



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) .No.1798 of 2021

WEB COPY

S.Rajaji @ Rajamani

.. Appellant/Petitioner

Vs.

1.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board,
Tirunelveli Electricity Region,
Tirunelveli-627 011.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tirunelveli Electricity Distribution Circle,
Tirunelveli-627 011.

.. Respondents/Respondents

Prayer:Writ Appeal filed under Clause XV of the Letters Patent Act, praying this Court to set aside the order passed by this Court in W.P(MD)No.10147 of 2009 dated 09.02.2021.

Prayer in WP(MD) . 10147/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a WRIT OF CERTIORARI, to call for the records relating to the impugned order Ku.Aa.No.11034/325/NePe/C2/2009 dated 01-09-2009 issued by the 1st respondent and quash the same.

For Appellants : Mr.T.Lajapathiroy
For Respondents : Mr.T.Sakthikumaran
Standing Counsel

JUDGMENT

(Judgment of the Court was made by P.VELMURUGAN,J.)

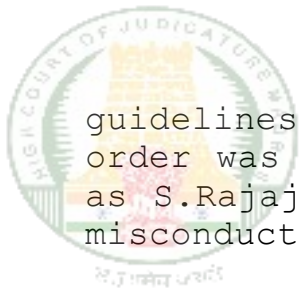
This writ appeal has been filed by the appellant against the order, dated 09.02.2021 passed in W.P(MD)No.10147 of 2009.

2.The case of the appellant is that he was engaged as contract labour in various sections under Tamil Nadu Electricity Board, in the year 1983 onwards and he is trained in installation of Poles, Extension of L.T Line and H.T Line with Transformer Structure



works. Subsequently, due to Khalid Commission, the respondents decided to regularize the services of the Contract Labour and as such, the petitioner received a call letter for certificate verification and he was appointed as Helper in the year 1998 and thereafter he was issued a charge memo for the allegation of impersonation and also gave a false information and submitted a false certificate. After completing the formalities, an Enquiry Officer was appointed and on completion of enquiry, a report was filed, in which, stating that the charges against the appellant were proved and the same was placed before the disciplinary authority, viz, the second respondent. The second respondent after serving the enquiry report and called for explanation. On receipt of such report, the appellant submitted his explanation before the disciplinary authority and not satisfying with the explanation, the disciplinary authority imposed the punishment of stoppage of increment for one year with cumulative effect. Aggrieved by the same, the appellant had filed an appeal before the first respondent. After affording an opportunity to the appellant, the first respondent/appellate authority has enhanced the punishment imposed on the appellant that demotion to the initial post of Field Helper for three years in the lowest scale of pay with cumulative effect from 15.05.2008. Aggrieved by the order of the first respondent/appellate authority, the appellant filed a writ petition before this Court. The Writ Court also dismissed the writ petition and confirmed the punishment imposed by the appellate authority. Challenging the same, the present writ appeal is filed.

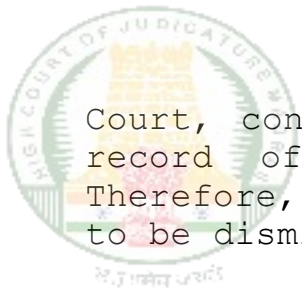
3.The learned counsel appearing for the appellant would submit that on completion of enquiry, the Enquiry Officer submitted the enquiry report before the disciplinary authority viz., the second respondent. Though the appellant has submitted his explanation, the disciplinary authority has not considered the same and imposed the punishment of stoppage of increment for one year with cumulative effect. Challenging the punishment imposed by the disciplinary authority/second respondent, the appellant has filed an appeal before the appellate authority/first respondent, in which, the appellate authority has enhanced the punishment of demotion to the initial post of Field Helper for three years in the lowest scale of pay with effect from 15.05.2008, is highly arbitrary, illegal and contrary to the procedure. The learned counsel would further submit that the appellant has not committed any offence and he has not concealed any material facts and only he received a second call letter dated 31.01.1998 issued to him to attend the interview on 04.02.1998 and after verifying his original certificates and the dual name certificate dated 24.07.1995 issued by the Tahsildar by the duly constituted Selection Committee, the appointment order was issued on 20.03.1998. The Selection Committee which was the competent authority to ascertain the veracity of the candidate as per the



guidelines issued for this purpose in January 1998 and appointment order was issued on 17.04.1998 with direction to correct his name as S.Rajaji alias S.Rajamani. Therefore, he has not committed any misconduct as contemplated under the Standing Order.

4.The learned counsel appearing for the appellant further submitted that since the disciplinary authority found that the charges levelled against the appellant were proved, the disciplinary authority imposed the punishment of stoppage of increment for one year with cumulative effect. When the appellant challenged the order of the disciplinary authority before the appellate authority, the appellate authority failed to consider the grounds raised by the appellant and enhanced the punishment of demotion to the initial post of Field Helper for three years in the lowest scale of pay with effect from 15.05.2008. Aggrieved by the said order, the appellant has filed a writ petition before this Court. The Writ Court has without considering the scope and power of the appellate authority dismissed the writ petition. Once the disciplinary authority imposed the punishment, the appellate authority can set aside or can reduce or can uphold the punishment, but cannot award a higher punishment than the punishment imposed by the disciplinary authority. More so, the appellate authority cannot give double punishment. Hence, he prayed for setting aside the order of the Writ Court.

