



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.03.2022**

CORAM:

THE HONOURABLE **MR. JUSTICE S.M. SUBRAMANIAM**

W.P. (MD) Nos. 24941 of 2019, 5222 & 15951 of 2020, 817 of 2022
and WMP (MD) No. 21520/2019, 4561, 4563/2020, 13344, 13346/2020 &
661 & 662 of 2022

P. Karuppasamy

...Petitioner in all Writ Petitions

/Vs./

1. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation Ltd (TANGEDCO)
Maharaja Nagar,
Tirunelveli District-11.

2. The Executive Engineer,
(Distribution/Urban),
Tamil Nadu Generation and
Distribution Corporation Ltd (TANGEDCO)
VM Chatram
Tirunelveli District-11

...Respondents in
W.P. (MD) Nos. 24941 of 2019,

1. The Chairman,
Tamil Nadu Electricity Board,
No. 144, Anna Salai, N.P.K.R.R. Maligai,
Chennai-2

2. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tangedco, Maharaja Nagar, Tirunelveli District -11

3. The Executive Engineer,
(Distribution/urban),
Tangedco, Vm Chatiram,
Tirunelveli District -11.

4. The Assistant Executive Engineer,
O/o. the Assistant Executive Engineer,
Tangedco (Distribution), Ervadi,
Tirunelveli District -627103

... Respondents in WP (MD). 5222 of 2020
& WP (MD). 15951 of 2020



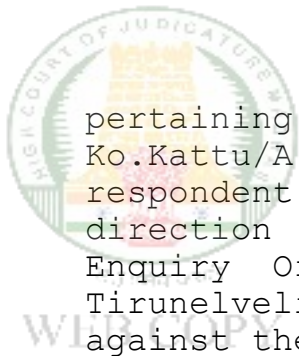
1. The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai, N.P.K.R.R. Maligai,
Chennai-2
2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board, Tangedco,
No.144 Anna Salai N.P.K.R.R Maligai,
Chennai-002
3. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tangedco, Maharaja Nagar, Tirunelveli District -11
4. The Executive Engineer,
(Distribution/urban),
Tangedco, Vm Chatiram,
Tirunelveli District -11.

... Respondents in WP(MD). 817 of 2022

PRAYER in W.P. (MD) No. 24941 of 2019 :- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order in reduction of Subsistence Allowance in Memo No./EE/D/U/Tin/Adm/ADS/F.Sus/D.No.3155/19 dated 22.10.2019 and consequential Impugned Order in Memo in EE/UR/TIN/Adm/ADS/F.Sub.All/ D.No.3170/2019 dated 23.10.2019 on the file of the Respondent No.2 and quash the same as illegal and consequently direction directing the respondents to provide full Subsistence Allowance from 01.09.2019 as per law.

PRAYER in W.P. (MD) No. 5222 of 2020 :- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order of appointment of Enquiry Officer in Ku.No.023152/637/NiA/NiPi-IV/U.1/Ko.O.NA/2019 dated 23.10.2019 on the file of the Respondent No.2 and consequential Impugned Order of Personal Hearing to the petitioner in Ku.A.No.U.Se.Po/Vi/Ervadi/Ko.Kattu/A.No.43/2020 dated 02.03.2020 on the file of the Respondent No.4 and quash the same and consequently direction directing the Respondent No.2 to provide all the documents mentioned in the Annexure No.3 and 4 of the Charge Memo which was served to the petitioner in Ku.No.007369/229/NiA/NiPi-IV/Ko.O.Na/2019 dated 10.05.2019.

PRAYER in W.P. (MD) No. 15951 of 2020 :- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records



pertaining to the Impugned Order in Ku.Aa.No.Oo.Se.Po/Vi/Ervadi/Ko.Kattu/A.No.015/2020 dated 29.10.2020 on the file of the respondent No.4 and quash the same as illegal and consequentially direction directing the Respondent No.1 to appoint any Special Enquiry Officer or any other competent authority outside the Tirunelveli District pertaining to the Departmental Enquiry made against the petitioner.

