



W.P.(MD).No.16951 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.09.2023

PRONOUNCED ON : 12.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16951 of 2023

and

W.M.P(MD)Nos.14178 & 16691 of 2023

M.Rajkumar Pandian

... Petitioner

Vs.

- 1.The Chief Engineer (Personnel),
The Tamil Nadu Generation and Distribution Corporation
(TANGEDCO),
Chennai.
- 2.The Chief Engineer (Distribution),
The Tamil Nadu Generation and Distribution Corporation
(TANGEDCO),
Madurai Region,
Madurai.
- 3.The Superintending Engineer,
Electricity Distribution Circle,
TANGEDCO,
Theni.
- 4.The Executive Engineer (Distribution),
Divisional Office,
TANGEDCO,
Theni District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the transfer order passed by the second respondent in KU.NO.110973/637/THAPO/PA/MD/MU.NI.A/NIPIA41/2023 dated 30.06.2023 and order passed by the third respondent in KU.AA.NO0580 / MAEPO / THENI / NIA / NIMAE / NIPI1/U1/KO12/2023 dated 27.06.2023 and quash the same as illegal, consequently direct the third respondent to restore the order passed by him in KU.AA.NO.012311/1310/MAEPO/THENI/NIA/NIMAE/NIPI1/UO3/KO/2022, 1 dated 21.12.2022.

For Petitioner : Mr.G.Thiruvartselvan

For Respondents : Ms.M.Parameswari
Standing Counsel

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the transfer order passed by the second respondent, dated 30.06.2023 and the order passed by the third respondent, dated 27.06.2023 and consequently direct the third respondent to restore the order passed by him, dated 21.12.2022.



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2.Heard Mr.G.Thiruvavutselvan, learned counsel appearing for the petitioner and Ms.M.Parameswari, learned standing counsel appearing for the respondents and perused the materials available on record.

3.The petitioner was appointed as a Helper in the Tamil Nadu Electricity Board in the year 1999. He was promoted as Junior Assistant on 20.08.2020. Thereafter, he was promoted as an Assistant in the office of the fourth respondent. There are totally three Assistant posts available in the fourth respondent office. Each of them was allotted with various types of administrative work and the petitioner was allotted with the work of Regular Work Establishment. Regular Work Establishment endeavor would be to maintain the service books of the employees and maintain the various correspondence to the fourth respondent office. While so, in the month of January 2022, one Assistant post fell vacant. In view of the same, the remaining two Assistants had to manage the work of all the 3 Assistants posts. However, it was only due to the vacancy which arose, the respondents handed over the additional work of the vacant post and forcibly compelled the petitioner to do the additional work by oral instructions. Because of an overload of work, the petitioner succumbed to high



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blood pressure and stress as a result of which he applied for an earned leave from 01.02.2022 to 28.02.2022, for which he had sent his leave letter through courier on 01.02.2022. Later, he informed the same through mobile as well. The petitioner's leave letter was received by the office of the fourth respondent on 02.02.2022 and it was also brought to the knowledge of the fourth respondent on 04.02.2022. However, after a lapse of 20 days, the fourth respondent vide his letter dated 17.02.2022 rejected the petitioner's leave applications and called for an explanation as to the leave taken by him without permission from the fourth respondent.

4. Due to continuous medication, the petitioner was not able to immediately rejoin before the fourth respondent's office. Thereafter, on 16.03.2022 the petitioner joined before the fourth respondent office and thereafter, he submitted his leave extension application on 16.03.2022 along with his explanation for the previous leave. However, the fourth respondent allowed him to continue his work. While the petitioner was on leave, the administrative officer of the Central Office EDC-Theni conducted an inspection on 15.03.2022 and found certain defects committed by the employees and submitted his inspection report. Pursuant to the same, the third respondent in his



