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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.29771 of 2008

1. M.Chandran (Deceased)
 2. Vasuki
 3. Deepan
 4. Mohanpriya
- (P2 to P4 are substituted as legal heirs
of Deceased sole petitioner as per
order dated 12.12.2019 in WMP No.31548 of 2019

...Petitioners

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Erode Region, Erode.
3. The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Mettur Dam - 1, Salem District.

... Respondents

PRAYER: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to orders in Ku.Aa.No.10534/512/U.Tha.4/2008-1 dated 16.5.2008 of the second respondent and Ku.Aa.No.447/Ni.Pi.5(1)/o.Na/2005-3 dated 14.4.2006 of the third respondent, quash the same and issue consequential directions to the respondents to reinstate the petitioner in service with consequential benefits.



For Petitioner : Mr.Balakrishnan
for Mr.M.Ravi
For Respondents : Mr.P.Subramanian
Standing Counsel

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O R D E R

The petitioner was appointed as Assessor in the Tamil Nadu Electricity Board (TNEB) on 24.07.1982. While in service, charge memo dated 09.06.2005 was issued setting out four specific charges outlining the instances of alleged dereliction of duty.

2. The first charge relates to unauthorized absence between the period 01.06.2003 and 04.07.2003, the second relates to collection of certain amounts in the month of May, 2003 from the consumers of the TNEB, which were not remitted to the Treasury, the third relates to unsanctioned leave on six instances, i.e., (i) 15.5.1998 to 15.6.1998, (ii) 30.11.1998 to 02.12.1998, (iii) more than 10 days from 04.06.1999, (iv) 20.10.1999 to 4.11.1999, (v) 04.08.2000 to 31.10.2000 and (vi) 03.02.2003 to 28.02.2003 and the fourth relates to collection of certain amounts from consumers on 15.04.2004 that were not remitted into the Treasury.

3. Action was thus initiated in terms of the Standing Orders of Workmen engaged in Clerical Departments of TNEB (Standing Order). The relevant Rule is Rule 19 which deals with acts and omissions constituting misconduct and the specific Rules pressed into service are, 19(iii) relating to theft, fraud or dishonesty in connection with the Board's property or business, 19(vi) relating to habitual late attendance or habitual absence without leave or absence without leave for more than 10 consecutive days without sufficient cause, and 19(xxiv) being continuous absence without permission and without satisfactory cause for more than 10 days.

4. Enquiry was caused in relation to the charges levelled and explanations were sought for from the petitioner. On 03.04.2006, the petitioner has tendered his explanations.

5. At the outset, I may state that all charges have been admitted by the petitioner, both in relation to the absence as



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well as the non-remittance of the amounts collected from the consumers and retention of the electricity cards of certain consumers unauthorisedly in his possession. The petitioner would only seek to explain the reasons that have caused him to engage in the illegal and unauthorised acts.

6. With regard to charge No.1, absence for the period 01.06.2003 to 04.07.2003, he would submit that he was ill and that family circumstances forced him to stay away from the work place. Though there is reference to a request for medical leave in reply to the charge memo, no such application or medical certificate has been placed on record.

7. In the grounds of appeal filed before the first Appellate Authority, the petitioner has sought to say that the leave sought was only Earned Leave, but again, there is no proof available in this regard and thus in light of the categorical assertion at the first instance that the leave was only for medical reasons, this argument appears to be an after thought.

8. As regards the second charge, the petitioner admits to collection of amounts from the consumers in the month of May, 2003 that were admittedly not deposited into the Treasury and handed over belatedly by him to his superiors.

9. Charge No.3 relating to unsanctioned leave has also been proved, the explanation tendered on medical grounds being unsubstantiated by any certificate in support thereof.

10. Charge No.4 relates to misappropriation of Rs.1131/- on 15.04.2004 and also stands proved. The petitioner attempts while accepting the acts of omission and commission, to turn the tables upon his authorities stating that in fact it was their bounden duty to have reviewed and keep a check on his activities and hence he should not be held at fault for the same.

11. The narration of facts as above make it clear to me that the petitioner is guilty of all charges that have been levelled against him. The first appeal was filed belatedly and the appeal had initially been dismissed on that ground. The petitioner filed a Writ Petition before this Court challenging the dismissal upon consideration of which, this Court directed



12. Hence, the impugned orders have come to be passed considering all materials available on record, the explanations tendered by the petitioner as well as the fact that no materials to substantiated the explanations, have been produced. I do not find anything untoward in the impugned order.

14. In the case of Mohd. Yunus Khan Vs. State of U.P. [(2010) 10 SCC 539] the Hon'ble Supreme Court, at para 34, notes that if a disciplinary authority wants to consider the past conduct of the employee in imposing punishment, the delinquent is entitled to notice thereof and the charge-sheet must contain a reference to, or information of the same, at the stage of show cause notice prior to such imposition.

16. My attention is drawn to a request made for examination of some of the petitioner's colleagues to establish his case in regard to two of the charges relating to collection of funds and retention of electricity cards from the consumers. Though there is a reference made to this request in the grounds of appeal, this again appears to be an after thought, as the request for examination does not figure in the reply to the enquiry submitted at the first instance.



17. Learned counsel for the petitioner would also submit that the imposition of punishment of dismissal from service is not commensurate with the offence that had been committed. The proven instances of dereliction of duty speak for themselves. That apart, the question of sufficiency of punishment or otherwise concerns the exercise of discretion by the authority concerned, who in this case has taken an overall view of the service of the petitioner to come to the view that he has. I find no reason to interfere on this aspect as well.

18. This Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-LA)

// True Copy //

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Erode Region, Erode-9.
3. The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Mettur Dam - 1, Salem District.

+1CC to Mr.P.Subramanian, Advocate, SR.No. 47776

W.P.No.29771 of 2008

PM(CO)
B.VC (02/11/2021)