PRAYER in W.P. (MD) No. 817 of 2022 :- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Suspension Order in Memo No.EE/U/Tin/AADo/Ads/Adm./D.No.255/2019 dated 30.01.2019 on the file of the Respondent No.4 and consequential Impugned Rejection Order in Ku.Aa.No.0187703/Nipi.4/U.1/Ko.Tha.Pa.Ne/2021 dated 22.09.2021 on the file of the Respondent No.3 and quash the same as illegal and consequently direction directing the respondents No.1 to 3 to revoke the Suspension Order of the petitioner dated 30.01.2019 and reinstate the petitioner based on the co-accused revocation order in Memo No.014130/436/ADM.IV/A.1/F.D.P/2019 dated 22.07.2019 passed by the respondent No.3.

For Petitioner : Mr.I.Pinaygash (in all W.Ps.)
For Respondents : Mr.S.Arivalagan (in all W.Ps.)

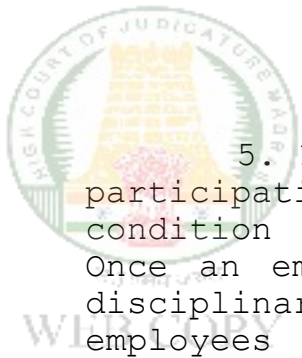
COMMON ORDER

The order of suspension dated 30.01.2019 and the consequential orders of rejection for revocation of suspension are under challenge in the present writ petitions.

2.The petitioner was working as Commercial Inspector in TANGEDCO and on account of allegation of misappropriation of the funds of TANGEDCO, a criminal case was registered and simultaneously departmental disciplinary proceedings was initiated.

3. The learned counsel for the respondents brought to the notice of this Court that in respect of other delinquents, enquiry proceedings have already been progressed and completed. However, final order is yet to be passed, since the petitioner has not participated in the departmental enquiry proceedings.

4. The learned counsel for the petitioner made a submission that the petitioner has no objection in participating the enquiry proceedings. However, in respect of other co-delinquent, the respondents have revoked the order of suspension and for the petitioner, they have not revoked the suspension, though the petitioner all along fighting for the revocation of suspension before the authorities and before this Court by filing the writ petitions.



5. No doubt, a suspended employee cannot put a condition for participation in the enquiry. Revocation of suspension cannot be a condition precedent for participating in the enquiry proceedings. Once an employee is placed under suspension and the departmental disciplinary proceedings have commenced, then, the delinquent employees are bound to cooperate for the early disposal of the disciplinary proceedings. Contrarily a new trend has been developed among the employees, at every stage, writ petitions are filed in order to dilute the departmental proceedings one or the other way and with an idea to prolong and protract the issues. Such moves, at no circumstances can be encouraged by this Court.

6. Even for suspension, charge memo, for appointment of enquiry officer, for receiving the documents, at each and every stage, the writ petitions are filed and such a practice is to be deprecated. Once an employee is subjected to departmental proceedings, in all fairness, the petitioner must cooperate and conclude the proceedings for reaching a logical conclusion. An employee has got a right to defend his case in the manner known to law, instead of defending the case, they are attempting to escape from the clutches of the proceedings through back door methods. Such practice is alone to be deprecated.

7. In the present case, the grievance of the petitioner is that the suspension orders were revoked in respect of other co-delinquents in the criminal case and for the petitioner alone, the authorities rejected the representation submitted by the petitioner for revocation of suspension. Thus, the petitioner is constrained to move the writ petition.

8. A charge memo is not liable to be quashed, as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some rights of a person are infringed. The charge memo does not infringe the rights of a person / employee. It is only when a final order imposing punishment or otherwise is passed, it may give a cause of action. Thus, the writ petition challenging the charge memo by itself is not maintainable.

9. Let us now consider the situations where an employee is issued with a charge memo. On initiation of disciplinary proceedings, charge memo is the first step taken by the Authority concerned to frame certain charges against the employee concerned. Mere framing of charges would not cause any prejudice to the Government employee. He is duty bound to establish his innocence or otherwise with reference to the documents and evidences available. Contrarily, if the disciplinary proceedings are quashed at the budding stage, the rights of the Departments will be prejudiced. Under the Tamil Nadu Government Servants Conduct Rules, a Government servant is bound to maintain a good conduct and integrity throughout



his service both inside and outside the office. While so, certain allegations are brought to the notice of the competent Authorities. They are initiating action under the Rules and they are framing charges. Such framing of charges would not cause any prejudice nor provide any cause of action for the purpose of instituting a writ petition. Therefore, framing of charges itself would not provide a cause of action for entertaining a writ petition. However, a writ petition against the charge memo may be entertained on certain exceptional circumstances, where the charge memo has been issued by an incompetent Authority having no jurisdiction or allegation of mala fides is raised. Even in case of raising an allegation of mala fides, the Authority against whom such an allegation raised must be impleaded as party respondent in his personal capacity. Except these circumstances, no writ needs to be entertained against the charge memo and such an entertainment would cause prejudice to the Department and the likelihood of causing prejudice is also to be considered by the Court, while entertaining a writ petition.

