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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.7083 of 2021
and W.M.P(MD) Nos.5437 & 5439 of 2021

S.Mariammal

... Petitioner

Vs

1. The Chairman Cum Managing Director,
   Tamil Nadu Generation and Distribution Corporation Ltd.,
   800,Anna Salai, Chennai -02.

2. The Chief Engineer (Distribution),
   Tamil Nadu Generation and Distribution Corporation Ltd.,
   Office of the Chief Engineer,
   Tirunelveli Region, Tirunelveli-11.

3. The Superintending Engineer,
   Tuticorin Electricity Distribution Circle,
   Tuticorin-628 002.

4. The Executive Engineer,
   Rural Division, Tuticorin Electricity Distribution Circle,
   Tuticorin.

... 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 pertaining to the impugned Order passed by the 1st respondent in proceedings in

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Order No.18, dated 19.02.2021 confirming the order passed by the 2nd respondent in Ku.Aa.No. 008385/401/Ni.P./c.1/Co.ONa/2019, dated 03.09.2019 and quash the same.

For Petitioner : Mr. Ganapathyraman.S.A

For Respondents : Mr.B.Ramanathan
Government Advocate

ORDER

This writ petition has been filed challenging the impugned Order passed by the 1st respondent in proceedings in Order No.18, dated 19.02.2021 confirming the order passed by the 2nd respondent in Ku.Aa.No. 008385/401/Ni.P./c.1/Co.ONa/2019, dated 03.09.2019 and quash the same.

2.The facts which led the filing of this writ petition is as follows:

The petitioner is presently working as an Administrative Assistant at Rural Division Tuticorin Electricity Distribution Circle, Tuticorin, under the control of the third and fourth respondents. The Administrative Assistant post falls under Class III employee and she was initially appointed as an Office Helper on 14.01.1999. Later, she was promoted as a Junior Assistant on 05.06.2007 and promoted as an Administrative Assistant on 13.08.2008 and has rendered 22 years of service with the respondent department.

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3.While so, the petitioner was visited with a show cause notice, dated 26.04.2017 by the fourth respondent for non-filing of TDS returns. Thereafter, the petitioner immediately cleared all the pending TDS returns for the year 2012-16 at Rural Division Tuticorin Electricity Distribution Circle and filed the same immediately before September 2017, following which, the same was also communicated to the fourth respondent on 16.09.2017. Following which, vide proceedings of the Director Finance, dated 11.01.2018 and the proceedings of the second respondent, dated 31.01.2018, instructions were issued to clear all the pending TDS returns before April, 2018 by engaging an external Consultancy.

4.On 26.06.2018, the petitioner was visited with a charge memo for late filing of TDS returns, alleging dereliction of duty, in subordination and causing disrepute under Standing Orders for Workmen engaged in Clerical departments of TNEB. Not being satisfied with the explanation submitted by the fourth respondent, Enquiry Officer was appointed on 10.07.2018. After completing the enquiry on 29.09.2018, the Enquiry Officer submitted his report on 11.10.2018, holding that the charges were proved. Thereafter, a second show-cause notice along with the Enquiry Officer's report was issued to the

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petitioner on 08.11.2018 and 28.05.2019, for which, the petitioner had offered her explanation on 26.11.2018 and 26.06.2019 respectively. On 3.09.2019, the second respondent passed an impugned order, by imposing a punishment of stoppage of increment for a period of 6 months without cumulative effect and imposition of recovery of Rs. 3,20,826/-, alleging that a sum of Rs. 12,83,304/- is determined as penalty for the belated filing of TDS returns by the Income Tax Department. Challenging the same, the petitioner had preferred an appeal before the first respondent on 09.10.2019 and the same was rejected by confirming the order passed by the second respondent, dated 03.09.2019, vide impugned order, dated 19.02.2001, Aggrieved by the order passed by the first respondent, dated 19.02.2021, this writ petition came to be filed.

