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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.29837 of 2008 & 15842 of 2018
and W.M.P. Nos.18842 & 18843 of 2018

W.Jayaseelan

...Petitioner in both WPs.

Vs

The Chief Engineer,
Chennai Region North,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002

...Respondent in W.P. No.29837 of 2008

1.The Chairman,
Tamil Nadu Electricity Board, (TANGEDCO)
#800, Anna Salai, Chennai -02.

2.The Chief Engineer,
Distribution, Tamil Nadu Electricity Board,
Chennai Region/North,
#802, Anna Salai, Chennai -02

...Respondent in W.P. No.29837 of 2008

PRAYER in W.P. No.29837 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records connection with the Charge Memo No.009008/457/Adm.O / B.Sec /B.2/2008, dated 30.10.2008 issued by the respondent and quash the same and consequently direct the respondent to defer the Departmental Proceedings based on the above said Charge Memo, till the disposal of the Criminal Case in C.C.No.13 of 2008 on the file of Learned IV Addl. Sessions Judge, Chennai.

PRAYER in W.P. No.15842 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in connection with the impugned suspension order issued by the 2nd respondent in Memo No.014873/564/Adm.O/B.Sec/B.2.2007 dated 12.11.2007 and quash



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the same and further direct the respondent to reinstate the petitioner with all consequential service and monetary benefits.

For Petitioner : Mr.G.Elanchezhiyan
in W.P. No.29837 of 2008
Mr.S.Sivakumar,
in W.P. No.15842 of 2018

For Respondents : Mr.P.Subramanian,
Standing Counsel in both WPs.

C O M M O N O R D E R

The petitioner in both the writ petitions is one and the same. The petitioner was an Assistant Executive Engineer (Electrical) with the Tamil Nadu Electricity Board (TNEB), who had been placed under suspension on 12.11.2007 for various charges in connection with alleged misconduct/misbehavior in taking a bribe from one S.Ranganathan for providing him with an electrical service connection (Crime no.8 of 2007).

2. While suspended, he had received a charge memo in terms of Regulation 8 (b) of the Tamil Nadu Electricity Board Employees Discipline and Appeal Regulations (Regulations) calling upon to respond to the charges and furnish an explanation. The writ petition filed in the year 2008 challenges the aforesaid charge memo bearing No.009008/457/Adm.O/B.Sec/B.2/2008 dated 30.10.2008.

3. The Writ Petition was admitted on 17.12.2008 and a counter has also been filed by the respondent on 20.10.2009. An interim stay had been obtained by the petitioner on 17.12.2008 made absolute on 31.03.2010. Pending this writ petition, the petitioner had filed a subsequent writ petition in the year 2018, challenging his suspension and relying upon the Judgment of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary V. Union of India (2015 (7) SCC 291).

4. In the affidavit filed in support of W.P. No.15842 of 2018, the petitioner has categorically averred that after he entered into service as Assistant Engineer in the TNEB on 10.12.1990, he was promoted as Assistant Executive Engineer in the year 2005, and his service of 17 years was 'meritorious' and 'unblemished'.

5. He refers to the incident of being implicated in a Criminal Case in Crime No.8 of 2007 under Section 7 of the Prevention of Corruption Act, 1988 following the complaint filed by the said S.Ranganathan, pursuant to which, the petitioner was



arrested on 09.11.2007 and remanded to judicial custody, and thereafter suspended. However, he makes a positively false statement that his service was meritorious and unblemished, notwithstanding that he had been issued a charge memo as early as in 2008, challenging which W.P. No.29837 of 2008 had been filed and interim stay obtained on 17.12.2008. There is no disclosure made of the pending charge memo, 2008 writ petition or the interim protection obtained.

6. Based on the incomplete and false averments contained in the writ affidavit, W.P. No.15842 of 2018 came to be allowed on 04.01.2019 applying the judgment of the Supreme Court in the case of Ajay Kumar Choudhary (Supra). On account of the prolonged suspension, the petitioner was reinstated in service and directed to be posted in a non-sensitive post. The aforesaid order has been given effect to and the petitioner is presently in service.

7. When the 2008 writ petition had come up before me for final hearing, noticing the subsequent events, I had, on 24.08.2021, passed the following order.

'The petitioner has filed this Writ Petition (W.P.No.29837 of 2008) challenging charge memo dated 30.10.2008 issued by the sole respondent/the Chief Engineer, Tamil Nadu Electricity Board (TNEB). The petitioner has obtained an order of interim stay on 17.12.2008.

2. The petitioner had entered service as Assistant Engineer in TNEB on 10.01.1990, promoted to the post of Assistant Executive Engineer in 2005. A criminal case in Crime No.8 of 2007 was filed, consequent upon which, he was remanded to judicial custody on 09.11.2007. He was also placed under suspension by order dated 12.11.2007.

3. The prolonged suspension came to be challenged by the petitioner in W.P.No.15842 of 2018 relying upon the judgments of the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary V. Union of India ((2015) 7 SCC 291 and State of Tamil Nadu V.Pramod Kumar IPS (Civil Appeal No.8427- 8428 of 2018 dated 21.08.2018).

4. The Hon'ble Supreme Court has held therein that currency of suspension should not extend beyond three months, within which time a charge sheet must be served upon the petitioner. The Court went on to state that a reasoned order must be passed from time to time by the



authorities justifying the extension of suspension, if any.

