

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11600 of 2013

M.T.Selvaraj

.. Petitioner

- Vs -

- 1.The Secretary to Govt. of Tamil Nadu,
Department of Electricity,
St.George Fort, Chennai - 600 001.
- 2.The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.
- 3.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.
- 4.The Enquiry Officer/ Chief Engineer (Distribution),
Chennai Region South,
Tamil Nadu Electricity Board,
No.802, Anna Salai,
Chennai - 600 002.
- 5.The Secretary,
Tamil Nadu Generation and Distribution
Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records in pursuant to the rejection order in (Permanent) F.B.TANGEDCO Proceedings No.32 dated 13.09.2011 issued by the fifth respondent Board rejecting the appeal dated 18.06.2011 preferred by the petitioner against the punishment order in (Permanent) CMD TANGEDCO Proceedings No.79 dated 12.05.2011 issued by the third respondent based upon the enquiry report submitted to him by the fourth respondent and the consequent recovery order issued by the fifth respondent vide Memorandum (Per.) No.18028/A16/A161/2011-6 dated 14.11.2011 and quash them and direct the respondents to refund

the amount of Rs.2,25,045/- to the petitioner with interest within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mr. A.N.Thambidurai, Spl. GP for R1
Mr.Karthik Rajan for RR-2 to 5

ORDER

The present petition has been filed seeking to quash the impugned order of recovery in a sum of Rs.2,25,045/- vide order dated 14.11.2011 and to refund the said amount to the petitioner along with interest within a stipulated time.

2. It is the case of the petitioner that while working as Superintending Engineer in Tamil Nadu Electricity Board, the 2nd respondent issued charge memo dated 25.10.2008 alleging that during the period from 06.12.1999 to 21.05.2002, while he was working as Assistant Executive Engineer/O&M/T.Nagar, he has failed to follow up cases in A.S. Nos.93/97 to 95/97 and did not file second appeal against the common judgment dated 29.11.1999 passed by the City Civil Court, Madras in those cases and hence, the chance of the Board successfully recovering the dues towards energy theft was lost and the said negligent act of the petitioner had incurred in a revenue loss to the tune of Rs.9,00,719/-.

3. It is the further case of the petitioner that pursuant to the said charge memo, the petitioner submitted his written statement of defence and the 2nd respondent appointed the 4th respondent as Enquiry Officer and the departmental enquiry was proceeded with culminating in the report being submitted by the enquiry officer holding the charges against the petitioner as proved. Furnishing the copy of the enquiry report, show cause notice was issued to the petitioner to which he submitted his further explanation and being no satisfied with the said explanation the 3rd respondent vide letter dated 12.05.2011 awarded the punishment of recovery of Rs.2,25,045/-.

4. It is the further case of the petitioner that the petitioner was permitted to retire from service on 31.05.2011. The petitioner filed appeal against the said recovery, which was also dismissed and the amount of Rs.2,25,045/- was recovered from his terminal benefits. Against the said recovery, the petitioner has preferred this writ petition.

5. It is the contention of the learned counsel for the petitioner that while the petitioner is not a party to the suit, the Executive Engineer was a party in the suit and appeal suit. It is the further submission of the learned counsel for the petitioner that only based on the report of the Superintending Engineer on 31.01.2000 that the judgment in the civil case is awaited and that intimation

will be given in future, no steps were taken. It is the further submission of the learned counsel for the petitioner that during the crucial period when the judgment was pronounced and also the date of knowledge of the said judgment to the Board, the petitioner was not in employment in the said post and, therefore, fastening liability on him is unsustainable. It is the further stand of the petitioner that the law officers, who were entrusted with the case have not appraised the Department properly and their negligence cannot be put against the petitioner. It is further submitted that no action has been taken against the persons, who were party to the suit and fixing responsibility on the petitioner, who was not in the picture at the crucial points of time, renders the whole enquiry a farce and, therefore, the recovery ordered against the petitioner is wholly unsustainable.

