



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.7507 of 2020

and

W.M.P(MD)Nos.6978 and 6979 of 2020

K.Thiruselvam

... Petitioner

Vs

1.The Superintending Engineer,
TANGEDCO,
Sivagangai Electricity Distribution Circle,
Sivagangai District.

2.The Executive Engineer [Distribution],
TANGEDCO, Sivagangai District.

3.The Assistant Executive Engineer [Distribution]
TANGEDCO,
Kalayarkovil,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records related to the impugned proceedings of the second respondent / the Executive Engineer - Distribution, Sivagangai District, dated 16.06.2020 Memo No.488, EE/D/SVG/AAdo/Adm/A.1/F.DP Doc/2020 and his consequential proceedings dated 22.06.2020 in அ.எண்.செபொ/ப/சிவ/உநிஅ/நப1/கோ.றை/அ.எண்.525 and quash the same.

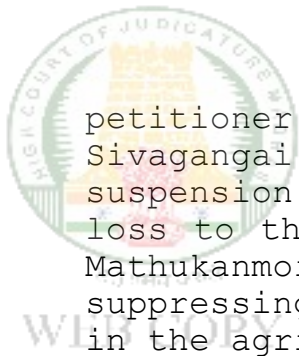
For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.T.Sakthikumaran,
Standing Counsel

ORDER

This writ petition is filed challenging the order of suspension dated 16.06.2020 and the consequential proceedings dated 22.06.2020 issued on the petitioner.

2. The learned Counsel for the petitioner submits that the



petitioner is working as Junior Engineer - Grade I in Kalayarkovil, Sivagangai District. While so, the petitioner has been placed under suspension vide impugned proceedings alleging that he has caused loss to the electricity board by replacing two HT poles leading to Mathukanmoi by obtaining permission for improvement work, suppressing the fact that they fell due to the hitting of a tractor in the agricultural field.

3.The learned Counsel for the petitioner referred to Section 9 (a) of the Tamil Nadu Electricity Board Employees Discipline and Appeal Regulations and submits that an employee shall be placed under suspension on two grounds namely, (i) an enquiry into grave charges against him is contemplated, or is pending, or (ii) and if such suspension is necessary in the public interest. However, there is no such reference in the impugned orders. Though the impugned order of suspension has been passed during the month of June, 2020 itself, so far no charge memo has been issued against the petitioner.

4.Mr.T.Sakthi Kumaran, learned Counsel for the respondents seeks time to file counter.

5.The petitioner has been placed under suspension vide impugned proceedings on the ground that he caused revenue loss to the electricity board by replacing two HD poles leading to Mathukamoi. The order of suspension and consequential proceedings were passed in the month of June, 2020, but no charge memo has been issued till date.

6.This Court while entertaining the writ petition on 10.07.2020 has passed a detailed order, which reads as follows:

"2. On a perusal of the impugned order as well as after hearing the learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents this Court feels that the very reasons cited in the impugned suspension order and the subsequent reasoning order, dated 16.06.2020 and 22.06.2020 respectively do not disclose any prima facie that any grave charge is pending against the petitioner, against which enquiry is contemplated.

3.The only charge according to the respondents is that one electricity pole fallen down because of the alleged hit by the tractor driven by local people and while rectifying the pole, the petitioner instead of compensatory amount collecting from the person who caused the damage, he has rectified it as if that it is a routine procedure or maintenance work of the TANGEDCO and thus, he allegedly caused



loss to the TANGEDCO. If at all any loss is caused that shall be only with regard to the costs of the pole. Therefore, it is not a grave charge, for which, this Court feels that the suspension is not necessary. In view of the matter, there shall be an order of interim stay for eight weeks".

7. It is seen that subsequent to the above order, the respondents have not taken any steps to file counter or to vacate the interim stay by filing vacate stay petition. Moreover, charge memo has not at all been issued so far.

8. The law relating to the authority of the respondents to keep an employee under prolonged suspension has been laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs Union of India** reported in **(2015) 7 SCC 291** and the relevant paragraph reads as follows:

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to serve any local or personal investigation against him. The Government may also prohibit him from contacting any person, or holding records and documents till the stage of his universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us".

9. From the above it is clear that the suspension order should not normally be extended beyond three months, when charge memo is not served on the delinquent officer.

In this case, the petitioner has not been served with any charge memo. Therefore, the respondents have not justified themselves in extending the petitioner's suspension beyond a period of three months and therefore, it opposed against the ratio laid down by the Hon'ble



10.In the light of the above, the impugned proceedings of the second respondent / the Executive Engineer - Distribution, Sivagangai District, dated 16.06.2020 Memo No.488, EE/D/SVG/AAdo/Adm/A.1/F.DP Doc/2020 and his consequential proceedings dated 22.06.2020 in அ.எண்.செபொ/ப/சிவ/உநிஅ/நிப1/கோ.றை/அ.எண்.525 are hereby quashed. However, it is open to the respondents to issue charge memo, if any delinquency is committed by the petitioner and proceed in accordance with law.

11.Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Superintending Engineer,
TANGEDCO,
Sivagangai Electricity Distribution Circle,
Sivagangai District.
- 2.The Executive Engineer [Distribution],
TANGEDCO, Sivagangai District.
- 3.The Assistant Executive Engineer [Distribution]
TANGEDCO, Kalayarkovil,
Sivagangai District.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-36863[F] dated 01/12/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-36873[F] dated 01/12/2021)

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RD(08.12.2021) 4P 6C