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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.25403 of 2024
and W.M.P.No.27773 of 2024

S.Santhakumar

... Petitioner

Vs.

1.The Chief Engineer / Personal,
TNAGEDCO & TANTRANSCO,
Anna Salai, Chennai – 600 002.

2.The Superintending Engineer,
Gobi Electricity Distribution Circle, Gobi.

3.The Assistant Executive Engineer O & M/East/Sathy,
Gobi Electricity Distribution Circle, Gobi.

4.The Superintending Engineer (P & A)
NCTPS – 1,
Chennai – 600 120.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for records pertaining to transfer order dated 12.08.2024 in Memo No.046233/G.11/G.111/2024-1 passed by the Respondent No. 1 and to quash the same.



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For Petitioner : Mr.P.Vetrivel

For Respondents : Mr.K.Rajkumar
Standing Counsel

ORDER

The learned Standing Counsel appearing on behalf of the respondents was ready with the written instructions when the matter was taken up for admission and therefore, the main writ petition itself is taken up for final hearing.

2.This writ petition has been filed against the proceedings of the 1st respondent dated 12.08.2024, transferring the petitioner on administrative grounds from Gobi Electricity Distribution Circle to NCTPS-I, Chennai Circle.

3.The case of the petitioner is that he was working as a Assistant Engineer from the year 2015 onwards. The disciplinary proceedings were initiated against the petitioner by serving a charge memo dated 31.07.2024. While the disciplinary proceedings were pending, the 1st respondent passed order dated 12.08.2024, transferring the petitioner from Gobichettipalayam to Chennai. The same has been



put to challenge in the present writ petition on the ground that the transfer is punitive in nature.

4.The learned Standing Counsel appearing on behalf of the respondent Corporation submitted that there were several complaints made against the petitioner regarding his attitude against the co-employees and consumers. The same impelled the Department to initiate disciplinary proceedings against the petitioner. G.O.Ms.No.10, dated 07.01.1994, enables such transfer to be made where there are certain allegations against an employee and on a preliminary enquiry, the same is found to be true. Such transfer can be made after a preliminary enquiry and in the instant case, only after conducting a preliminary enquiry, the 1st respondent had passed the order of transfer against the petitioner. The learned counsel therefore submitted that there are absolutely no merits in the present writ petition and that the same is liable to be dismissed by this Court.

5.The learned Standing Counsel for TANGEDCO in order to substantiate his submissions relied upon the order passed by this Court in W.P.No.17896 of 2023, dated 11.09.2023.



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6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.The order of transfer passed by the 1st respondent reads as if the order was passed against an existing vacancy on administrative grounds. However, it now comes to light that the petitioner has been transferred only on the ground that there are certain allegations against the petitioner. The same is further substantiated by the fact that a charge memo has been issued against the petitioner dated 31.07.2024, in which three charges have been framed against the petitioner. The first charge pertains to a quarrel between the petitioner and the foreman and wireman in the office premises. The second charge pertains to installation of an electrical pole which was done against the instructions given and in a slipshod manner. The third charge pertains to delay in execution of the work resulting in hardship caused to the Electricity Board.

8.The charges that have been framed against the petitioner does not involve moral turpitude. It is more in the nature of attitudinal problems on the part of the



petitioner. The fact that emerges is that the transfer order in this case was passed by the first respondent more in the nature of a punishment.

9.It is true that G.O.Ms.No.10, dated 07.01.1994, enable transfers to be made against staff after conducting a preliminary enquiry on the basis of allegations made against them. When such a transfer is made, it would be more appropriate to mention in the transfer order itself that such transfer is made pursuant to G.O.Ms.No.10, dated 07.01.1994. In the instant case, there is no such mention in the transfer order and the transfer order merely says that the transfer is made on administrative grounds. An order can be tested only based on what is mentioned in the order and the Court cannot understand the order by adding and supplementing certain facts which are not found in the order. The law on this issue is now too well settled.

10.The order that has been relied by the learned counsel for the respondent Corporation in W.P.No.17896 of 2023, dated 11.09.2023, turns on its own facts. On carefully reading the order, it is seen that the petitioner in that case had indulged in acts of moral turpitude. The same also came to light after an enquiry



was conducted by the Vigilance Department. A report to that effect was also sent to the transferring authority in that case. Considering such facts, this Court held that the transfer was warranted.

11. When an order is relied upon, it is very important to look at the facts of the case in that order. One small change on facts, will make a sea of difference while dealing with the facts that are taken note of in the case in hand. The major difference between the case that was cited by the learned Standing Counsel and the case in hand is that in the cited order, the concerned staff had indulged in acts of moral turpitude. In the case in hand, there is a behavioral/attitudinal problem on the part of the petitioner. Therefore, the order that was relied upon cannot be applied to the facts of the present case.

12. There is another angle from which this case can be looked at. According to the department, the petitioner is having behavioral problems/attitudinal problems and therefore, the petitioner is being transferred. If the petitioner is transferred to another place, it is quite inconceivable as to how the petitioner will behave properly in the transferred place just because the petitioner gets



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transferred and it will lead to the reformation of the petitioner with respect to his attitude.

13. In the case in hand, already disciplinary proceedings has been initiated against the petitioner. In the course of disciplinary proceedings, if the attitude of the petitioner is causing hardship to the department in dealing with the staff and also the consumers, the department has to place the petitioner under suspension and proceed further with the disciplinary proceedings. The disciplinary proceedings must be taken to its logical end in order to handle the problems that are faced by the Department from the petitioner. Ultimately, if any punishment is imposed, that will give an indication to the petitioner that he cannot continue with such behavioral/attitudinal problems. Instead, transferring the petitioner to a different place will not in any way help the Department. That apart, if the petitioner is going to be stationed at Chennai and the departmental proceedings are going to be conducted at Gobichettipalayam, the departmental proceedings will never come to an end.



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14. In view of the above discussion, this Court is inclined to interfere with the order of transfer passed by the 1st respondent in Memo No.046233/G.11/G.111/2024-1, dated 12.08.2024 and the same is hereby quashed. The respondents are directed to keep in mind the observations made by this Court *supra* and accordingly, deal with the petitioner and complete the disciplinary proceedings against the petitioner, as expeditiously as possible.

15. In the result, this writ petition stands allowed with the above directions.

No Costs. Consequently, connected miscellaneous petition is closed.

04.09.2024

Internet : Yes / No

Index : Yes / No

Speaking Order / Non Speaking Order

Neutral Citation : Yes / No

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N. ANAND VENKATESH, J.

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