

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 32586 of 2005

K.Muthu

... Petitioner

-vs-

1. The Chairman,
Tamil Nadu Electricity Board,
Madras - 2.
2. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
Madras - 2.
3. The Superintending Engineer,
Protection and Communication
Tamil Nadu Electricity Board,
Madras - 2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the first respondent made (Per.) B.P.(Chairman) No.161 Administrative Branch dated 18.07.2005 quash the same and direct the respondents to reinstate the petitioner with all attendant benefits.

For Petitioner : Mr.V.Ramaniah
for Mr.S.Elamurugan

For Respondents : Mr.Karthik Rajan
Standing counsel for TNEB

O R D E R

The prayer sought for in the Writ Petition is for a Writ of Certiorarified Mandamus calling for the records of the first respondent relates to the impugned order made in B.P. (Chairman) No.161 Administrative Branch dated 18.07.2005 and quash the same and direct the respondents to reinstate the petitioner with all attendant benefits.

2. The petitioner was working as an Assistant Engineer at the respondents organization, while so, a disciplinary

proceeding was initiated sometime in the year 1983 and 1984, pursuant to which, an enquiry was conducted affording all opportunity to the petitioner and ultimately, by order dated 22.06.1985, the second respondent having accepted the Enquiry Officer's report that the charges framed against the petitioner since have been proved, inflicting the punishment of dismissal from service.

3. As against the dismissal of service, the petitioner already approached this Court by filing Writ Petition in W.P. No. 14363 of 1992, in that Writ Petition, some remand order was passed, pursuant to which, the matter has been examined by the Board in its 652nd meeting held on 19.02.1993 and rejected the plea made by the petitioner.

4. Subsequently, the petitioner challenging the said rejection, has filed once again the Writ Petition in W.P. No. 29374 of 2004, where, this Court has passed an order, directing the respondents Board to consider the representation of the petitioner dated 12.02.1995 and 05.01.2000.

5. Pursuant to the said order passed by this Court in second round of litigation as stated supra, the Board Chairman of the respondent Board having considered the representation of the petitioner was inclined to reject the same and pursuant to which, an order has been passed communicating the said decision by the second respondent, in his order dated 18.07.2005, which is the order impugned herein.

6. Assailing the said impugned order, Mr.V.Ramaniah, learned counsel appearing for the petitioner has raised the following two grounds. The first ground according to him is that, the second respondent, who passed the order originally i.e., original order of punishment dated 22.06.1985, is not the Competent Authority to inflict the punishment, as the third respondent is the Disciplinary Authority in respect of the petitioner. Therefore the original order of dismissal itself is bad in law.

7. Secondly, the learned counsel raised a ground that, assuming that, the charge memo against the petitioner was proved, for such proven charge, the punishment of removal of service, as has been inflicted on the petitioner, is obnoxiously disproportionate. Therefore, on these two grounds, he sought for interference of this Court against the impugned order.

8. On the contra, Mr.Karthik Rajan, learned Standing counsel appearing for the respondents Board relying upon the Tamil Nadu Electricity Board Employees' Conduct Regulations as well as the Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations, would submit that, the charge framed against the petitioner is in a serious nature, because, the petitioner had been unauthorizedly absence for more than six

months. Though it is an admitted fact and based on such admitted fact, punishment could have been imposed on the petitioner and enquiry if any, is nothing but an empty formality, the respondent organization still chosen not to violate the established procedure under law and accordingly, disciplinary proceedings was initiated and definite charges were framed against the petitioner. The charge framed to that effect dated 12.06.1984 was issued against him, pursuant to which, the Enquiry Officer was appointed, before whom, though an opportunity was given, the petitioner has not chosen to appear. Therefore, having no other option, the enquiry Officer having completed the enquiry submitted his report.

9. Since the said charge of unauthorized absence for more than six months having been proved, for such proven charges, even though the Disciplinary Authority is the third respondent, since it was initiated by the second respondent i.e., Chief Engineer (Personnel) who is the higher authority than the third respondent, who inflicted the punishment, imposing a punishment of removal of service.

10. As against the said impugned order, the litigation have already been persuaded by the petitioner and ultimately, by last order as referred to above, this Court has only directed the respondents to consider the representation given by the petitioner dated 12.02.1995 and 05.01.2000 and the said representation, pursuant to the order of this Court, was considered and the same was rejected by citing the following reasons:

"6. The points raised in the representations dated 12.02.1995 and 05.01.2000 have been examined thoroughly with connected records by the Chairman / Tamil Nadu Electricity Board. Since the final order of dismissal and rejection of subsequent Review Petition have been issued by the Highest Forum of Tamil Nadu Electricity Board (i.e.,) Full Board after thorough examination and no additional worthy points are putforth in the representation dated 12.02.1995 and 05.01.2000 for reconsideration. The Chairman / Tamil Nadu Electricity Board has decided to reject the representation.

7. Accordingly, it is herewith ordered that the representations dated 12.02.1995 and 05.01.2000 are rejected."

11. Therefore, for such a major violation of code of conduct or Conduct Regulation of the Board, the petitioner is liable to be inflicted the major punishment of removal of service and therefore, the quantum of the said punishment cannot be said to be a disproportionate one, for which, nothing has been substantiated by the petitioner.