5.The learned counsel appearing for the respondents would submit that the charges levelled against the appellant are grave in nature and he impersonated and obtained an appointment and also he made a false information and filed a document which was not given by the competent authority. Therefore, the charges levelled against the appellant were proved and the Enquiry Officer has submitted the report before the disciplinary authority. The appellant was issued a second show cause notice and not satisfying with his explanation, the disciplinary authority imposed the punishment of stoppage of increment for a period of one year with cumulative effect. The appellant approached the appellate authority/first respondent a fact finding authority, who independently has considered the matter and found that by impersonation the appellant got employment, thereby deprived the other person to get employment. The appellant was issued second show cause notice regarding enhancement of punishment proposed to be imposed after receiving further representation considered and rejected the same. The appellate authority was of the opinion that the appellant deserves to be removed from the service. However, considering the length of the service, the appellate authority imposed the punishment of demotion to the initial post of the appellant for three years in the lowest scale of pay with cumulative effect from 15.05.2008. Challenging the same, the appellant has filed a writ petition before this Court. The Writ

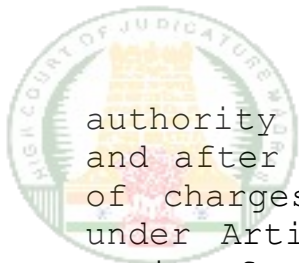


Court, considering the gravity of the misconduct and the service record of the appellant, has dismissed the writ petition. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

6. Heard Mr.T.Lajapathiroy, learned counsel appearing for the appellant and Mr.T.Sakthikumaran, learned Standing Counsel appearing for the respondents and perused the materials available on record.

7. Admittedly, the petitioner was appointed as a Helper on 20.03.1998 and subsequently, he was served with a charge memo on 30.12.2006 and on receipt of the said charge memo, Enquiry Officer was appointed. After completion of enquiry, the enquiry officer found that the charges levelled against the appellant were proved and the enquiry report was placed before the disciplinary authority/second respondent. The second respondent furnishing the copies of the enquiry report to the appellant and he was issued second show cause notice. After receiving further explanation, considering the enquiry report and further explanation given by the appellant, the disciplinary authority imposed the punishment of stoppage of increment for a period of one year, with cumulative effect. Challenging the same, the appellant filed an appeal before the appellate authority/first respondent. The first respondent, after hearing the parties and also considering the materials, though found that the appeal deserves to be dismissed, considering the length of service he enhanced the punishment imposed by the disciplinary authority into demotion to the initial post of Field Officer for three years in the lowest scale of pay, with cumulative effect from 15.05.2008. Challenging the same, the appellant has filed the writ petition. Before the Writ Court, the appellant raised two points that he has not committed any offence and he has not concealed any material facts and the selection committee and the Second Respondent themselves have accepted the dual name certificate issued by the Tahsildar and the disciplinary authority and the appellate authority had failed to note that the appellant cannot be imposed with such a larger punishment. Another point is that the appellate authority has no power to enhance the punishment. The Writ Court, considering the enquiry report and also the award of the punishment imposed by the disciplinary authority as well as the appellate authority, considering the grave nature of the misconduct, dismissed the writ petition.

8. Admittedly, there is no procedural violation and the disciplinary authority as well as the appellate authority have followed the procedure meticulously and all the opportunities have been given to the appellant and on every stage, show cause notice was issued and further explanation also received. The disciplinary



authority and the appellate authority are fact finding authority and after giving due care to the entire materials and the gravity of charges, imposed the punishment, the Writ Court cannot sit under Article 226 of the Constitution of India and re-write the entire facts. The Writ Court has to consider only if there is any procedural violation or any violation of principles of natural justice or violation of law or rules in appreciation of any evidence or materials or the punishment is shockingly disproportionate. In the absence of above, the Writ Court could not interfere with the orders of the Departmental Authorities.

9.The main point raised by the learned counsel for the appellant is that the appellate authority, who has enhanced the punishment, travelled beyond the scope and object of the charges and mere reading of the entire materials, which clearly shows that the appellant has impersonated and also concealed the material facts and therefore, the enquiry officer found that the charges levelled against the appellant were proved. The appellate authority observed that the appellant deserves to be removed from service and considering the length of service put by him, only enhanced the punishment imposed by the disciplinary authority into demotion to the initial post of the appellant for three years in the lowest scale of pay with cumulative effect from 15.05.2008. A reading of the Standing Orders in Clauses 31 & 32, this Court does not find any violation from the procedures of the disciplinary authority as well as the appellate authority and there is no prohibition to enhance the punishment by the appellate authority. As per Clause 32(iv) of the Standing Orders, the only condition is "*no punishment shall be imposed unless the workman is informed in writing of the alleged misconduct*". The said procedure was duly complied with in the departmental proceedings. Therefore, there is no violation of the Standing Orders. This Court does not find any merit in the appeal and hence, the writ appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board,
Tirunelveli Electricity Region,
Tirunelveli-627 011.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tirunelveli Electricity Distribution Circle,
Tirunelveli-627 011.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-36343[F] dated
29/11/2021)

**W.A. (MD) .No.1798 of 2021
26.11.2021**

AM(CO)
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