5. The affidavit filed in support of W.P.No.15842 of 2018 contains not a whisper about the filing or pendency of W.P.No.29837 of 2008. In fact, in the affidavit there is an averment at paragraph 2 that..... 'the petitioner's service have been meritorious and (he has) rendered 17 years of unblemished service of records'.

6. The grounds on which the order of suspension has been challenged is that no charge sheet has been served upon the petitioner, whereas, the charge sheet has not only been served, but has been challenged in the year 2008 in the present Writ Petition and stay of operation of the same has been obtained by the petitioner on 17.12.2008.

7. There has been rank abuse of process of this Court by the petitioner and material information has been suppressed in the Writ Petition filed in the year 2018. On the basis of the incomplete and erroneous affidavit, an order has been obtained on 04.01.2019, wherein a learned single Judge has, following the ratio of the above two judgments of the Hon'ble Supreme Court, directed revocation of suspension and re-instatement of the petitioner to a non-sensitive post within a period of eight weeks from the date of receipt of that order. The order has also been complied with.

8. In such circumstances, it is imperative that the order passed on 04.01.2019 in W.P.No.15842 of 2018 is recalled. Since the said Writ Petition is disposed, it has necessarily to be re-posted for the purpose of recalling the order passed. Hence, list W.P.No.15842 of 2018 along with this Writ Petition on 31.08.2021 after obtaining orders from the Hon'ble the Chief Justice.'

8. The matter was placed before the Hon'ble the Chief Justice and listed before this Court as specially ordered. After hearing all counsel, this common order is passed.

9. The petitioner has filed affidavit dated 28.09.2021, wherein he states that since a disclosure was made of the criminal case, he did not see the necessity for disclosing the charge memo. There is no merit in this submission since the charge memo impugned in the 2008 writ petition is specific to disciplinary proceedings and the two proceedings are separate and different. It is a material fact that ought to have been



placed before the Court for proper and wholistic consideration of the prayer for reinstatement. The petitioner has submitted that there was no malafide intention to suppress facts and has tendered an unconditional apology.

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10. I am not inclined to brush aside the matter as a simple error, as I am not convinced that the same was entirely innocent. It was the bounden responsibility of the petitioner to have come to court with clean hands and make a full and true disclosure of all facts that might have weighed with the Court in considering the prayer for reinstatement.

11. In the case of Ajay Kumar Choudhary, the original suspension had been in contemplation of a departmental inquiry which could not be commenced because of a directive of the Central Vigilance Commission prohibiting its commencement as the matter was under the investigation of the CBI. In the present case, the deferment of the departmental enquiry was by virtue of an interim order obtained in the 2008 writ petition at the instance of the petitioner.

12. Post admission and grant of interim orders, the 2008 writ petition had come up for hearing on 31.03.2010, 12.03.2019, 03.08.2021, 12.08.2021, 19.08.2021 and on all occasions stood adjourned at the instance of the petitioner. The attempt of the petitioner appears clearly to reap the benefit of the interim protection obtained as against the charge memo while continuing in service in the meanwhile. This, in my view, constitutes abuse of process of court and the petitioner must be mulcted with the consequences.

13. Since the petitioner has been reinstated to serve in a non-sensitive post after a hiatus of 10 years, I do not propose to disturb his service, but put him to terms and impose costs of a sum of Rs.50,000/- to be paid to the Blue Cross of India, 1 Eldams Road, Chennai 600018 within a period of four (4) weeks from today. Order passed in W.P.No.15842 of 2018 is reiterated.

14. The impugned charge memo is challenged on the ground that the criminal proceedings were on-going at that juncture and the disciplinary proceedings must thus, await completion of the same. This contention is liable to be rejected outright in view of the settled position that disciplinary and criminal proceedings are different and distinct and may proceed concurrently, and independent of each other. (See judgments of the Hon'ble Supreme Court in the cases of G.M.Tank Vs. State of Gujarat and others ((2006) 5 SCC 446) and Noida Entrepreneurs Association V. Noida and others (2007 (3) CTC 211) referred to in an order passed by the Division Bench of this Court in W.A. No.1114 of 2017 dated 12.09.2017)



15. I am told that the criminal proceedings are well underway and at the stage of final arguments. Let the criminal proceedings be completed expeditiously, in any event, within a period of two (2) months from today. Proceedings under impugned charge memo will continue forthwith and be concluded, also within a period of two (2) months from today.

16. The stay granted on 17.12.2008 and made absolute on 31.03.2010 is vacated and W.P.No.29837 of 2008 is dismissed. Connected Miscellaneous Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkp

To

- 1.The Chief Engineer,
Chennai Region North,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Chairman,
Tamil Nadu Electricity Board, (TANGEDCO)
#800, Anna Salai, Chennai -02.
- 3.The Chief Engineer,
Distribution, Tamil Nadu Electricity Board,
Chennai Region/North,
#802, Anna Salai, Chennai -02.
- 4.The Blue Cross of India,
1, Eldams Road,
Chennai-18.

+1cc to M/s.S.Sivakumar, Advocate Sr No.55609
+1cc to M/s.G.Elanchezhian, Advocate Sr No.55693
+1cc to M/s.P.Subramanian, Advocate Sr No.55725

W.P. Nos.29837 of 2008 & 15842 of 2018
and W.M.P. Nos.18842 & 18843 of 2018

RR (CO)
PR (22/11/2021)