorities. It is needless to state that the writ petitioner has already attained the age of Superannuation. Therefore, the respondents are bound to proceed with the enquiry and conclude the same as expeditiously as possible and without causing any undue delay. Long pendency of disciplinary proceedings would cause prejudice to the employees also. Keeping in mind, the competent authorities have to proceed with the enquiry and conclude the same.

14. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

kak/kmm

To

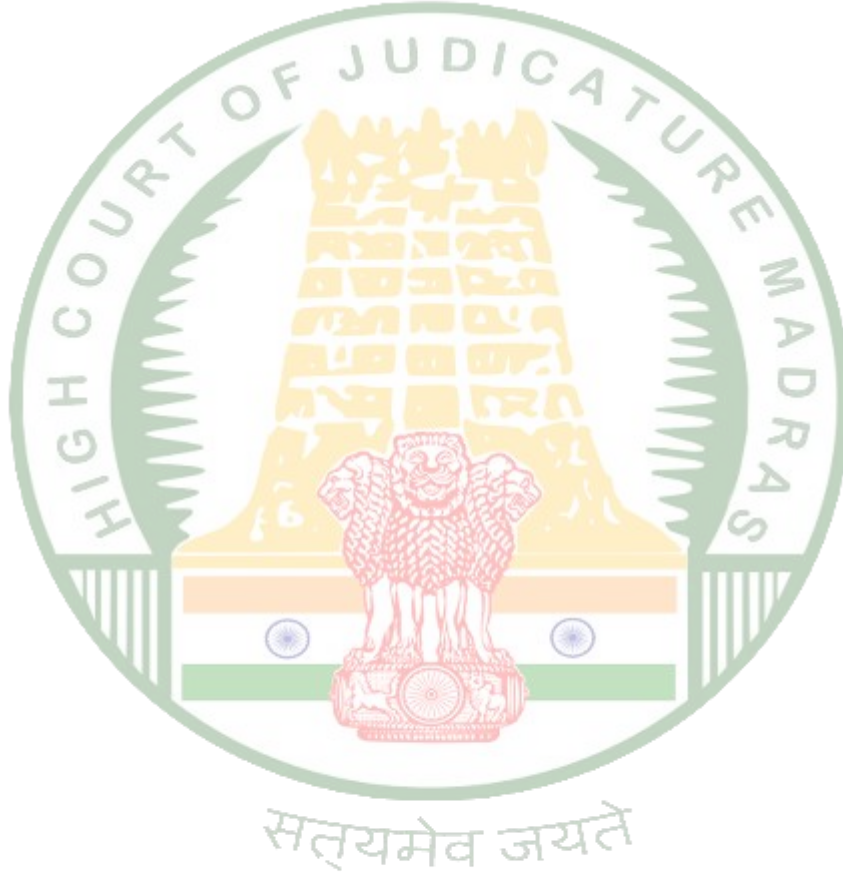
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+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No.11130

W.P.No.3141 of 2018

CS/04/04/2019



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