10. Mere pendency of the criminal case is not a bar for the continuance of the departmental proceedings. Regarding simultaneous proceedings (i.e. departmental disciplinary proceedings and criminal case), this Court has elaborately considered the issue and the following principles have been summarized:

- (i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;
 - (ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;
 - (iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;
 - (iv) The question to be considered is whether simultaneous proceedings may go on or not?;
 - (v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;
 - (vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.
 - (vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance.
- all the disposal of the criminal case. However,



the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

WEB COPY

- (viii) There is no legal bar for both proceedings to go on simultaneously.
- (ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.
- (x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.
- (xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.
- (xii) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary



proceedings.

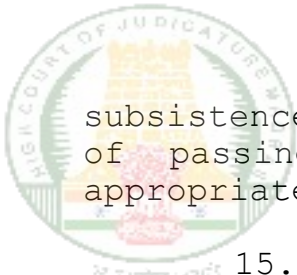
(xiii) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings.

(xiv) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988.

11. This being the scope of simultaneous proceedings, there is no impediment for the respondents to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible by following the procedures as contemplated under the Discipline and Appeal Rules. The writ petitioner is directed to cooperate for the disposal of the disciplinary proceedings. In the event of non cooperation on the part of the writ petitioner, the same shall be recorded in the proceedings itself by the respondents and in such circumstances, he is not entitled to claim any relief on the ground of delay in disposal of the disciplinary proceedings.

12. Challenging the appointment of enquiry officer, the writ petitioner filed a writ petition in W.P. (MD) No. 5222/2020. However, this Court do not find any reason to change the Enquiry Officer, as such allegations, which raised personally, are not substantiated so as to accept the same for changing of enquiry officer.

13. In this view of the matter, this Court is of the considered opinion that the order of suspension has to be revoked by the respondents, as they have already been revoked the suspension order in respect of other co-delinquent. The petitioner must cooperate for the early disposal of the disciplinary proceedings and he should not seek any adjournment or otherwise during the course of enquiry by the competent authority. This being the factum, the order of suspension impugned and the consequential orders of rejection in proceedings dated 30.01.2019, consequential orders of rejection proceedings dated 22.09.2021 are quashed and the respondents are directed to reinstate the petitioner in service within a period of two weeks from the date of receipt of a copy of this order. The respondents are further directed to continue the departmental proceedings in all respects and conclude the same by following the procedures as contemplated and by affording an opportunity to the writ petitioner within a period of six weeks from the date of receipt of a copy of this order.



subsistence allowance, all such claims can be dealt with at the time of passing final orders in the disciplinary proceedings and appropriate orders are to be passed in this regard also.

15. With these directions, these writ petitions stand disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

RR

To

1. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation Ltd (TANGEDCO)
Maharaja Nagar, Tirunelveli District-11.

2. The Executive Engineer,
(Distribution/Urban),
Tamil Nadu Generation and
Distribution Corporation Ltd (TANGEDCO)
VM Chatram, Tirunelveli District-11

3. The Chairman
Tamil Nadu Electricity Board,
No.144, Anna Salai, N.P.K.R.R. Maligai
Chennai-600 002.

4. The Assistant Executive Engineer,
O/o. the Assistant Executive Engineer,
TANGEDCO (Distribution),
Ervadi, Tirunelveli District-627 103.

5. The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
TANGEDCO, No.144, Anna Salai,
N.P.K.R.R. Maligai, Chennai-600 002.

+1. CC to M/S.I.PINAYAGASH Advocate SR.No.12267

W.P. (MD) Nos. 24941 of 2019, 5222 & 15951 of 2020, 817 of 2022

14.03.2022