



W.P.(MD) No.15839 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.15839 of 2022
and W.M.P.(MD).No.11418 of 2022

K.Thiruselvam

... Petitioner

Vs.

**1.The Executive Engineer,
Distribution,
TANGEDCO,
Sivagangai,
Sivagangai District.**

**2.The Assistant Executive Engineer,
Distribution,
TANGEDCO,
Sivagangai,
Sivagangai District.**

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, seeking to call for the records related to the impugned proceedings of the 1st respondent in கு.எண்: செ.பொ./பகிர்/சிவ/உநி.அ/நிபி/உ1/கோ.தனி/அ.எண்.414/2022 நாள் 17.06.2022 and the consequential proceedings of the 1st respondent in கு.எண்: செ.பொ./பகிர்/



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WEB CUM சிவ/உநி.அ/நிபி/உ1/கோ.தனி/அ.எண்.437/2022 நாள் 23.06.2022 and

quash the same.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

In contemplation of Departmental Enquiry, the petitioner herein was placed under suspension through the impugned order of suspension, dated 17.06.2022. The order of suspension indicates that the petitioner had conducted certain misconducts. Pursuant to the order of suspension, another order, dated 23.06.2022, has been passed giving three reasons for the suspension.

2. The learned counsel for the petitioner submitted that since the suspension was not made in contemplation of an enquiry of a “grave misconduct”, the punishment that could result therefrom would not be a major punishment and therefore, placing him under suspension is against the regulations.



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3. The learned Standing Counsel for the respondents submitted that the petitioner herein had indulged in various misconducts earlier and was punished on three occasions. In view of these earlier punishments, the order of suspension does not require interference.

4. The Tamil Nadu Electricity Board Employees Discipline and Appeal Regulations, governs the conditions of service of the petitioner herein. As per Regulation 19, a member of the Board may be placed under suspension from service, where an enquiry into “grave charges” against him is contemplated or else is pending. The impugned order of suspension does not indicate that the contemplation for the disciplinary proceedings are for charges that are grave in nature. When the service regulations specifically empower the Board to place an employee under suspension, where an enquiry into “grave charges” against him is contemplated, the order of suspension requires to spell out that an enquiry into such “grave charges” is contemplated and therefore, the employee is being kept under suspension.



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5. The Honourable Division Bench of this Court in the case of ***The Secretary to Government, Highways & Minor Ports (HL.1) Department, Secretariat, Chennai 600 009 Vs. S.R.Venkatesh***, had placed reliance upon an earlier decision of this Court in the case of ***R.Ravichandran Vs. Additional Commissioner of Police, Chennai***, reported in ***2010 CIJ 553 IPJ*** and dealt with this aspect and held that when a Government Servant commits a serious misconduct which entitles major penalties, like, dismissal, removal or compulsory retirement, etc., the disciplinary authority would be entitled to place such an employee under suspension in contemplation of the departmental enquiry. The relevant portion of the order reads as follows:

"81. For the purpose of suspension, it is sufficient that the competent authority has arrived at a prima facie conclusion that the Government servant has committed a serious misconduct, which entails major penalties, like dismissal, removal or compulsory retirement, etc., from service. Illustrative cases, where action has to be taken immediately, are persons, involving in serious acts of misdemeanor, such as, (a) offence or conduct involving moral turpitude, (b) corruption, embezzlement or misappropriation of Government money, (c) possession of disproportionate assets, (d)



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misuse of official powers for personal gain, (e) serious negligence or dereliction of duty, (f) desertion of duty and (g) refusal or deliberate failure to carry out written orders of superior officers; (h) apprehension of tampering with witnesses or documents or likelihood of causing prejudice to an inquiry, investigation or trial; (j) likelihood of subversion of discipline in office; (k) involvement of scandals, and (l) likelihood of ultimate conviction out of departmental proceedings, and in all these illustrative cases, it is the matter of necessity and public interest, involved and therefore, it which must be left to the absolute discretion of the competent authority, with whom, the power is vested to suspend and that such discretion exercised in public interest should not be interfered with lightly.”

