



W.P.No.3286 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3286 of 2021

and W.M.P.Nos.3733 & 3734 of 2021

V.K.Navaneethakrishnan

...Petitioner

Vs.

- 1.The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur-641 602.
- 2.The Executive Engineer,/O & M,
TANGEDCO, Tirupur Electricity,
Distribution Circle,
Tirupur- 641 602.
- 3.The Chief Engineer,
TANGEDCO, Tatabad,
Coimbatore-12.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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praying for issuance of Writ of Certiorarified Mandamus, praying to call for the records of the 3rd respondent culminating in the order bearing No.014873/473/Ne pe 2 (4) 2020 dated 27.01.2021 quash the same as illegal, arbitrary and contrary to law, against principles of natural justice and consequently direct the respondents to restore the pay to the same level drawn by the petitioner and grant increments as envisaged in standing orders.

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.E.Jayasankar

For RR1 to R3 : Mr.K.Rajkumar
Standing Counsel

ORDER

The petitioner is working as Account Supervisor in TANGEDCO. The show cause notice dated 06.07.2017 was issued to the petitioner alleging that there is a Short Levy of Energy Charges and Excess over quota energy and quota demand charges in respect of M/S.Sudharshan Exports with HTSC.No.214 causing loss of Rs.40,71,867/- and petitioner was required to explain the reasons for such incorrect billing. It is thereafter, regular disciplinary proceedings were initiated by issuing a Charge Memo No. கு.ஆ.எண்.21654/நமோ/நிபி1/ஒ.ஒ.2/எ.எண்.2019, dated 12.02.2019 alleging that the petitioner is



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responsible for the loss of Rs.40,71,867/- and the same is stated to have been identified during the audit. It is pursuant to the said charge memo, having conducted a detailed enquiry, the 1st respondent passed an order in proceedings No.கு.ஆ.எண்.21651/நிமே/நிபி2/உ.2/அ.எண்.3680/2019-5, dated 29.10.2020 imposing the punishment of reducing the pay of the petitioner to the minimum scale of pay of the post held by him on the date of imposing the punishment, for a period of two years which will operate the future increment. The said proceedings dated 29.10.2020 was given effect through proceedings கு.ஆ.எண்.செ.பொ/இ&பே/திரு/நிபி/உ.த.2/கோ.ஊ.நி/அ.எண்.4659/2020, dated 17.12.2020 reducing the pay of the petitioner in terms of the above said punishment. Aggrieved by the said proceedings, though the petitioner approached this Court by filing W.P.No.867 of 2021, the petitioner was advised to avail the remedy of appeal and accordingly, the petitioner filed an appeal before the 3rd respondent. However, the 3rd respondent by an order in Proceedings கு.ஆ.எண்.எண்.014873/473/நிபி 2(4)/2020, dated 27.01.2021 rejected the appeal filed by the petitioner. Aggrieved by the said order dated 29.10.2020, as confirmed by the 3rd respondent by the order dated



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27.01.2021, the petitioner approached this Court by filing the present writ petition.

2.The entire substance of the allegation made against the petitioner is the miscalculation of the energy charges that are payable by M/s.Sudharshan Exports and thereby the petitioner caused loss of Rs.40,71,867/- and such an action of the petitioner would amount to misconduct within the meaning of Clause 3 and Clause 9 of Standing Order No.19 of the Board Standing Orders.

3.Mr.N.L.Rajah, learned Senior counsel appearing for the petitioner had brought to the notice of this Court that the loss alleged to have been caused by the petitioner to the tune of Rs.40,71,867/- was demanded against M/s.Sudharshan Exports by issuing a demand notice dated 10.07.2017 and the said demand notice was assailed by the said consumer before this Court by filing W.P.No.21143 of 2017 and a learned Single judge of this Court, by an order dated 01.12.2021, quashed the said demand notice. Considering the submission made by the learned Standing Counsel appearing for the respondent/Board in the said



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writ petition. Thus, it is contended that in view of the quash of the demand made by the respondent/Board, for the alleged loss of Rs.40,71,867/- alleged to have been caused by the petitioner and was found to be unsustainable the charge made against the petitioner also should fail.

