



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.9553 & 9554 of 2017
and W.M.P(MD)Nos.7286 & 7287 of 2017

N.Murugesan

... Petitioner in
Both Petitions

vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
No.144, Anna Salai,
Tamil Nadu Electricity Board,
Chennai – 600 002.
2. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Tamil Nadu Electricity Board,
Dindigul Electricity Distribution Circle,
Dindigul.
3. The Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Tamil Nadu Electricity Board,
Distribution South, Dindigul.



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

4. The Assistant Executive Engineer (South),
Tamil Nadu Generation and Distribution
Corporation Limited,
Tamil Nadu Electricity Board,
Operation and Maintenance, Vadamadurai,
Dindigul District.

... Respondents in
Both Petitions

PRAYER in W.P.(MD)No.9553 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, or any other appropriate writ or order or direction in the nature of writ to call for the records in pursuant to the impugned order passed by the 3rd respondent in Ku.Aa.No.Se.Po/ The/Thi.Kal/Ni.U1/Ko.Kattu.A.No.1224/2015 dated 18.11.2015 and quash the same and consequently direct the respondents to reimburse the amount of Rs.30,600/- to the petitioner with interest within a stipulated time may be fixed by this Court.

PRAYER in W.P.(MD)No.9554 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, or any other appropriate writ or order or direction in the nature of writ to call for the records in pursuant to the impugned order passed by the 3rd respondent in Ku.Aa.Se.Po/The/Tho.Nu.U1 Ko.Kattu.A.No.533/2016 dated 05.04.2016 and quash the same and consequently direct the respondents to reimburse the amount of Rs.2,19,360/- to the petitioner with interest within a stipulated time may be fixed by this Court.



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

In Both Writ Petitions

For Petitioner : M/s.M.Saravakumar

For Respondents : Mr.S.Arivalagan,
Standing Counsel

COMMON ORDER

W.P.(MD)No.9553 of 2017 has been filed for issuance of ***Writ of Certiorarified Mandamus***, to quash the impugned order passed by the 3rd respondent in Ku.Aa.No.Se.Po/The/Thi.Kal/Ni.U1/Ko.Kattu.A.No.1224/2015, dated 18.11.2015 and also sought for a consequential direction to the respondents to reimburse the amount of Rs.30,600/- to the petitioner with interest within a stipulated time may be fixed by this Court.

W.P.(MD)No.9554 of 2017 has been filed for issuance of ***Writ of Certiorarified Mandamus***, to quash the impugned order passed by the 3rd respondent in Ku.Aa.Se.Po/The/Tho.Nu.U1 Ko.Kattu.A.No.533/2016, dated 05.04.2016 and also sought for a consequential direction to the respondents to



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

reimburse the amount of Rs.2,19,360/- to the petitioner with interest within a stipulated time may be fixed by this Court.

2. The petitioner was appointed as Helper in the respondent Corporation on 27.11.1987, subsequently as Commercial Assistant in the year 1992 and thereafter, promoted as Commercial Inspector in the year 2000, further Foreman in the year 2006 and then Special Grade Foreman in the year 2016 and allowed to retire from service on superannuation on 30.04.2016. A charge memo was issued on 01.10.2012 for the incident took place in the year 2009, alleging that the petitioner has prepared the estimate bill for granting Agricultural Service Connection to the individuals and thereby, caused loss to the Electricity Board. The 4th respondent in his memo, dated 16.10.2012, cancelled the charge memo, dated 01.10.2012. Thereafter, the 4th respondent has issued another charge memo, vide his proceedings, dated 29.10.2012 for the very same set of allegations and on receipt of the charge memo, the petitioner has submitted a representation to the 4th respondent, with the request to furnish the documents relied in the charge memo, enabling the petitioner to submit his explanation, but the 4th respondent has refused to furnish the same and subsequently, appointed an Enquiry Officer. The



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

Enquiry Officer himself acted as a Prosecutor and conducted the enquiry in a biased manner and even without enquiring the beneficiaries, who were got Agricultural Service connection and without examining the Officers, who have counter signed in the estimate bill prepared by the petitioner.

3. The contention of the petitioner is that the 3rd and 4th respondents have counter signed authorities in the estimate bill prepared by the petitioner. The Enquiry officer without examining any of the independent witnesses and not permitted the petitioner to produce his witnesses and conducted enquiry within a period of two days and submitted his report. The 3rd respondent had communicated the enquiry report on 22.08.2014 and the petitioner further submitted his explanation on 22.09.2014 and requested the 3rd respondent to withdraw the entire proceedings. But, the 3rd respondent has issued punishment order, dated 08.11.2015, thereby imposed punishment of stoppage of increment without cumulative effect.