82. When the criminality of the government servant is adjudicated before the Court of competent jurisdiction and when the Police, Vigilance and Anti- Corruption Department has launched prosecution or proposed to launch for imposing appropriate punishment under the penal laws, the appointing/disciplinary authority/government, should be allowed to exercise their discretion to place the government servant under suspension, which is a step in aid, to complete the



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investigation/trial. Courts have consistently held that even if the materials are not adequate for prosecution or even after acquittal, when the appointing/disciplinary authority/government is empowered to place the government servant under suspension, the power can be exercised on proper consideration of relevant materials, in public interest.

83. Once the objective consideration of the allegations, the material on record, warrants suspension, till the completion of enquiry or trial, in public interest, it is not for this Court to examine the nature of the allegations, the evidence and to record any finding thereon, which would hamper the progress of the departmental enquiry or investigation or trial against the government servant.

84. No doubt, the exercise of discretion, should be rational, should not be arbitrary and that there is also a legal duty cast upon the appointing/disciplinary authority/Government to apply its mind before exercising such discretionary power. However, when the government servant against whom, an enquiry into grave charges or an investigation into an offence or trial is pending and such charge/charges, involves moral turpitude, then the competent authority can



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exercise his discretionary power under Rule 17 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and place the government servant under suspension, pending enquiry into grave charges under contemplation into charges/enquiry into formulated charges/investigation/trial.

87. The appointing/disciplinary, authority /government is entitled to exercise the control and maintain the master and servant relationship. To suspend an employee, as an interim measure for anyone of the reasons stated supra, which are illustrative, is the absolute right of an employer and no employee can insist that he must be allowed to be retained in service and discharge his duties and enjoy the fruits or privileges attached to the post. While testing the correctness of the order of suspension, all that has to be seen by the Court is whether the power of the appointing/disciplinary authority, in controlling the employees, has been exercised reasonably, without any malafide and that there should not be any lack of jurisdiction. Any action taken by the appointing/disciplinary authority, in public interest to maintain a clean and honest administration, cannot be interfered with lightly. Even though the government



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servant is put to mental agony, it is only to the limited extent of restricting him from discharging his duties and enjoy other privileges attached to the post and it is only an interim measure, till he is cleared off of the imputations levelled against him. The suspension cannot be attacked on the ground that the facts stated therein are not correct. It is well settled that the High Court cannot delve into the factual details, while adjudicating the correctness of an administrative order."

6. Thus the Regulations governing the Board, as well as the decision of the Honourable Division Bench, gives the powers to the Disciplinary Authority to place an employee under suspension, if and only when an enquiry is contemplated for "grave charges of misconduct". Consequently, it requires to be observed that in cases of minor misconducts, for which, the punishments are contemplated under Regulations, such a pre-suspension pending enquiry, may not be appropriate.

7. The learned Standing Counsel for the respondents placed reliance on



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the counter affidavit and stressed upon the previous punishment/misconduct conducted by the petitioner and submitted that the order of suspension need not be interfered with. The stand taken by the respondents in placing reliance on the previous misconducts of the petitioner for the purpose of placing him under suspension, is misconceived. The past conduct of an employee, will have no axe to grind in a decision to place him under suspension in contemplation of an enquiry for some other reasons. Such reference to a past misconduct and placing an employee under suspension will be deemed to be punishing such an employee with the order of suspension, since the suspension by itself is a mode of punishment under Regulation 5(v)(viii). When that being so, such a punishment of suspension can only be done, after due departmental enquiry.

8. This apart, the decision to suspend the petitioner herein could also be treated as a mode of punishment in view of a subsequent order passed by the respondents, on 23.06.2022, wherein the respondents have indicated the reasons for placing the petitioner under suspension. On this ground also, the order of suspension against the petitioner herein, requires to be revoked.



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9. For all the foregoing reasons, the impugned proceedings of the 1st respondent in கு.எண்: செ.பொ./பகிர்/சிவ/உநி.அ/நிபி/உ1/கோ.தனி/அ.எண்.414/2022, நாள் 17.06.2022, is hereby quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, reinstating the petitioner back into services, which order shall be passed, at least within a period of one week from the date of receipt of a copy of this order.

9. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking Order

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