4.On the other hand, Mr.K.Rajkumar, learned Standing Counsel appearing for the respondents 1 to 3 contended that, on the allegation of misconduct within the meaning of Clause 3 and Clause 9 of Standing Order No.9 detailed charges were framed against the petitioner and the said charges were also held to have been proved by the Enquiry Officer and based upon the report of the Enquiry Officer, the 1st respondent/Disciplinary Authority also came to the conclusion that the petitioner is responsible for such misconduct and petitioner is infact in the habit of committing such mistake and on an earlier occasion also, on a similar allegation, punishment of stoppage of one increment, without cumulative effect, was imposed on the petitioner. It is also further contended that the petitioner himself, during the course of personal hearing before the 3rd respondent/Appellate Authority conceded about his



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guilt and therefore, the appellate Authority also confirmed the order of punishment imposed on the petitioner. He also further submitted that, as against the order passed in W.P.No.21143 of 2017 dated 01.12.2021 the respondent/Board has already filed a review petition on 16.08.2022 and the same is pending for consideration. Thus, it is contended that the order in W.P.No.21143 of 2017 dated 01.12.2021 has not attained finality and therefore, the petitioner is not entitled to take advantage of the said order. The learned counsel also laid a stress on the averments made in the affidavit filed in support of the writ petition stating that the petitioner himself has accepted that the bills are prone to arithmetical errors and mistakes and thereby, admitting the mistakes committed by the petitioner while raising the bill against M/S.Sudharshan Exports.

5.This Court considered the submissions made on either side and also on perusal of the materials on record especially the order passed in W.P.No.21143 of 2017 dated 01.12.2021. As already noted above, the charge against the petitioner is about wrong calculation of the energy charges payable by M/S.Sudharshan Exports in respect of HTSC.No.214 resulting in loss of Rs.40,71,867/-. The same is stated to have been



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identified during the course of Audit by the auditing personnel. When the very same amount is sought to be recovered from the consumer namely M/S.Sudharshan Exports, the same was put to challenge before this Court in W.P.No.21143 of 2017 and by an order dated 01.12.2021 this Court quashed the said demand. As seen from the order passed by this Court, the said demand was quashed in the light of the orders passed by the Appellate/Tribunal in similar matters.

6.In the light of the above submission made by the learned Standing Counsel stating that the orders passed by the Appellate/Tribunal under similar circumstances were also implemented by the respondent/Board, the demand made by the respondent/Board for the alleged loss committed by the petitioner which is the subject matter of the disciplinary proceedings initiated against the petitioner is quashed by this Court, the very basis of the charge is lost. Once, the alleged loss caused by the petitioner is found to be not the amount for which the respondent/Board is legally entitled to, by virtue of the order passed by this Court, the respondent shall not be permitted to contend that the petitioner has caused any such loss to the respondent/Board nor it can be



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permitted to say that the petitioner has committed any error in calculation of the energy charges as alleged in the charges. In the teeth of the orders passed by this Court in W.P.No.21143 of 2017 on 01.12.2021, the entire basis of the charge is lost and if the impugned order of punishment passed by the respondent, as confirmed by the 3rd respondent, if allowed to be operated against the petitioner, the same would amount to allowing the respondent/Board to act in contravention or contrary to the order passed by this Court in W.P.No.21143 of 2017 dated 01.12.2021. Though the review application is stated to have been filed as early as on 22.05.2022, the respondent failed to furnish any details of the review application as on date, i.e., almost even after lapse of two years. Hence, this Court is not inclined to take into consideration so called pendency of the said review application.

7.In the light of the above, the impugned order of punishment dated 29.10.2020 passed by the 1st respondent as confirmed by the 3rd respondent by order dated 27.01.2020, cannot be allowed to remain. Accordingly, the impugned order is set aside. The respondents are directed to pass appropriate consequential orders restoring the pay of the



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petitioner within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that in the event if the respondent/Board succeeds in the review application stated to have been filed seeking review of the order passed in W.P.No.21143 of 2017 by order dated 01.12.2021 upholding the demand made by the respondent/Board against the M/S.Sudharshana Exports, it is open to the Respondent/Board to seek review of this order by filing appropriate petition.

8.Accordingly, the writ petition stands allowed. No costs.
Consequently, connected miscellaneous petitions are closed.

19.06.2024

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order



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