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W.A.No.3341 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.3341 of 2023
and
C.M.P.Nos.27247 and 27248 of 2023

E.Thanappan
Appellant

..

Versus

1. The Chief Engineer / Personal
Tamil Nadu Generation and Distribution
Corporation (TANGEDO) Ltd.,
O/o. the Chief Engineer, Personal 144,
Anna Salai, Chennai.
2. The Superintending Engineer,
Tamil Nadu Generaion and Distribution
Corporation (TANGEDCO) Ltd.,
O/o. the Superintending Engineer,
CEDC/North, Chennai - 2.
3. The Superintending Engineer,
Tamil nadu Generation and Distribution
Corporation (TANGEDCO) Ltd.,
O/o. the Superintending Engineer,
CEDC/South-II, K.K.Nagar, Chennai - 600 078.
4. The Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO) Ltd &



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M/Tambaram, Chennai - 600 045.

5. The Assistant Executive Engineer,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO) Ltd &
M/CEDC/South - II, Kadapeeri,
Chennai - 600 047.

Respondents

..

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 01.08.2023 made in WP.No.2839 of 2023.

For Appellant Mr.R.Subburaj

For Respondents Mr.D.David Sundar Singh
Standing Counsel

JUDGMENT

R. MAHADEVAN, J.

This writ appeal arises from an order of the learned Judge passed in W.P.No.2839 of 2023 on 01.08.2023.

2.The writ petitioner is the appellant herein. The case projected by him before the writ court is that he joined the services of the TANGEDCO as Technical Assistant on 30.12.1997. Thereafter, he was promoted as Junior Engineer and further promoted as Assistant Engineer. When he was working as Assistant Engineer at SS/Thirunavalur, Kallakurichi, at his request, he was transferred to Chennai South-II Region and posted as Assistant Engineer, Operation and Maintenance, New Colony CEDC/South and he assumed charge



on 11.07.2022. However, the then in-charge Assistant Engineer, who was holding additional charge of New Colony Section, did not hand over the charge to him with an intention to cover up the illegalities committed by him joining hands with others. Hence, the appellant sent a letter to the then Assistant Engineer requesting him to hand over the charge to him and seeking information with regard to 45 nos. of disconnected service connections. After taking charge of the office, the appellant came to know that there was huge loss caused to the Board and the consumers, whose service connections were disconnected, had again started consuming energy illegally without paying any consumption charges. The appellant had pointed out several instances of illegalities made by the fifth respondent in giving electricity connections to the consumers violating the Rules of the Board. It is further stated by the appellant that when he was asked to commit such illegalities in favour of the consumers, he refused to commit such illegalities and in view of the same, the fifth respondent himself passed orders in various instances of EB services like changing connections, changing tariff and other related works coupled with illegal gratification, thereby, causing huge loss to the Board.

3.The appellant further averred that in one of such instances, on 15.10.2022, one V.Rajeswari applied for fresh three phase service connection



along with a consent letter of Velmurugan by giving an undertaking that she would pay all the outstanding dues pertaining to SC No.293/020/333. On 21.10.2022, the said V.Rajeswari had paid the outstanding dues and as such, based on the oral direction of the 5th respondent, the appellant had effected service connection to the said V.Rajeswari. In the circumstances, the fifth respondent issued a memo on 10.11.2022 to the appellant calling upon his explanation as to how he could give service connection on 21.10.2022 without collecting the arrears. Meanwhile, without giving an opportunity to the appellant to submit his explanation, he was placed under suspension with effect from 04.11.2022. The appellant approached this Court by filing W.P.No.31716 of 2022 seeking revocation of order of suspension and the same was disposed of, by order dated 28.11.2022, pursuant to which, the appellant gave a representation on 30.11.2022 and based on such representation, the order of suspension was revoked by the third respondent by his proceedings dated 03.12.2022. However, the appellant was relieved from his duties with effect from 04.11.2022 and he was directed to await posting order from the second respondent. Eventually, the appellant was transferred from South to North Circle. Contending that the impugned orders of transfer and posting are nothing but punitive in nature and motivated and against the transfer policy of the Government in G.O.(Ms) No.10, P & AR Department, dated 07.01.1994, the appellant filed the instant writ



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petition bearing No.2839 of 2023 challenging the same.