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letter dated 24.03.2022 instructed the employees to rectify all the defects committed by them within a period of 5 days. The petitioner came to know of the same only after rejoining and he rectified all the defects with immediate effect. While so, the petitioner was visited with the charge memo dated 12.09.2022 for having taken leave upto 15.03.2022 from 01.03.2022 without intimation and for sluggishness in completing his official duties and he submitted his explanation on 10.03.2023. In the meanwhile on 21.12.2022, the petitioner was transferred to Chinnamanur Division by the third respondent. However, he was not issued with relieving order from his original place of work at Periyakulam, Theni. Thereafter, on 19.04.2023 an enquiry officer was also appointed. Even before the said enquiry officer completed his enquiry, the third respondent vide proceedings dated 27.06.2023 cancelled the transfer order dated 21.12.2022 after a lapse of 6 months from 21.12.2022. On the other hand, the second respondent vide proceedings dated 30.06.2023 transferred the petitioner to Ramanathapuram. Challenging the earlier cancellation order passed by the third respondent dated 27.06.2023 and the subsequent transfer order passed by the second respondent on 30.06.2023, this Writ Petition came to be filed.



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5.The third respondent Board has filed a counter-affidavit and the learned standing counsel for the Board submitted that the transfer was purely made on administrative grounds and there is a procedure for the employees to take leave and only with the prior permission of the immediate superior namely Executive Engineer/Distribution/Periyakulam, the employees of Periyakulam, Theni Electricity Distribution Circle TANGEDCO could avail leave. But the petitioner sought for earned leave by his letter for the period from 01.02.2022 to 28.02.2022 through registered post. The irresponsible attitude of the writ petitioner was strictly warned by his immediate superior by letter dated 17.02.2022 thereby directing him to report duty immediately. Hence, the petitioner was visited with the charge memo dated 12.09.2022 by his immediate superior. However, the writ petitioner submitted his explanation on 10.03.2023 elaborating on his health condition and all those evasive explanations could not be accepted for the reason that the petitioner's explanation was not supported with reliable documents of having taken treatment for the said period 01.02.2022 to 15.03.2022. The petitioner did not report duty till 16.03.2023 and after joining, he submitted an extension of leave application on 16.03.2023. A complaint of sluggishness in the discharge of his duties came to be lodged against the petitioner by the



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Electricity Board Joint Committee Association along with the resolution of the said Association dated 25.03.2022 and the said action of the said Association resulted in conducting a Dharna on 30.03.2022 in front of Executive Engineer/Periyakulam Division Office.

6.While the enquiry proceedings were pending against the writ petitioner, he committed another misconduct of assaulting one co-employee namely Mohamed Thowfeek on 23.11.2022. Only thereafter, both the writ petitioner as well as the said Mohamed Thowfeek were transferred to another Division office. While the writ petitioner was transferred to Chinnamanur Division office, the said Mohamed Thowfeek was transferred to Theni Central office. However, without obeying the transfer order, the present Writ Petition is filed. Pursuant to the transfer dated 30.06.2023, the reliving order was also sent to the petitioner through a professional courier on 12.07.2023. For the better administration of the Chinnamannur Division office, it is necessary that the petitioner had to be transferred to some other Division and hence the nature in his transfer is not punitive and on that basis the learned standing counsel pressed for dismissal of the Writ Petition.



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7.However a perusal of the records would clearly reveal that after having visited the petitioner with the charge memo on 12.09.2022, the third respondent transferred the petitioner at the first instance on 21.12.2022 to Chinnamannur Division. Thereafter, without issuing him a reliving order, on 19.04.2023 an enquiry officer was appointed in view of the charge memo issued to him. Even after that, he was not relieved from his original post. Thereafter, after appointing the enquiry officer even before he could complete his enquiry, the petitioner was further slapped with a transfer order dated 30.06.2023 transferring him to Ramanathapuram immediately by the third respondent. Before issuing the second transfer order, on 27.06.2023, the third respondent cancelled the previous transfer order. Having issued a charge memo and appointed an enquiry officer, the attitude of the respondents to transfer the petitioner without giving him an opportunity to fully participate in the enquiry and defend himself appropriately, the cancellation of the transfer order and the second transfer order has been passed by the respondents in a hurry burry manner and the same is without application of mind.



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8.Once a departmental proceeding has been initiated by the issuance of charge memo, the employee is entitled to defend himself fully in the disciplinary proceedings in accordance with law. Having not done the same, simultaneously the respondents have transferred him to Ramanathapuram and that would amount to double jeopardy.

