



WEB COPY



W.P. Nos. 12568 and 12574 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

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

W.P. Nos. 12568 and 12574 of 2023

and

W.M.P. Nos. 12389 and 12392 of 2023

M.K.Manimegalai

... Petitioner in W.P. No. 12568 of 2023

P.Elakkiya

... Petitioner in W.P. No. 12574 of 2023

-VS-

The Managing Director
Tamil Nadu Water Supply and Drainage Board
31, Kamarajar Salai
Chepauk,
Chennai – 600005.
W.P.s

... Respondent in both

Prayer in W.P. No. 12568 of 2023:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Proceedings No. 9815/Ni(O.Na)/A1/2022-1 dated 12.12.2022 and the subsequent Proceedings No. 9815/Ni(O.Na)/A1/2022-1 dated 23.02.2023 passed by the Respondent and quash the same and further direct the Respondents not to initiate disciplinary proceedings against the Petitioner invoking the provisions of the TWAD Board Employees (Discipline and Appeal) Regulations, 1972 instead of the TWAD Board Standing Orders for Workmen, 1998.



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Prayer in W.P. No. 12574 of 2023:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the Proceedings No. 9815/Ni(O.Na)/A1/2022-1 dated 12.12.2022 and the subsequent Proceedings No. 9815/Ni(O.Na)/A1/2022-2 dated 23.02.2023 passed by the Respondent and quash the same and further direct the Respondents not to initiate disciplinary proceedings against the Petitioner invoking the provisions of the TWAD Board Employees (Discipline and Appeal) Regulations, 1972 instead of the TWAD Board Standing Orders for Workmen, 1998.

For Petitioner : Ms. G.P.Arivuchudar
(in both W.P.s)

For Respondent : Mr. Pradeep Shankar
(in both W.P.s)

COMMON ORDER

Heard Ms. G.P.Arivuchudar, Learned Counsel for the Petitioners and Mr. Pradeep Shankar, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners are working as Deputy Hydrogeologist in the services of the Respondent, viz., Tamil Nadu Water Supply and Drainage Board, which is a body corporate constituted under Section 4 of the Tamil Nadu Water Supply



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and Drainage Board Act, 1970 (hereinafter referred to as 'the TWAD Board Act'

for short). The Tamil Nadu Water Supply and Drainage Board Employee's Discipline and Appeal Regulations, 1972, (hereinafter referred to as 'the D & A Regulations' for short) framed in the exercise of the powers conferred by sub-section (3) of Section 73 of the TWAD Board Act, applies to the holders of all the posts under the Board (other than those employed occasionally or subject to discharge without notice) whether temporary or permanent except to the extent otherwise expressly provided therein. That apart, the Tamil Nadu Water Supply and Drainage Board Standing Orders for Workmen, 1998 (hereinafter referred to as 'the Standing Orders' for short) have been certified under the relevant provisions of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as 'the IESO Act' for short).

3. The Respondent by separate Proceedings No. 9815/Ni(O.Na)/A1/2022-1 dated 12.12.2022 and Proceedings No. 9815/Ni(O.Na)/A1/2022-1 dated 23.02.2023 and Proceedings No. 9815/Ni(O.Na)/A1/2022-2 dated 23.02.2023 had informed the Petitioners that it was proposed to conduct enquiry in disciplinary proceedings against them under the D & A Regulations. It is the case of the Petitioners that they are 'workmen' within the meaning of Section 2(i) of the IESO Act read with Section 2(s) of the Industrial Disputes Act, 1947,



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and as such, the Standing Orders would become applicable to them and the Respondent cannot take any disciplinary action invoking the D & A Regulations against them. In that backdrop, these Writ Petitions have been filed challenging the said orders passed by the Respondent and for consequential directions.

4. The legal position in this regard has been settled by the decision of the Hon'ble Supreme Court of India in *U.P. State Electricity Board -vs- Hari Shankar Jain* [(1978) 4 SCC 16] in the following words:-

18. We, therefore, hold that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government under Section 13-B or certified by the Certifying Officer under Section 5 of the Industrial Employment (Standing Orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act shall continue to apply.

The said view has been reiterated by the Hon'ble Supreme Court of India in the ruling in *ONGC Limited -vs- Petroleum Coal Labour Union* [(2015) 6 SCC 494] holding as follows:-

35. For the Corporation to implement such a provision which affects the service conditions of its employees, it is necessary for the Corporation to first



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modify the Certified Standing Orders by following the procedure provided under Section 10 of the Industrial Employment (Standing Orders) Act, 1946 as the same is a special enactment and therefore, prevails over the provisions under the ONGC Act and the Recruitment Rules. The Corporation undisputedly has not made any such modification to its Certified Standing Orders by following the procedure for modification of conditions of service as per Section 10 of the Industrial Employment (Standing Orders) Act, 1946....

Applying the principles laid down in the said authoritative pronouncements, it is incumbent upon the Respondent to show that in respect of its employees, who are 'workmen' governed by the IESO Act, it would not be possible to apply the D & A Regulations unless it has been notified by the Government under Section 13-B of the IESO Act or modification has been made in the manner prescribed in Section 10 of the IESO Act.

5. However, Learned Counsel for the Respondent vehemently asserts that the Petitioners are not 'workmen' governed by the IESO Act in order to derive such benefit.

6. In such circumstances, it would be incumbent upon the Respondent to first determine as to whether or not the nature of functions performed by the Petitioners in its services is that of 'workman' by affording an opportunity of



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personal hearing to them to place their contentions, which would have to be answered by a reasoned order and only depending upon its outcome, the conduct of further proceedings in the disciplinary action against the Petitioners, either under the Standing Orders, or the D & A Regulations, as the case may be, shall take place in accordance with law.

In the result, the Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No cost.

28.04.2023

Maya

Index: Yes/No

Neutral Citation : Yes/No

To

The Managing Director
Tamil Nadu Water Supply and Drainage Board
31, Kamarajar Salai
Chepauk, Chennai – 600005.



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P.D. AUDIKESAVALU, J.

Maya

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