



W.P.(MD).No. 3757 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.10.2022

DELIVERED ON : 16.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No. 3757 of 2016

and

W.M.P.(MD).No.3375 of 2016

V.Murugan

... Petitioner

Vs

1.The Superintending Engineer,
TANGEDCO Limited,
Madurai Electricity Distribution Circle/Metro,
Madurai – 7.

2.The Executive Engineer,
South Metro MEDC,
TANGEDCO Limited,
Madurai – 625 001.

3.The Assistant Executive Engineer,
Distribution / Kovil Sub Division,
TANGEDCO Limited,
Madurai – 625 001.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned charge memo issued by the first respondent in கு.எண்.001013/மேபொ/மமபவ/பெந/மது/நிஅ/நி.பி.2/உ4/2016 dated 11.02.2016 and the consequential disciplinary proceedings on the same date and quash the same.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.S.Arivalagan,
Standing Counsel.

ORDER

This Writ Petition is filed for Writ of Certiorari to quash the impugned charge memo dated 11.02.2016 and the consequential disciplinary proceedings.

2. The brief facts as stated in the affidavit are that the petitioner had joined as Technical Assistant on 02.07.1990 and promoted as Junior Engineer Grade-II on 18.08.1999 and Junior Engineer Grade-I on 19.05.2005 and served in TNEB for more than 20 years. In the year 2010, one Vijayalingam requested the petitioner to insulate the electric line passing close to the wall of the newly constructed house of his brother-in-law namely, Krishnamoorthy with PVC pipes.



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The petitioner directed the said Vijayalingam and Krishnamoorthy to submit a petition and to pay necessary charges in order to move the electric line away from the wall. Thereafter the said Krishnamoorthy gave a false complaint to the Vigilance and Anti Corruption Police on 21.04.2010 stating that the petitioner had demanded money to insulate electric line with PVC pipes. When the petitioner was away from office, the said Krishnamoorthy placed the money on the petitioner's office table and caused the vigilance Police to initiate criminal proceedings against the petitioner. The petitioner was under suspension from service on 21.04.2010 till date. After completion of trial, the learned Special Court for the Prevention of Corruption Act cases, Madurai acquitted the petitioner on 02.06.2015 holding that the petitioner was not guilty. The petitioner was under prolonged suspension for more than 6 years from service i.e. from 21.04.2010. The first respondent issued charge memo dated 11.02.2016, for the very same charge in respect of which the petitioner was acquitted by the Special Court. The respondents have not stated any reasons for not issuing impugned charge memo for more than 5 years. The petitioner relied on the judgments, wherein, it has been stated that the charge memo if it is issued belatedly is liable to be quashed. Based on the said judgments, the petitioner is praying to quash the impugned charge memo.



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3. The respondents submitted that the petitioner was facing criminal prosecution for accepting bribe in order to move the electric line away from the compound wall. The petitioner was caught red handed and hence immediately the petitioner was suspended from service. After completion of the criminal prosecution, the respondents have initiated domestic enquiry on the allegation of bribe charges. Since the criminal prosecution is different from domestic enquiry, the petitioner cannot claim any limitation to initiate disciplinary proceedings under service rules. The two proceedings are entirely different and the employer has every power to initiate domestic enquiry. Moreover, this is only a charge memo, the petitioner ought to face the charge memo and it cannot be challenged before the Court of law. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.I.Pinaygash, learned counsel for the petitioner and Mr.S.Arivalagan, learned Standing Counsel for the respondents and perused the records.



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5. When the Writ Petition came up for admission, this Court has granted interim stay and subsequently extended the interim order already granted until further orders. Because of the interim stay order, the respondents have not proceeded with the domestic enquiry.

6. The contention of the petitioner is that in the criminal prosecution, the Superintending Engineer had deposed before the Criminal Court, laying of PVC pipe lines is not within the purview of the work of the TANGEDCO. In other words, it is outside the work of the TANGEDCO. If it is not within the purview of the petitioner's work, then demand and acceptance will not arise. For prosecuting a person under bribe charges, the ingredients for prosecution is the work should be within the purview of the delinquent and there should be demand and acceptance of bribe to execute the official work. In the present case, the deposition of Superintending Engineer is categorically stating it is not within the purview of the work of the petitioner. Therefore, the first ingredient itself is not satisfied.

7. The next contention put forth by the petitioner is that the alleged delinquency is on 24.01.2010. The respondents have issued charge memo on



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11.02.2016. Therefore, there is a delay in issuing charge memo for more than 6 years. However, the contention of the respondents is that since it is a Vigilance and Anti Corruption case, the entire original records were transferred to the Vigilance Department. Since the documents are not available, the respondents have issued charge memo after receipt of the entire records from the Vigilance Department. The Vigilance Department has handed over the papers after the criminal prosecution is ended up in acquittal. This reasoning cannot be accepted, since the respondents have right to seek photo copies of the papers to proceed with the domestic enquiry. The respondents ought to have issued the charge memo once the petitioner is suspended from service. In the present case, the petitioner was suspended on 24.01.2010. The respondent is bound to issue charge memo within 180 days as per the service rules. The respondents ought to have issued the charge memo within 180 days and might have kept the domestic enquiry pending until the criminal prosecution is completed. Moreover, it is for this reason it is repeatedly held that the criminal proceedings are different from domestic enquiry and both can go on simultaneously. In this case, the respondents have not issued charge memo at all. The period of 180 days had lapsed. But without issuing the charge memo within 180 days, the respondents cannot claim that they have issued within 180 days and complied with the service rules. The



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respondents claims that the charge memo was issued after completion of the criminal prosecution. Even that also cannot be claimed in the present case, since the criminal prosecution was over on 02.06.2015, the charge memo issued on 11.02.2016 which is beyond 180 days.

8. Therefore, this Court is of the considered opinion that the petitioner is entitled to the relief. Hence, the impugned charge memo is quashed and this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

16.11.2022

Index : Yes / No
Internet : Yes

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S.SRIMATHY, J

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Pre-delivery Order made in
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