



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:30.04.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVANW.P(MD) No.8017 of 2016

Kamalakannan

... Petitioner

vs.

- 1.The Chairman,
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO),
NPKKR Maligai,
144, Annasalai, Chennai - 600 002.
 - 2.The Chief Engineer (Personnel)
Administrative Branch,
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO),
NPKKR Maligai,
144, Annasalai, Chennai - 600 002.
 - 3.The Superintending Engineer,
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO) (PEDC),
Pudukkottai Electricity Distribution Circle,
Pudukkottai District.
 - 4.The Executive Engineer (Operation and Maintenance),
Tamilnadu Generation and Distribution Corporation,
Pudukkottai Electricity Distribution Circle,
Pudukkottai.
- ... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the fourth respondent vide his proceedings dated 28.11.2014 made in Ku. Aa.No.1069/Se Po/E.Ka/Pudu/Ni Pi/2-1/ Ko.Nadavadi. / 14 and impugned order passed by the 3rd respondent in his proceedings No. Ku.No.01099/69/Ni P.2/Vu 3 / Ko/appeal / 2015-1, dated 13.03.2015 and quash the same as illegal and consequently direct the respondents to reimburse the deducted annual increments to the petitioner forthwith.

For Petitioner

: Mr.P.Mahendran

<https://hcservices.ecourt.gov.in/Reserve>

For Respondents

: Mr.S.M.S.Johny Basha
Standing Counsel

**ORDER**

This Writ Petition has been filed seeking to quash the orders passed by the respondents 3 and 4 and consequently direct the respondents to reimburse the deducted annual increments to the petitioner forthwith.

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2. The case of the petitioner is that he was appointed as Assistant Engineer(Shift) on 15.02.2006 in the respondent Corporation. Subsequently, he was promoted as Assistant Engineer (SS Construction) and posted at Pudukkottai Electricity Distribution Circle. While so, the fourth respondent issued a charge memo dated 18.09.2014, to which, the petitioner submitted his detailed explanation. However, the fourth respondent passed an order dated 28.11.2014 imposing a punishment of stoppage of annual increment for a period of six months, without cumulative effect. Aggrieved over the same, the petitioner filed an appeal before the third respondent, who by order dated 13.03.2015, rejected the said appeal and thereby, confirmed the order of punishment passed by the fourth respondent. Hence, the petitioner is before this Court for the aforesaid relief.

3. The learned Counsel appearing for the petitioner submitted that the third respondent, without conducting any enquiry and without providing an opportunity of personal hearing to the petitioner, imposed the punishment of stoppage of annual increment for a period of six months, without cumulative effect, against the petitioner and hence, the same is arbitrary, illegal and in violation of the principles of natural justice. The learned counsel further submitted that on the basis of the complaint lodged by one Manimegam, the charge memo was issued to the petitioner as well as his co-employees containing the same set of charges, however, the petitioner and another alone were inflicted with the punishment of stoppage of annual increment for a period of six months, whereas the further actions in respect of other co-employees were dropped and hence, the action so taken by the fourth respondent against the petitioner is discriminatory in nature with oblique motives. The third respondent also, without perusing the materials placed before him, confirmed the order of punishment passed by the fourth respondent, by a non-speaking order. In support of the said submission, he drew the attention of this Court to the decision of the Supreme Court in **Tata Engineering & Locomotive Co., Ltd., Vs. Jitendra PD. Singh and another** reported in **(2001)10 Supreme Court Cases 530**, wherein, it was held as follows:

"2. On an enquiry being held, the enquiry authority found that the allegation of misconduct is proved and the disciplinary authority on consideration of the report of the enquiry authority and the other relevant material dismissed the first respondent from service. Thereafter, a reference to the Labour Court

