



W.P(MD)No.17448 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.09.2023

DELIVERED ON : 12.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.17448 of 2023

and

W.M.P(MD)No.14623 of 2023

S.Perumal

... Petitioner

Vs.

- 1.The Chief Engineer / Personnel,
TANGEDCO, Administrative Branch,
N.P.K.RR Maligai,
No.144, Anna Salai,
Chennai.
- 2.The Chief Engineer,
TANGEDCO,
Distribution Circle,
Tirunelveli Region,
Tirunelveli.
- 3.The Superintending Engineer,
Kanyakumari Electricity Distribution Circle / Nagercoil,
TANGEDCO,
Suchindram,
Kanyakumari.



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4.The Executive Engineer,
TANGEDCO / Distribution,
Nagercoil.

5.The Executive Engineer,
TANGEDCO / Distribution,
Kuzhithurai,
Kanyakumari.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned proceeding in Memo No.009267/277/Adm.I/A.1/ 2023, dated 01.07.2023 passed by the third respondent and quash the same.

For Petitioner : Mr.M.Prabhakaran

For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

The present writ petition has been filed for a Writ of Certiorari, calling for the records relating to the impugned proceeding in Memo No. 009267/277/Adm.I/A.1/ 2023, dated 01.07.2023 passed by the third respondent and quash the same.



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2. Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents and carefully perused the materials available on record.

3. The petitioner joined the respondent Department as Assistant Draftsman on 08.06.1988 at Tirunelveli. Thereafter, he was promoted to the posts of Technical Assistant, Junior Engineer Grade – II and Junior Engineer Grade – I and he worked in various places at Tirunelveli, Panangudi, Thisayanvilai, Koodankulam, Kalakad, Parvathipuram and Suchindram. In the year 2018, he was transferred to the third respondent Office at Suchindram, Kanyakumari District. While so, on 17.06.2023, a charge memo, vide the proceedings of the Chief Engineer / second respondent was served upon the petitioner through third respondent on 05.07.2023. The charge levelled against the petitioner was that, when the estimate was prepared by him, pending sanction to the tune of Rs.23,500/- for replacement of electric pole, which was damaged by the Government Bus Driver, the same was replaced independently by the petitioner with RSJ iron scrap pole to help the consumer unauthorizedly. The petitioner had submitted his detailed explanation to the said charge. Pending departmental



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proceedings, the impugned proceedings of transfer, dated 01.07.2023 vide office of the third respondent came to be passed, by which the petitioner was transferred and posted to the office of the fourth respondent in an existing vacancy. However, the said order was served upon him only on 15.07.2023. In view of the pending departmental proceedings, the said impugned order of transfer is punitive in nature and hence, assailing the same, this writ petition came to be filed.

4. Per contra, the learned Standing Counsel for the respondents has filed a counter and vehemently submitted that while the petitioner was working as Junior Engineer Grade - I based on a petition, the Vigilance Cell of TANGEDCO had conducted a thorough enquiry and the enquiry revealed that the petitioner and Tmt.Manjula, Assistant Executive Engineer, Kottaram had committed certain lapses in their work. Subsequently, only on the basis of the recommendation of the Vigilance Cell, TANGEDCO Chennai for initiating major disciplinary proceeding against the petitioner and the said Manjula for their substantial lapses, charges under Rule 8(b) of the Tamil Nadu Electricity Board Discipline and Appeal Regulations were framed by the Chief Engineer, Tirunelveli Region for not having taken



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appropriate action on the theft of energy detected in service connection No. 141-023-993 under tariff V, even after well knowing the fact that the service connection No.141-023-993 was disconnected due to non payment of CC / penal charges, worked out thereon for the theft of energy detected. The petitioner had effected another service connection in service connection Nos.141-023-1893 and 141-023-1894 to the same consumer, without following the rules and regulations of TANGEDCO with dishonest motive.