9.This Court has dealt with a similar case on more than one occasion and in ***W.P(MD)Nos.10759 and 11259 of 2021 etc., batch dated 28.10.2021 [Narasingaraja Vs. The Director General of Police and others]***, favourable order was passed in favour of the petitioner therein and the relevant portion of which is extracted as follows:-

"28. In view of the above settled legal position, this Court is of the opinion that when transfers are effected after preliminary enquiry on the complaints / allegations, it should necessarily be followed up by a detailed investigation and disciplinary proceedings initiated on the allegations resultantly found to be substantiated. However, in the present case, prima facie it is found that disciplinary proceedings were initiated and charge



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memos were issued only when the matter was taken up for hearing that too after the matter was being adjourned on several occasions, which is contrary to the aforesaid G.O.Ms.No.10, dated 07.01.1994 and the clarificatory letter dated 09.08.1994. Even on perusal of the impugned transfer orders, it is seen that the same were passed on the administrative grounds, however, in the counter affidavit filed by the respondents, it is stated that based on the discreet enquiry report, the impugned transfer orders were passed. Further, according to the respondents, the impugned transfer orders were passed to avoid more complications in the prison administration. That apart, the respondents have not initiated disciplinary proceedings immediately after the incident had taken place and only in the month of September, 2021, by way of filing additional counter affidavit, it was brought to the notice of this Court that disciplinary proceedings have been initiated against the petitioner for the incident alleged to have been taken place in the month of April, 2021 and in the counter affidavit filed in the month of August, 2021, there is no whisper about the disciplinary proceedings against the petitioners and only after the matter was taken up for hearing, disciplinary proceedings were initiated and charge memos were issued to the petitioner. Hence, this



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Court comes to a conclusion that the impugned transfer orders are punitive in nature and there is violation of the principles of natural justice on the part of the respondents and therefore, the respondents have not followed the clarification order issued by the Government and the decision in the case of Elumalai's case (supra) would therefore squarely apply to the facts and circumstances of the present case. Hence, the respondents have violated the principles of natural justice as observed in the aforesaid decision. Hence, for all these reasons, the impugned transfer orders are liable to be set aside.

29. Before parting, this Court is of the opinion that there are various interpretations made by the parties for the definitions "administrative ground" and "punitive in nature". The Courts decide the issue as to whether the transfer is on administrative ground or it is punitive in nature on case-to-case basis depending upon the facts and circumstances of the case. Therefore, for giving more clarity to the definitions "administrative ground" and "punitive in nature", it is the right time for the Government to issue clarificatory guidelines in transfer matters, where allegations / complaints are pending against the employees by taking note of the aforesaid decisions of this Court as well as the Honourable Supreme Court."



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10. Fully in consonance with the discussions made in the order extracted supra, the transfer order which has been issued by the respondents during the pendency of departmental enquiry could certainly be treated as punitive. Had the transfer order been passed after the conclusion of the disciplinary proceedings, this Court would not have interfered. However, since the petitioner has been visited by a transfer order transferring him from Periyakulam to Ramanathapuram before the completion of the departmental proceedings initiated against him, this Court comes to the conclusion that the impugned transfer order is punitive in nature and there is a violation of principles of natural justice on the part of the respondents and hence, this Court is inclined to quash the impugned order passed by the third respondent, dated 27.06.2023 and the impugned order passed by the second respondent, dated 30.06.2023.

11. Accordingly, the impugned cancellation order passed by the third respondent, dated 27.06.2023 and the impugned order passed by the second respondent, dated 30.06.2023 are quashed and consequently, direct the third respondent to restore the order, dated 21.12.2022.



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12. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Chief Engineer (Personnel),
The Tamil Nadu Generation and Distribution Corporation
(TANGEDCO),
Chennai.
2. The Chief Engineer (Distribution),
The Tamil Nadu Generation and Distribution Corporation
(TANGEDCO),
Madurai Region,
Madurai.
3. The Superintending Engineer,
Electricity Distribution Circle,
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4. The Executive Engineer (Distribution),
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L.VICTORIA GOWRI, J.

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