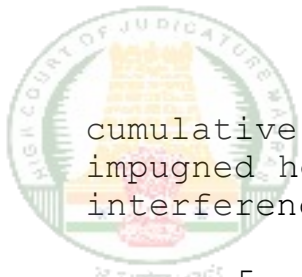


at the instance of the first respondent was made. The Labour Court though held on a preliminary question that the disciplinary enquiry conducted against the first respondent is valid, came to the conclusion after perusing the documentary and oral evidence on record that the dismissal was not justified and held that he was entitled to reinstatement with full back wages with continuity in service and other consequential benefits. A writ petition was filed in the High Court which was allowed but on the basis of certain offer made, the learned Single Judge also directed that the appellant shall pay to the first respondent salary from the date of discharge till the date of the order in a lump sum of Rs.50,000. Thereupon both the management and the workman filed two appeals. In the appeals, several questions were raised as to whether the act attributed to the first respondent would amount to misconduct at all which will entail a disciplinary enquiry at the instance of the management to end up with his dismissal; strong reliance was placed on **Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut**. Ultimately, however, the two learned Judges were agreed on one aspect of the matter that the question, whether on misconduct attributed to the workman, there should have been causal connection between misconduct and employment of the workman may not be of much significance, when such acts have taken place within the premises of the factory, should be decided in an appropriate case. What influenced the Court in deciding the matter is that:

"Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service."

Thus, the learned counsel sought to allow this writ petition by quashing the orders impugned herein.

4. The learned counsel appearing for the respondents submitted that after thorough examination of the materials made available and considering the nature of the charges framed against the petitioner, the respondents have inflicted the punishment of stoppage of annual increment for a period of six months without



cumulative effect against the petitioner and hence, the orders impugned herein are perfectly valid in law and the same warrant no interference by this Court.

5. Heard both sides and perused the materials placed before this Court.

6. Admittedly, the petitioner, while working as Assistant Engineer (O&M), Gandharvakottai, was issued with a charge memo dated 18.09.2014, on the basis of the complaint lodged by one Manimegam, a resident of Komapuram, with regard to the alleged disconnection of agricultural electricity connection given under the Self Finance Scheme and the materials issued for reconnecting the said electricity connection were not utilized. Being not satisfied with the explanation offered by the petitioner, the fourth respondent passed the order dated 28.11.2014 imposing the punishment of stoppage of annual increment for a period of six months without cumulative effect, against the petitioner. The said order was also confirmed by the third respondent, vide order dated 13.03.2015.

7. The main ground raised by the learned counsel for the petitioner, apart from the submission with regard to equality of punishment for the same set of charges in respect of all the delinquents, who involved in the same incident, is that the third respondent, without conducting any enquiry under the relevant provisions of law and without providing an opportunity of personal hearing to the petitioner, has passed the impugned order, imposing the punishment of stoppage of annual increment for a period of six months without cumulative effect, which was also confirmed by the fourth respondent by a non-speaking order and hence, the same are arbitrary, illegal and violative of the principles of natural justice.

8. This Court finds some *bona fide* in the submissions so made on the side of the petitioner. Though the learned counsel for the respondents made his submissions supporting the orders impugned herein, he was unable to show any material to the effect that the respondents, before passing the impugned orders, have conducted proper enquiry and afforded reasonable opportunity of hearing to the petitioner. Further, there is no whisper in the impugned orders about the conduct of enquiry and affording an opportunity of hearing to the petitioner. When such being the case, the orders passed by the respondents 3 and 4, which are impugned herein, are arbitrary, against the law and not adhering to the principles of natural justice. On this ground alone, the same are liable to be set aside.

9. Accordingly, the orders dated 13.03.2015 and 28.11.2014 passed by the respondents 3 and 4 respectively are set aside and

the matter is remitted back to the fourth respondent for passing order, on merits and in accordance with law, after conducting due enquiry and providing sufficient opportunity of hearing to the petitioner. While passing such an order, the fourth respondent shall also take into consideration the orders passed in respect of other co-employees of the petitioner, who involved in the same misconduct. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

10. This writ petition stands allowed on the above terms.
No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Chairman, Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO),
NPKKR Maligai, 144, Annasalai, Chennai - 600 002.
- 2.The Chief Engineer (Personnel) Administrative Branch,
Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO),
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- 3.The Superintending Engineer,
Tamilnadu Generation and Distribution, Corporation Limited (TANGEDCO) (PEDC),
Pudukkottai Electricity Distribution Circle,
Pudukkottai District.
- 4.The Executive Engineer (Operation and Maintenance),
Tamilnadu Generation and Distribution Corporation,
Pudukkottai Electricity Distribution Circle, Pudukkottai.

+ 1 CC TO Mr.P.Mahendran, ADVOCATE IN SR No.64846/19

W.P(MD) No.8017 of 2016

30.04.2019