

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

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THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.24004 OF 2016
AND
W.M.P.NO.20525 OF 2016

A.Vimala

...Petitioner

Vs

1.Tamil Nadu Generation and Distribution Corporation Limited,
(TANGEDCO),
Rep. by its Chairman and Managing Director,
No.144, Anna Salai,
Chennai - 600 002.

2.The Secretary,
Tamil Nadu Generation and Distribution Corporation Limited,
(TANGEDCO),
No.144, Anna Salai,
Chennai - 600 002.

3.The Chief Internal Officer,
Audit Branch,
Tamil Nadu Generation and Distribution Corporation Limited,
(TANGEDCO),
NPKRR Maligai, 1st Floor, No. 144, Anna Salai,
Chennai - 600 002.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records relating to impugned Proceedings issued by the Third Respondent in Memo No. 016449/804/F.1/F.12/2016-14 dated 29.04.2016 and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.P.Subramanian

O R D E R

Heard Mr. G.Sankaran, Learned Counsel for the Petitioner and Mr. P.Subramanian, Learned Counsel appearing for the Respondents

and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Assistant Audit Officer in the Corporation of the First and Second Respondents, was sanctioned two advance increments for having passed B.Com. degree (double degree) through Annamalai University. The Third Respondent has issued show cause notice in Memo No. 016449/804/F.1/F.12/2016-16 dated 29.04.2016 to the Petitioner calling upon her to submit her explanation as to why the two advance increments sanctioned with effect from 25.05.2005 should not be recovered for not having the requisite qualification of B.Com. Degree or its equivalent as per TNEB Service Regulations, which is challenged in this Writ Petition.

3. This Court at the time of admission on 13.07.2016 had passed an order of interim stay which continues to be in force till date.

4. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Union of India -vs- Kunisetty Satyanarayana [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh [JT 1995 (8) SC 331], Special Director -vs- Mohd. Ghulam Ghouse (AIR 2004 SC 1467), Ulagappa -vs- Divisional Commissioner, Mysore [2001(10) SCC 639], State of U.P. -vs- Brahm Datt Sharma (AIR 1987 SC 943) etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-

cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Third Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

5. Learned Counsel for the Petitioner relying on the decision of the Hon'ble Supreme Court of India in State of Punjab -vs- Rafiq Masih (Whitewasher) [(2015) 4 SCC 334] contends that the recovery of excess payment has to be exempted in respect of persons who were at the verge of retirement, like the Petitioner in this case. In this context, it must be noticed here that the Government of Tamil Nadu in G.O. Ms. No. 286, Finance (Pension) Department dated 28.08.2018 after referring to the said decision has issued detailed instructions providing the manner in which any excess amount paid to Government Servants/Pensioners/Family Pensioners would have to be made and it shall be incumbent upon the concerned authorities of the Respondent to follow the principles laid down in the said Governmental Order while taking any final decision in the matter.

6. In such circumstances, this Court is inclined to pass the following order:-

- (i) the Petitioner shall submit her explanation to the show cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 31.07.2022;
- (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain her position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken

communicated under written acknowledgment; and
(iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law and no view has been expressed by the Court on the merits of the controversy involved in the matter.

In fine, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation Limited,
(TANGEDCO),
No.144, Anna Salai, Chennai - 600 002.
2. The Secretary,
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(TANGEDCO),
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3. The Chief Internal Officer,
Audit Branch,
Tamil Nadu Generation and Distribution Corporation Limited,
(TANGEDCO),
NPKRR Maligai, 1st Floor, No. 144, Anna Salai,
Chennai - 600 002.

Copy to

A.Vimala,
W/o. P.Govindarajan,
S3, Land Marvel Flats,
No.169, Eldams Road,
Alwarpet, Chennai - 600 018.

+1cc to M/s.P.Subramanian, Advocate Sr.No.44561

W.P.No.24004 of 2016

RP(CO)
RVM(13/07/2022)