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4.A counter affidavit was filed on behalf of the third respondent before the learned Judge contending that the fifth respondent, during his inspection, detected a case of theft of energy by a consumer by unauthorisedly reconnecting the disconnected service connection and hence, he issued a provisional assessment with working sheet assessing the loss caused to the Board at Rs.4,51,678/-. As the consumer had failed to deposit the assessed amount towards extra levy, though she had paid the compounding fee of Rs.12,000/- out of that amount, the service connection was disconnected. However, the appellant had unilaterally prepared a revised working sheet indicating that the consumer has to pay Rs.2,19,839/- only, instead of Rs.4,51,678/-. After payment of Rs.2,00,000/- initially by the consumer, a cheque for a sum of Rs.2,39,678/- was stated to have been given by the consumer and when it was presented for collection, it was returned for insufficient funds. While so, the consumer made a complaint to the Chief Engineer Chennai Region, South, alleging that the appellant had received a blank cheque by making false representation that after deducting Rs.2,00,000/- already paid, he would fill in the balance amount of Rs.19,839/- only, however, he wrote in the cheque the balance amount as per the assessment made by the fifth respondent. As per Regulation 27 of the Tamil Nadu Distribution Code, 2004, for providing any new or additional service connection



to a premises in which if there is any due to be paid, the service connection should be effected only after payment of such dues. However, the appellant, having full knowledge about the dues to be paid, provided an additional service connection in the name of wife of the consumer relating to S.C.No.293-020-333 (Tariff V). Thus, the appellant had not only acted in violation of the statutory regulations in force, but also failed to discharge his basic duty to realize the dues before considering service connection and thereby caused loss to the Board.

5.It was also stated in the counter by the third respondent that since there were series of complaints against the appellant from the consumers of New Colony, he was placed under suspension on 04.11.2022, pursuant to which, one Sudhakar was posted as Assistant Engineer. Thereafter, the third respondent, in exercise of the powers conferred under the Regulations, revoked the order of suspension on 03.12.2022 and the appellant was asked to await posting orders. Accordingly, the first respondent issued the order on 16.12.2022 posting the appellant as Assistant Engineer, Electrical/Shift/110 KV SS/Ennore/Chennai Electricity Distribution Circle/North, which is headed by the second respondent. The appellant did not choose to join duty as per the order of posting / reposting. He was posted only within Chennai area and the transfer was made only in public interest. It was also submitted that there is no bar under G.O.(Ms) No.10, P &



AR Department, dated 07.01.1994 to transfer an officer who is facing disciplinary proceedings.

6.After hearing the submissions made on either side, the learned Judge, pointing out the clarification issued by the Government by its letter dated 09.08.1994 in respect of G.O.(Ms) No.10, P & AR Department, dated 07.01.1994, and also relying upon the judgments of the Hon'ble Supreme Court in the cases of *Rajendra Singh and others v. State of Uttar Pradesh and others [(2009) 15 SCC 178]* and *State of U.P. and others v. Gobardhan Lal [(2004) 11 SCC 402]*, dismissed the writ petition. Challenging the same, the present appeal has been filed by the incumbent.

7.The learned counsel for the appellant submitted that the appellant exposed many irregularities committed by the officials in the Department within a short period of four months of joining the place and he was a whistleblower and hence, he was transferred. It is a clear case of victimization based on a complaint given by a consumer, who committed energy theft. That apart, the appellant gave a detailed explanation with regard to the allegation of correction made by him in the assessment done by the fifth respondent, which is available in Page Nos.110 and 111 of the typed set of papers and that the reduction amount is very much



available in 1st memo dated 03.11.2022 and hence, it is clear that the very base of the allegation made against the appellant is wrong. The learned counsel also placed reliance on the decision in the case of *Arvind Dattatraya Dhande vs. State of Maharashtra, reported in (1997) 6 SCC 169*, wherein the Hon'ble Supreme Court held that victimization of an honest officer is bad. However, without properly appreciating the facts, the learned Judge erred in passing the order of dismissal in the writ petition.

7.1. Continuing further, the learned counsel for the appellant submitted that the learned Judge failed to consider the facts put forth and the documents filed by the appellant to the effect that the transfer is punitive in nature and the fifth respondent who passed the suspension order is exposed to so many illegalities. The learned Judge had not correctly applied G.O.Ms.No.10 P&AR Department, dated 07.01.1994, to the facts of the case. It is also submitted that the transfer order has been passed in lieu of punishment and hence, the same is liable to be set aside in terms of the judgment of the Hon'ble Supreme Court in the case of *Somesh Tiwari vs. Union of India, reported in 2009(2) SCC 592*. The learned counsel has also relied upon the judgment of this Court in *W.A.No.12812 of 2013 dated 04.10.2013 in the case of P.Karunakaran vs. Union of India*, in support of such contention.