4. The further contention of the petitioner is that the respondents are very well aware that the said punishment cannot be enforced, since the petitioner



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

was on the verge of retirement. Therefore, the respondents directed the petitioner to pay the entire amount in one lump sum, otherwise the petitioner's retirement proposal cannot be submitted. Hence, the petitioner has paid the entire amount in one lump sum. In the meanwhile, the 3rd respondent has issued another order of recovery, vide proceedings, dated 05.04.2016, by stating that the beneficiaries, who have obtained Agricultural Service Connection refused to pay the differential amount and therefore, the 3rd respondent directed the petitioner to pay a sum of Rs.2,19,360/-. After the aforesaid payment, the petitioner was permitted to retire from service on 30.04.2016. Aggrieved over the same, the instant Writ Petition is filed.

5. At the time of admission, this Court has granted an interim stay, vide order, dated 25.04.2017.

6. The petitioner has preferred another writ petition in ***W.P.(MD)No. 9554 of 2017*** to quash the impugned order, therein to reimburse the deducted amount of Rs.2,19,360/- to the petitioner with interest.



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

7. Heard M/s.M.Saravakumar, learned counsel for the petitioner and Mr.S.Arivalagan, learned Standing Counsel appearing for the respondents. Perused the material documents available on records.

8. The contention of the petitioner is that the petitioner was working as Foremen from the year 2006 onwards. The alleged incident took place in the year 2009 while he was serving as Foreman. The Foremen is not an appropriate authority either to draft the estimate or to approve the estimate. The Assistant Engineer is the Filed Officer, who is entrusted with the work of field survey and spot inspection and submit a report to the Assistant Executive Engineer. The Assistant Executive Engineer is the appropriate authority to prepare the estimate, after ascertaining the number of towers / poles for granting Agricultural Service connection. However, even the Assistant Executive Engineer is not an appropriate authority for granting approval for the estimate. It is the Executive Engineer is the appropriate authority for approving the estimate for Agricultural Service connection. Therefore, the plea of the petitioner is that the Assistant Executive Engineer and the Executive Engineer are the appropriate authorities.



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

9. In the present case, the Executive Engineer has approved the estimate, thereafter only the work has been carried out. In such circumstances, if there is any mistake in the preparation of estimate, the petitioner alone cannot be made responsible.

10. The learned counsel appearing for the petitioner vehemently contended that the petitioner has not prepared the estimate at all. In such circumstances, the charge memo itself is erroneous one. He further contended that the incident took place in the year 2009, whereas, the first charge memo was issued in the year 2012 subsequently, that was cancelled and the second charge memo on the same set of allegations was issued in the same year i.e., 2012. Therefore, the said charge memo is belated one and the second charge memo is not maintainable.

11. The learned Standing counsel appearing for the respondents submitted that, because of the act of the petitioner the Board incurred huge loss to the tune of Rs. 2,19,360/-. The first charge memo was cancelled, because there



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

was some error in the charge memo, subsequently another charge memo was issued in the same year, that cannot be considered as second charge memo.

12. On considering the rival submissions, this Court is of the considered opinion that the alleged incident took place in the year 2009 and therefore, the charge memo itself is belated one. As far as the contention of the second charge memo is concerned, the respondents have not stated anything that there was some error and the first charge memo is withdrawn and second charge memo was issued. Therefore, the plea that the first charge memo was cancelled, because some mistakes have crept in cannot be accepted.

13. The next contention, the punishment that was imposed beyond the period of superannuation. Admittedly the punishment was imposed which would extend beyond the period of superannuation and the same cannot be enforced. On all these three grounds, the petitioner is in advantageous position. Therefore, the impugned orders are liable to be set aside.



W.P.(MD)Nos.9553 & 9554 of 2017

WEB COPY

14. Accordingly, the impugned orders, dated 18.11.2015 passed by the 3rd respondent in Ku.Aa.No.Se.Po/The/Thi.Kal/Ni.U1/Ko.Kattu.A.No.1224/2015, and in Ku.Aa.Se.Po/The/Tho.Nu.U1Ko.Kattu.A.No.533/2016, dated 05.04.2016 are hereby quashed. The respondents are directed to confer all the monetary and service benefits, including the terminal benefits i.e., applicable to the petitioner. The said exercise shall be implemented, within a period of eight weeks, from the date of receipt of a copy of the order.

15. With these directions, these Writ Petitions are allowed. No Costs. Consequently, connected miscellaneous petitions are also closed.

Index : Yes / No
Internet : Yes
ksa

27.10.2022



WEB COPY



W.P.(MD)Nos.9553 & 9554 of 2017

S.SRIMATHY, J

ksa

Common Order made in
W.P.(MD)Nos.9553 &
9554 of 2017

27.10.2022