



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.S. SUNDAR**

W.P. (MD) .No.16432 of 2013

and

M.P. (MD) .No.2 of 2013

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P.Vetramuthu
Commercial Inspector
Office of the Assistant Electrical
Engineer (Distribution)
Kadamalaikundu Office
Theni District.

.. Petitioner

Vs.

- 1.The Chairman
Tamil Nadu Electricity Generation & Distribution Corporation,
10th Floor, N.P.K.R.R.Maligai,
No.144, Anna Salai,
Chennai 600 002.
 - 2.The Chief Engineer (Personnel)
Tamil Nadu Electricity Generation & Distribution Corporation,
Chennai.
 - 3.The Superintending Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
Theni, Theni District.
 - 4.The Executive Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
Periyakulam, Theni District.
 - 5.The Assistant Executive Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
Aundipatty, Theni District.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records relating to the impugned order of the 2nd respondent in Board Standing Order (Perm) Chairman-cum-Managing Director No.58, dated 23.05.2013 signed by the 2nd respondent received on 17.07.2013 confirming the impugned order of the 3rd respondent in Ref. Ku. No.757-08852/MePo/Theni/VuNiA/NiPi3/Vu.3/Ko.Marai/01, dated 09.08.2001 and the impugned order of punishment passed by the fourth respondent in Ref.Ku.Aanai.No.Nir/Vuthavi.1/Ko. Thani/2001-1187 dated 16.06.2001 and quash the same.



For Petitioner : Mr.K.Navaneetharaja
For Respondents : Mr.S.Dhayalan

ORDER

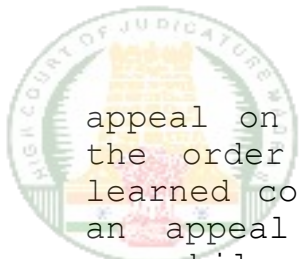
This writ petition is directed against the order of the 2nd respondent in Board Standing Order (Perm) Vide Ref. No.58, dated 23.05.2013 received on 17.07.2013 confirming the impugned order of the third respondent in Ref. Ku. No.757-08852/MePo/Theni/VuNiA/NiPi3/Vu.3/Ko.Marai/01, dated 09.08.2001 which in turn confirming order of punishment passed by the fourth respondent in Ref.Ku.Aanai.No.Nir/Vuthavi.1/Ko.Thani/2001-1187 dated 16.06.2001.

2.The brief facts that are necessary for the disposal of this writ petition are as follows:

The petitioner was appointed as helper in Tamilnadu Electricity Board on 27.11.1987 and his service was regularized from the date of appointment. The petitioner is now put in 32 years of service. During the year 2000, the petitioner was arrested along with four other persons who are staying in the same lodge in connection with the offences punishable under Sections 465, 468, 471 r/w 420 and 511 of IPC. It is stated that the purpose of visit to Chennai by the petitioner and his stay in a lodge was only for taking treatment after getting leave from his office. It is stated that the police arrested the petitioner on suspicion in connection with a case of fraud only because he was also staying in the same lodge from which the other accused were arrested. Admittedly, the petitioner's name was not in the FIR. In the course of enquiry by the Investigating officer, the petitioner was found innocent. It is also admitted that charge sheet was filed in the criminal case against so many accused, but the petitioner's name is not found in the charge sheet and therefore the petitioner took a stand that he never involved in any criminal case and that his arrest was only by mistake.