7.2. With the above submissions, the learned counsel for the appellant prayed for setting aside the impugned order and consequently to grant the relief as prayed for in the writ petition.

8. The learned Standing counsel for the Department submitted that the learned Judge has passed the impugned order, after taking note of all the facts and circumstances in a right way and hence, the same need not be interfered by this Court.

9. Heard the learned counsel on either side and perused the materials available on record.

10. It is seen that the appellant, while working as Assistant Engineer, O&M/New Colony / Tambaram Division / Chennai EDC/South II, is said to have committed the following lapses, for which, he was placed under suspension on 04.11.2022:

(i) He has corrected and reduced the assessed amount to Rs.2,19,839/- and the original assessment working sheet issued on 13.10.2022 by the Assistant Executive Engineer / O&M/Kadapperi was Rs.5,30,872/-. On 21.10.2022, a new service connection was given in his wife's name without collecting the IRDC



amount for the same premises and without receiving any documents from the consumer.

(ii)He has misbehaved with the consumer by demanding bribe.

(iii)He has threatened the consumer and received blank cheque leaf and at a later date, he himself filled the amount of Rs.2,39,678/- without the knowledge of the consumer and the same was confirmed by the consumer. Subsequently, the cheque was dishonoured by the bank.

11.During the pendency of the disciplinary proceedings, the suspension of the appellant was revoked by order dated 03.12.2022 and he was posted as Assistant Engineer / Electrical / Shift /110 KV SS / Ennore / Chennai Electricity Distribution Circle / North against the existing vacancy, by order dated 16.12.2022. The appellant challenged the said orders of transfer and posting by filing the instant writ petition, which was dismissed by the learned Judge, by the order impugned herein.

12. On a perusal of the order impugned in this appeal, it is evident that the learned Judge has rightly held that the dispute between the parties cannot be gone into as they are disputed questions of fact. The proceedings challenged in the writ petition are only with regard to transfer and posting. In this connection,



the learned counsel for the appellant relied upon the General Policy of Transfer or change of post once in three years, to be made applicable to the case of the appellant. But, this Court is of the view that it cannot be made applicable at all times and in all circumstances generally. In this regard, reference to G.O.Ms.No.10, P & AR Department, dated 07.01.1994 and the annexures thereto, would be relevant. Para III to Annexure I sets out exceptions to the General Guidelines. Sub Clause (f) instructs that in ,cases where severe allegations are pending enquiry, when it is considered necessary in public interest, and sufficient in lieu of suspension, the officer may be transferred and in that case, transfer shall be effected to a vacant post in another station or to the post where the juniormost person of the same category is working. Pointing out the same, the learned Judge has dismissed the writ petition by the order in this writ appeal.

13. It is well settled position of law that a Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at a particular place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the



contrary. No Government can function, if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desire [Refer: *Suresh Kumar Dewangan v. State of Chhattisgarh through Secretary, Food Civil Supplies and Consumer Protection Department and others*, 2024 SCC OnLine Chh 4358, High Court of Chhattisgarh at Bilaspur].

14. The Hon'ble Supreme Court in the decision in *Dr.Nagorao Shivaji Chavan v. Dr.Sunil Purushottam Bhamre and others [(2020) 1 SCC (L&S) 705]*, has held that though normal tenure of government servant is three years, but in administrative exigencies, transfer before normal tenure is permissible i.e., there is no total embargo. The relevant passage of the said decision is usefully extracted below:

"12.Notwithstanding the provisions contained in Section 3 which uses the expression that "ordinarily the tenure is three years", in our opinion in exceptional circumstances in a given case, or in the case of administrative exigencies, transfer is permissible, and no absolute bar on transfer is created by virtue of the provisions contained in Section 3 read with Section 4. In the facts and circumstances of the case and also considering the past record of Respondent 1 of not joining the place where he was transferred for five years, no interference with the order of transfer is called for."

15. Applying the above legal position to the facts of the present case, wherein, no valid or acceptable grounds have been made out to interfere with the



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order passed by the learned Judge, this writ appeal deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q.,

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J.]

Index : Yes / No

Internet : Yes / No

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