



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26715 of 2009

1 P.A.MURUGAPPAN
S/O.LATE ANGAPPA CHETTIAR,
DOOR NO.82 GANGA ILLAM,
LAKSHMI NAGAR, THINDAL (POST),
ERODE- 12.PETITIONER

Vs.

1 TAMIL NADU WATER SUPPLY AND DRAINAGE BOARD
REPRESENTED BY ITS MANAGING DIRECTOR,
31 KAMARAJAR SALAI, CHEPAUK, CHENNAI-5.

2. MANAGING DIRECTOR,
TAMIL NADU WATER SUPPLY AND DRAINAGE BOARD
31 KAMARAJAR SALAI CHEPAUK CHENNAI-5.RESPONDENTS

Prayer :Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in B.P.Ms.No.119 TWAD.Estt. (DP) Wing dated 18-08-2009 passed by The Tamil Nadu Water Supply and Drainage Board rep. by its Managing Director 31 Kamarajar Salai Chepauk Chennai-5 the first respondent herein by confirming the order passed by the Managing Director, Tamil Nadu Water Supply and Drainage Board, 31 Kamarajar Salai, Chepauk, Chennai-5 the 1st respondent herein in Proc.No.2711/Estt(DP)/A4/2007 dated 26.09.2008 and quash the above mentioned orders passed by the respondents and direct the respondents to pay the Earned Leave and Unearned Leave Salary at the credit of the petitioner Leave Accounts at the time of retirement as per Pension rules along with interest.

For Petitioner : Mr.D.Kanagasundaram

For Respondents : Ms.S.Shankila Bhanu for
TWAD Board

O R D E R

The petitioner while working as Accounts officer, charges have been framed by the respondent under Regulation 10(a) (i) of TWAD Board Employees (Discipline and Appeal) Regulation 1972 for



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the irregularities committed in Kattur CWSS and Kovilkaradu CWSS of Maintenance Division, Erode. According to the respondent, the petitioner misappropriated Board's fund and therefore, following charges have been framed against the petitioner.

Charge No.1:that he has failed to verify the bills received without the required certificate such as PDI Certificate, Guarantee Certificate, Post Installation Certificate, Performance Certificate, and other certificates as specified in the Agreement and initiated the pass order entries made by the Junior Assistant thereby committed misconduct as per Regulation 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.2:that he has failed to point out the lapses in the bills to the higher officers by office note and thereby committed misconduct as per Regulation 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.3:that he has failed to put up office note to the E.E. Pointing out that the amount kept idle for the period from 17.4.2006 to 22.12.2006 has to be remitted to the Board which is a misconduct as per Regulation 6 (x) of TWAD board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.4:that he has failed to maintain high standard of integrity and devotion to duty as expected from an officer of his rank and thereby violated Regulation 3 of TWAD Board officers' and Servants Regulations, 1972.

Enquiry officer was appointed and the petitioner has submitted explanation to the enquiry officer. According to the petitioner, enquiry officer has submitted a report by holding that charges 1, 2 and 4 were not proved and charge No.4 stands proved. Based on the said findings of the enquiry officer, the second respondent passed the impugned order by imposing punishment of penalty of Rs.2500/- and the suspension period be treated as leave period. Challenging the said order, the petitioner has preferred an appeal before the Appellate Authority viz., the first respondent herein. The first respondent rejected the appeal and passed the impugned order by confirming the order passed by the original authority.

2. The main contention raised by the learned counsel appearing for the petitioner is that the order passed by the Appellate Authority is liable to be set aside on the short ground that the very same Officer viz., Mr.Swaran Singh, I.A.S.



who passed the order of punishment as original authority also passed the impugned order acting as Appellate Authority. In support of his contention, the petitioner also relied on the unreported judgment of this court rendered in J.SAMUEL THANGARAJ VS. THE MANAGING DIRECTOR, T.N.W.S. & DRAINAGE BOARD, CHENNAI-5 [W.P.No.12278 of 2001 dated 10.09.2009]

3.The learned Standing counsel appearing for the respondent strongly objected by stating that even authority who passed the impugned order acting as Appellate Authority cannot be ground to interfere with the order passed by the respondent. According to the learned Sanding counsel appearing for the respondents, considering the nature of charges, the punishment awarded by the respondent is only a minor punishment. Therefore, no warrant required to interfere with the order passed by the respondent.

4. Heard the rival submission of the parties and perused the materials available on record.

5.The writ petition was admitted in the year 2009, however, the respondents have not filed counter affidavit for more than 12 years after the case has been adjourned several occasions, today posted for final disposal.

6. The only ground raised by the counsel appearing for the petitioner is that the very same Officer viz., Mr.Swaran Singh, I.A.S. who passed the order of punishment as original authority also acted as Appellate Authority and passed the impugned order and therefore, the impugned order is liable to be set aside on the sole ground.

7.This Court while considering the identical issue in a judgment in J.SAMUEL THANGARAJ case cited supra, has held as under;

"6..... Since the petitioner suffered punishment of stoppage of increment for 2 years with cumulative effect at the hands of the Disciplinary Authority, the same was challenged by way of appeal before the 2nd respondent. When the Appellate Authority head the appeal, as rightly contended by the learned counsel appearing for the petitioner, the Managing Director, who was the person who imposed the punishment of stoppage of increment for two years with cumulative effect, should not have participated as one of the members of the Board in the appeal proceedings. But, unfortunately, the Board while hearing the appeal of the petitioner, has allowed the original authority, namely,



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Managing Director, who has passed the impugned order to participate as a member of the Board. The entire appeal proceedings were issued by the Managing Director, who was the Original Authority and, therefore, the order passed by the Appellate Authority, is not only bad in law, but also is vitiated by the participation of the Original Authority. Therefore, this point has also not been answered by the respondents either in their counter or in their argument, which also further strengthens the stand of the petitioner. Further, the argument of the petitioner that the Managing Director also has signed in the order passed by the Appellate Authority, also clearly proves the fact that the impugned order passed by the Appellate Authority, is bad in law and is without jurisdiction."

8. Coming to the instant case, on a perusal of the order passed by the second respondent, viz., Mr. Swaran Singh, I.A.S. While acted as Managing Director of TWAD Board, and passed impugned punishment order, also acted as Appellate Authority viz., Chairman and Managing Director and confirmed his own order of punishment imposed by him for the proven charges while he was a Managing Director of TWAD board, by rejecting the appeal preferred by the petitioner. Therefore, the entire appeal proceedings are vitiated by participation of Original Authority in the Appeal proceedings.

9. In the light of decision cited supra and considering the facts of the case, this Court safely come to the conclusion that the impugned order passed by the Appellate Authority is liable to be set aside and remitted to the first respondent to consider afresh and pass orders on its own merit as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of copy of the order.

10. In the result, the writ petition stands allowed with the above directions. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. THE MANAGING DIRECTOR,
TAMIL NADU WATER SUPPLY AND DRAINAGE BOARD
31 KAMARAJAR SALAI, CHEPAUK, CHENNAI-5.

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+1cc to Mr.Kanagasundaram, Advocate, S.R.No.63572

W.P.No.26715 of 2009

MG (CO)
RGA (28/12/2021)