5. Only after identifying such continued delinquency on the part of the petitioner, following the procedures laid down in TNEB Discipline and Appeal Regulations, final orders were imposed to both the petitioner and the said S.Manjula, Assistant Executive Engineer, Kottaram vide memo, dated 29.11.2022. Only for the purpose of restraining continued violations for a larger public interest and to safeguard the image of TANGEDCO, the first respondent vide impugned order, dated 30.06.2023, transferred the petitioner from Suchindram to Puthenchanthai on administrative grounds and the third respondent is certainly a competent authority to issue such reposting orders and the same cannot be termed 'punitive' transfer. Hence, the same need not be interfered with and on that basis, he pressed for



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dismissal of this writ petition.

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6. A perusal of the available records would reveal that a charge memo has been issued by the first respondent on 17.06.2023, contemplating disciplinary proceedings under Rule 8(b) of the TNEB Discipline and Appeal Regulations. For which, the petitioner has submitted his detailed explanation on 07.07.2023. Without passing orders on the explanation of the petitioner on 01.07.2023, the impugned transfer order has been passed by the third respondent and the same is served on the petitioner on 15.07.2023. Though the transfer is said to be on administrative grounds, materials placed before this Court shows that the order was passed on the basis of the disciplinary proceedings initiated on the recommendation of the Vigilance Cell of TANGEDCO, Chennai and it is found that the disciplinary proceedings has been commenced under Rule 8(b) of the TNEB Discipline and Appeal Rules. No doubt the said rules do not mandate transfer order to be passed by way of punishment pending disciplinary proceedings. Though the impugned order is issued on the guise of administrative reasons, it is needless to state that the same is the effect of the disciplinary proceedings, which has been contemplated against the petitioner under Rule 8(b) of the



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TNEB Discipline and Appeal Rules.

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7. This aspect has already been dealt with by this Court in several cases and this Court in the case of ***S.Sevugan Vs. The Chief Educational Officer, Virudhunagar and Another reported in 2006 (3) LLN 326*** has held as follows:

"7. It is seen from the impugned order of transfer that it is passed on administrative ground, but it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner. If that be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaints against him by the public or by the Headmaster is proper or not by way of an enquiry.

8. In these circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside."

8. In a similar case in W.P.No.23205 of 2010 (***R.Ponnusamy Vs. The***



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Director General of Police, Office of the Director General of Police, Chennai and Others), the learned Single Judge of this Court has passed similar order on 29.04.2011 and the relevant portion of which is extracted as follows:

"10. It is well settled by the Courts that no transfer order transferring Government servant under administrative reason shall be interfered with by any Court of law. Further, it has been equally settled by the Court that if any transfer order is passed by the department by way of punishment, the same cannot be resorted to except by conducting an enquiry. Though the impugned order of transfer shows that the order is passed on administrative ground, the counter read with an order passed by the Director General of Police in RC No. 140450/NGB.IV(2)/2010, dated 29.09.2010 shows that the writ petitioner Mr.R.Ponnusamy, HC 1849, PRS, Coimbatore has violated the Government Servant's Conduct Rules by administering "Athiparasakthi Temple" in the nick name of "SMT Pons" and also issued pamphlets in the name of "SMT Pons" to worship "Naga Thevathai". The said order further says that he was transferred and posted to Tiruppur District. In view of the reading of counter also supports the case of the petitioner that the order of transfer was not passed on administrative ground, but only by way of punishment based on the complaint



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against the petitioner. That be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaint against him by the Public or anybody is proper or not by way of an enquiry."

9. The instant case is also a clear case, wherein the impugned order of transfer has been issued transferring the petitioner from Suchindram to Puthenchanthai, pending disciplinary enquiry without giving him complete opportunity to defend his case before the disciplinary authority and forcing him to comply with punitive transfer order. In view of the same, impugned transfer order, dated 01.07.2023 is hereby quashed.

10. This writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.10.2023

NCC : Yes
Index : Yes
Internet : Yes
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L.VICTORIA GOWRI, J.

BTR

Order made in
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