



W.P(MD)No.5666 of 2023

WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 13.04.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.5666 of 2023**  
**and**  
**W.M.P(MD)No.5269 of 2023**

A.Udayakumar

... Petitioner

Vs

1.The Chief Engineer (Distribution),  
TANGEDCO (TNEB),  
Tirunelveli Region,  
Maharaja Nagar,  
Tirunelveli District – 11.

2.The Superintending Engineer,  
TANGEDCO,  
Tirunelveli Electricity Distribution Circle,  
Maharaja Nagar,  
Tirunelveli District – 11.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned charge memo in Ku.No. 011967/844/NiPi/C1/Ko.O.Na/2022-1 dated 28.11.2022 on the file of the first respondent and quash the same as illegal.



**W.P(MD)No.5666 of 2023**

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.S.Arivalagan  
Standing Counsel

### **ORDER**

Heard the learned counsel on either side.

2. The petitioner is working as Commercial Assistant in TANGEDCO. He was involved in a vigilance case. Crime No.9 of 2009 on the file of Vigilance and Anti Corruption, Tirunelveli detachment came to be registered. The petitioner was originally suspended and later reinstated in service. He has now been issued with the impugned charge memo. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this court to set the impugned charge memo and grant relief as prayed for.

4. The primary contention of the learned counsel appearing for the petitioner is that the Board Proceedings Ms. (Ch.) No.142 dated 13.04.1987 contemplate completion of such proceedings within 180 days. However, in the case on hand the charge memo has been issued after a gap of 13 years. The



W.P(MD)No.5666 of 2023

delay in issuing charge memo has not been explained. The stand of the learned counsel appearing for the petitioner is that the Hon'ble Apex Court as well as this Court in quite a few decisions have quashed the disciplinary action on the ground of belated issuance of charge memo. He relied on a decision reported in **(2005) 6 Supreme Court Cases 636 (P.V.Mahadevan Vs MD, T.N.Housing Board)** in particular.

5. The respondents have filed counter affidavit and the learned Standing Counsel took me through its contents. He pressed for dismissal of writ petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. One aspect has become well settled. Merely because the employee concerned is facing criminal prosecution, that is not a ground for the disciplinary authority to hold his hands and not initiate any disciplinary action. The Hon'ble Division Bench in a recent decision had directed the Government to come out with the Government Order for initiating disciplinary action even during the pendency of criminal case. Pursuant to the said direction, the Government had issued G.O(Ms)No.81 Human Resources Department dated



W.P(MD)No.5666 of 2023

04.08.2022. Therefore, issuance of the impugned charge memo cannot be faulted.

8. The question that arises for consideration is whether on the ground of belated issuance, it should be quashed. No doubt there are quite a few decisions in which issuance of charge memo was found upon and proceedings were initiated. But there has been paradigm shift subsequently. The Court should pose two questions:

- a)Whether delay has been explained;
- b)Whether the delinquent has been prejudiced by the delay.

9. In this case there is no explanation for the delay. The first condition is satisfied. But the petitioner has not been able to demonstrate as to how he is prejudiced on account of the delay in issuance of charge memo. The learned Standing Counsel would point out that the petitioner is facing criminal case prosecution and that a number of witnesses have been examined. The petitioner is continuing to face criminal case prosecution. He cannot obviously complain of prejudice merely because the charge memo is belatedly issued. I do not find any ground to interfere. The petitioner has to necessary establish his innocence before the enquiry officer.



**W.P(MD)No.5666 of 2023**

10. At this stage, the learned counsel for the petitioner submitted that the impugned proceedings can be put on hold atleast till the conclusion of the criminal case. I find no merit in this request also. This Court would stay the criminal case in disciplinary action for a period of one year primarily on the ground that the delinquent will have to disclose his defense if he is made to participate in the enquiry even before commencement of the trial. But in this case the main witness has already been examined. Therefore, there is no justification for accepting the request of the learned counsel appearing for the petitioner. Leaving open all the defenses and contentions of the petitioner, this writ petition is dismissed. I make it clear that I have not gone in the merits of the matter and the dismissal of the writ petition will not in any way cast any cloud on the petitioner's case. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**13.04.2023**

Index : Yes / No  
Internet : Yes/ No  
NCC : Yes / No  
MGA



WEB COPY



W.P(MD)No.5666 of 2023

G.R.SWAMINATHAN, J.

MGA

To

- 1.The Chief Engineer (Distribution),  
TANGEDCO (TNEB),  
Tirunelveli Region,  
Maharaja Nagar,  
Tirunelveli District – 11.
- 2.The Superintending Engineer,  
TANGEDCO,  
Tirunelveli Electricity Distribution Circle,  
Maharaja Nagar,  
Tirunelveli District – 11.

W.P(MD)No.5666 of 2023

and

W.M.P(MD)No.5269 of 2023

13.04.2023