12. The learned Standing counsel would further submit that, insofar as the want of jurisdiction is concerned, the learned Standing counsel relied upon the decision of the respondents Board, wherein, under Rule 6, i.e., Competent and Appellate Authorities are concerned, various authorities have been named as Disciplinary as well as Appellate Authorities and in this context, since the petitioner comes under Class-II(d) and he was the Assistant Engineer, at that time, the penalties in items (a) to (e) in Column 2 against Class-I employees under 1(A) above, the Disciplinary Authority is an Executive Engineer and the Appellate Authority is the Superintending Engineer. Like that, in respect of penalties in items (f) to (j) in Column 2 against Class-I employees under 1 (A) above, the Disciplinary Authority is the Superintending Engineer and the Appellate Authority is the Chief Engineer.

13. By relying upon these regulations, the learned Standing counsel would submit that, since it was initiated by the Chief Engineer, who happened to be Appellate Authority, insofar as the petitioner is concerned, he only passed the order of punishment, therefore it cannot be said to be a case, where an authority lacking jurisdiction inflicted the punishment against the petitioner. According to him, it is a settled proposition that, if a Higher Authority than the Disciplinary Authority initiated the disciplinary proceedings and ultimately, if it is ended in a punishment, where the penalties are imposed including the major penalties of dismissal of service by some authorities who happened to be Appellate Authority or the Higher Authority than the Disciplinary Authority, that would not ipso facto render the order of inflicting the punishment unlawful or without jurisdiction.

14. Therefore, the learned Standing counsel appearing for the respondents submits that, the grounds raised by the petitioner side are untenable, therefore, the Writ Petition deserves to be dismissed, he contended.

15. I have considered the submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

16. As has been rightly defended and argued by the learned counsel appearing for the respondents organization, both the grounds raised by the petitioner side are untenable.

17. The reason being that, insofar as the disproportionality of the punishment is concerned, since the charge made against the petitioner is unauthorized absence for six months and more, therefore, under the Conduct Regulations Rule (3) is concerned, even if an employee, who does not come to the work spot punctually in the prescribed time and late and irregular attendance would constitute a breach of discipline, which shall be punishable under the Tamil Nadu

Electricity Board Employees' Discipline and Appeal Regulations.

18. When that being the position, here it is an admitted case that, the petitioner had been unauthorizedly absence for six months and more, therefore, definitely he could have been brought under the major punishment on violation accordingly on the said proven charge, he can be inflicted with the major punishment of removal of service.

19. So far as the jurisdiction is concerned, as rightly pointed out by the respondents counsel, though the third respondent / Superintending Engineer is the Disciplinary Authority and the second respondent / Chief Engineer is the Appellate Authority, since the very Appellate Authority i.e., second respondent himself initiated the disciplinary proceeding and inflicted the punishment against the petitioner, it cannot be said that, the second respondent does not have the jurisdiction to impose the punishment against the petitioner.

20. At the most, the petitioner can raise the ground that, the second respondent, being the Appellate Authority since has exercised the power, which supposed to have been exercised by the third respondent, being the Disciplinary Authority, the petitioner has lost one chance of appeal to be made to the second respondent, as contemplated in the relevant regulations.

21. In this case, even that ground is not available, because, the petitioner has already approached this Court twice and the order passed by the authority concerned, i.e., the second respondent inflicting the punishment, has been testified and in both the occasions, though a direction was given by this Court for reconsideration, after having reconsidered the issue only, the present impugned order has been passed by the respondents, therefore even that ground is not available to the petitioner.

22. Insofar as the competency of authorities superior to disciplinary authority, the relevant Regulation of Tamil Nadu Electricity Board Employees' Discipline and Appeal Regulations, reads thus:

"(b) Competency of authorities superior to disciplinary authority:

Where in any case a higher authority has imposed or declined to impose a penalty under this regulation, a lower authority shall have no jurisdiction to proceed under this regulation in respect of the same case.

(c) The fact that a lower authority has imposed or declined to impose a penalty in any case shall not debar a higher authority

from exercising his jurisdiction under this regulation in respect of the same case.

(d) The order of a higher authority imposing or declining to impose in any case a penalty under this regulation shall supersede any order passed by a lower authority in respect of the same case. (e) The fact that a lower authority has dropped a charge against a person as not proved shall not debar a higher authority from reviving it for reasons to be recorded in writing and taking suitable action on the charge so revived "

Therefore, the question of raising any doubt about the competency or authority or jurisdiction of the second respondent to inflict the punishment against the petitioner does not arise.

23. Since both the grounds raised by the petitioner are untenable or it does not have any substance to accept, this Court feels that, no plausible reason is available to successfully challenge the impugned order in this Writ Petition.

24. In the result, the Writ Petition fails, therefore it is dismissed. However, there shall be no order as to cost.

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

vji

To

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Madras - 2.
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Tamil Nadu Electricity Board,
Madras - 2.
3. The Superintending Engineer,
Protection and Communication
Tamil Nadu Electricity Board, Madras - 2.

+1 CC to Mr.S.Elamurugan, Advocate SR.No.1255

+1 CC to Mr.Karthik Rajan, Advocate SR.1916.

W.P. No. 32586 of 2005

LN (CO)

<https://hcservices.courts.gov.in/hcservices/>
GM (12.07.2021)