6. Per contra, learned standing counsel appearing for respondents 2 to 5, referring to the counter affidavit filed on behalf of the respondents submits that the judgment in the appeal suit was delivered on 29.11.1999 and had the petitioner, who had joined the post of Assistant Executive Engineer/O&M/T.Nagar on 06.12.1999 and had remained there as Assistant Executive Engineer in the same station for the next three years, acted diligently by taking effective steps to file second appeal, the loss that had been caused to the Board would have been averted. However, the inaction on the part of the petitioner has caused revenue loss to the Board. It is the further submission of the learned standing counsel appearing for respondents 2 to 5 that even during the enquiry, the petitioner was not in a position to give any proper explanation to the queries raised by the enquiry officer with regard to the action taken by him for the letter dated 31.01.2000 addressed to the Superintending Engineer/ Chennai Electricity Distribution Circle/ Central as to the judgment in the civil case and also the endorsement made by the AE/AEE on the same with regard to the future status. It is the further submission of the learned standing counsel that even during the enquiry, the petitioner accepted that it is the duty of the AE/AEE to follow up the Court case pertaining to theft of energy, which the petitioner has failed to adhere to and, therefore, the recovery imposed on the petitioner pursuant to the finding rendered in the enquiry does not call for any interference.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. A perusal of the materials available on record disclose that the judgment in the appeal suit was rendered on 29.11.99. It is the admitted case of the parties that the pronouncement of the judgment was not intimated by the law officers of the Board. However, the order passed in the appeal suit came to the knowledge of the respondents herein, even as per their affidavit in the second appeal, only in June, 2002. It is evident from the records that the petitioner, on transfer, had taken charge of the post of AEE only on 6.12.1999, which is much after the pronouncement of the judgment in the appeal suit. Equally, the petitioner stood retransferred and

relieved from the said post on 21.5.02 and the judgment pronounced in the appeal suit had come to the knowledge only in June, 2002. Therefore, it is evident that the petitioner was not aware of a case, which was pending in appeal for which judgment was pronounced before the petitioner joining the said post.

9. Further, a perusal of the array of parties in the suit as well as the appeal suit reveals that AE/AEE was not a party in the suit and appeal suit. However, the Executive Engineer and the Superintending Engineer were parties to the suit. Though it is the stand of the respondents that the AE/AEE is the person, who is the liaison between informing about the status of the case to his higher authorities and to take action for filing necessary appeal, however, the fact remains that the person, viz., the AE/AEE, the predecessor to the petitioner, who was at the helm of affairs at the relevant point of time, when the judgment was pronounced in the appeal suit, no action has been taken against him, nor against the person, who was the successor to the petitioner. However, for reasons best known, the petitioner alone was singled out, though the Executive Engineer and the Superintending Engineer, who were parties to the suit, were left to go scot-free. No explanation whatsoever is forthcoming from the respondents as to the reason for not taking action against any other person other than the petitioner. The above act of the respondents is clearly a colourable exercise of power, exercised only as against the petitioner. Further, it is to be pointed out that the Board is equipped with law officers, who brief the counsel who appear before the Court. Equally, no action has been taken against the said law officers for their negligence in duty pertaining to not bringing to the notice about the pronouncement of the judgment in the appeal suit. The whole counter of the respondent is totally silent on this aspect.

10. Though it is the contention of the learned standing counsel for the respondents that the petitioner is the person, who has to bring to the knowledge of his superiors about the judgment in the appeal suit and for taking further legal action on the same and the petitioner being the person in-charge, has acted negligently, however, such a contention cannot be accepted for the simple reason that if at all action has to be taken, it has to be taken only against the predecessor of the petitioner and not against the petitioner as the judgment was pronounced when predecessor to the petitioner was in office. Equally, only after the petitioner being relieved from the post, the pronouncement of the judgment has come to light and, therefore, no liability can be fastened on the petitioner, as the whole Department has been in the dark and singling out the petitioner as the person, who has committed a negligent act, would be too much an ask for this Court to accept.

11. For the reasons aforesaid, this Court has no hesitation to quash the impugned order of punishment as well as the impugned order of recovery passed by the respondents. Accordingly, this writ petition is allowed setting aside the impugned order of punishment and consequently, the respondents are directed to refund the amount

of Rs.2,25,045/- recovered from the petitioner, however, without interest, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

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Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar

To

- 1.The Secretary to Govt.
Department of Electricity,
Government of Tamil Nadu
St.George Fort,
Chennai - 600 001.
- 2.The Chairman,
Tamil Nadu Electricity Board,
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C.C. To the Government Pleader, SR.NO. 35466

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SSD(CO)
RRI 21/12/2020