3.Based on the newspaper report that the petitioner was also arrested in connection with the criminal offence, the petitioner was suspended from 26.02.2000 and 28.08.2000, since he was being in custody for more than 48 hours. Later a charge memo was issued against the petitioner. In the charge memo only charge alleged against the petitioner is that he was under police custody in connection with the criminal case and that the incident which was widely published in news paper had caused disrespect to the Board and hence the petitioner's conduct is liable to be punished under Section 30(XXIII) of Standing orders. Thereafter, an Enquiry Officer was appointed and the Disciplinary Authority the fourth respondent accepting the enquiry report, imposed the punishment of stoppage of increment for one year without cumulative effect excluding casual leave and other leave. The order of punishment was

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appeal on 03.08.2001 and the appeal was also dismissed confirming the order of punishment imposed by the fourth respondent. The learned counsel for the petitioner submitted further that he filed an appeal before the first respondent on 27.12.2003. In the meanwhile, the petitioner was denied promotion and he was considered for promotion only in the year 2007. The second respondent ultimately rejected the appeal on the ground of delay. Challenging the order of first respondent dismissing the appeal preferred by the petitioner, the above writ petition has been filed.

4.In the present case, the charges against the petitioner are proved. However, the explanation offered by the petitioner that he was arrested for no fault of him and that there was no material to connect him with the criminal case appears to be not correct. The petitioner states that he was staying in a lodge for taking treatment and that the police arrested him in connection with the criminal case for the sole reason that he belonged to same Theni District to which the accused belonged to. From the charge sheet filed, it is seen that the petitioner has been shown as a witness to speak to the fact of accompanying with other witnesses and to the fact of meeting the accused and witnessing the payment of Rs.45,000/- to the accused through witnesses each for getting appointment order. The witnesses who have been shown along with the petitioner belonged to Theni District and the accused belonged to North Arcot District and Vellore District. It is to be seen that the accused named in the criminal case had cheated the Army Recruiting Office and some of the innocent public by representing that they had high influence in Army Recruiting Office at Chennai to get soldier post for the aspirants in Indian Army and induced the witnesses to part with a sum of Rs.45,000/- each. It appears that the petitioner also has accompanied the witnesses. The petitioner's presence at the place of occurrence has not been explained by producing any material. On the other hand, it is revealed that the petitioner has availed leave and accompanied the witnesses in the criminal case to give money to the accused who had promised them employment in Indian Army. The petitioner's presence could convey logic only if he was acting as an agent for the accused or accompanied his friends to get employment by back-door method. In either way, the petitioner has committed misconduct and the charges are proved.

5.In the case of ***G.M.Tank Vs. State of Gujarat and others*** reported in ***(2006) 5 Supreme Court Cases 446***, the Honourable Supreme Court considered the issue where an acquittal is absolutely on merits, the delinquent should be released from the liability and criminal disciplinary proceedings, when the charge levelled against the delinquent in a departmental proceedings and the criminal proceedings are on the same set of facts, circumstances and evidence. After considering the facts of the case, the honourable Supreme Court has held as follows:



"30.The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witness were examined in the criminal case and the criminal court on the examination came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31.In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry



was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

6. From the judgment of Honourable Supreme Court, it is seen that the person who was Honourably acquitted cannot be permitted to face departmental proceedings on the same set of facts. The judgments of the Hon'ble Supreme Court referred to above has no application in the present case where the petitioner has not come forward with clean hands by giving true facts. The explanation for the petitioner's presence on the date of arrest cannot be believed. Though the petitioner is not an accused in the criminal case, his involvement as a witness would suggest that his presence was either to cheat the innocent people by joining hands with the accused or to accompany the witnesses for getting employment for his friends fraudulently. When the petitioner's explanation is not acceptable, the possible inference that can be drawn justify the findings of the authorities below. Having regard to the facts and circumstances of this case, this Court do not find any reason to interfere with the orders impugned in this Writ Petition. Accordingly, this Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

TM/SRM

To

1. The Chairman

Tamil Nadu Electricity Generation & Distribution Corporation,
10th Floor, N.P.K.R.R. Maligai,
No.144, Anna Salai,
Chennai 600 002.

2. The Chief Engineer (Personnel)

Tamil Nadu Electricity Generation & Distribution Corporation,
Chennai.

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3.The Superintending Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
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4.The Executive Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
Periyakulam, Theni District.

5.The Assistant Executive Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
Aundipatty, Theni District.

+1 CC to M/s.K.NAVANEETHARAJA, Advocate (SR-87369[F] dated
18/09/2019)

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