5.The learned counsel for the petitioner submitted that, the charges pertaining to the dereliction of duty, in subordination and causing disrepute to the Board would not qualify against her, as she was never called upon to file TDS returns and it was not part of her duty. No instructions was issued calling upon the Administrative Assistant to file TDS from the Income Tax Department, He further insisted that the first and second respondents ought to have seen that the fourth respondent had not issued any instructions calling

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upon the petitioner to file TDS as projected in the enquiry report and the impugned orders, but a show cause notice, dated 26.04.2017 has been issued under mistaken presumption that filing of TDS return is the work assigned to the Administrative Assistant. Having not given any training for filing TDS return, he insisted that the first and second respondents ought not to have made the petitioner liable for instructional shortcomings. The impugned order passed by the respondents are non-speaking orders, without application of mind. He categorically submitted that the first and second respondents ought to have seen that no action against Drawing officers, who have given training for filing TDS returns. Further, he insisted that considering the fact that the petitioner is a Clerk, Class III employee and as per the settled proposition of law, no recovery can be effected against Class III employees. Assailing the impugned orders as one vitiated by illegality and arbitrariness, pressed for allowing the writ petition.

6.The second respondent has filed a counter affidavit and submitted that from 13.08.2008 onwards, the petitioner was looking after the administrative works including the administrative works, maintenance of service rolls, related works of Regular Work Establishment(RWE), preparation

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of pay bills and related works of Regular Work Establishment, preparation of recovery schedules and other allied works, preparation of bills for advance and passing of TA bills and other entitlements, bonus, wage revision etc., in Rural Division/Tuticorin. The deduction of income tax from salaries and preparation of schedules including deduction made from the employees has to be tallied with schedules for passing of HR for remittance to the concerned bank Accounts Department in TANGEDCO. In that regard, initially work has to be done by the Administrative Assistant and it is one of the work allotted to the respective Administrative Assistant working after the works of pay bills and allied works monthly. Since the petitioner is preparing bills on monthly basis, she must be aware that income tax remittance deducted from the salary ought to be deposited to the Income Tax Department Accounts within a period of 5th of every month through concerned bank. Despite the Income Tax Department viewing seriously against the action of Departments for their delayed remittance, the petitioner has not taken preliminary steps for filing TDS returns as per the procedure. That apart, the Income Tax Department has levied notice of an amount of Rs.12,83,804 and in that regard, the petitioner has failed to take adequate steps for waiving the levied amount, which was imposed by the Income Tax Department. Based on the final notice issued by the Income Tax

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Department, an explanation was called for by the Executive Engineer / Distribution / Rural / Tuticorin vide memo, dated 26.04.2017 and the petitioner on receiving the same, submitted her explanation on 06.06.2017 in which, she herself admitted that she was additionally looking after the ADM I seat allocated works, for which she was not in a position to file the income tax quarterly returns during 2012 – 15 and then for the period from 2016-17 properly. Thereafter, she promised to file income tax returns for the year 2012-15 shortly. On a perusal of the reply, which was neither convincing nor satisfying, subsequently, another explanation was called for on 07.09.2017 for which, she submitted her reply vide letter, dated 16.09.2017 informing that non filing of income tax returns for the year 2012 - 2015 has now been filed and she will discharge her duty without any delay in future. It is only under such circumstances, charges were framed under relevant TNEB Standing Orders, vide memo, dated 26.06.2018.

7.The learned Government Advocate further submitted that in terms of the letter of the Director / Finance, dated 18.03.2019, from 01.04.2018 interest / penalty for non-compliance of TDS provision would not be borne by the Department. However, interest can be recovered from the employee

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concerned from the financial year 2018-19, if no possibility of waiver is materialized. That apart, late fee upto 31.05.2015 waiver letter has to be submitted by the respective Income Tax Department. If no waiver has been materialized by the income tax authorities, huge cost cannot be borne by the Board and only on that basis, for causing additional financial burden and quantum of loss to the Board, the punishment of stoppage of annual increment for a period of six months (excluding if any spent on leave) without cumulative effect came to be inflicted on the petitioner and the penalty amount were equally divided at Rs.3,20,824/- out of Rs.12,83,804/- came to be levied on the petitioner as penalty, based on the demand notice of the Income Tax Department. Thus the punishment has been inflicted on the petitioner, after conducting an elaborate disciplinary inquiry and number of charges framed against her in the disciplinary inquiry. The competent authority, who has been imparted to issue final order, has ordered the same to all the employees namely S.Appadurai, the then ADM Supervisor (retired) and Mariammal, ADM Assistant/Tuticorin EDC and Selvalakshmi, ADM Assistant/Tuticorin EDC, who had committed lapses invariably. In view of the same, there is no infirmity in the impugned order and pressed for dismissal of the petition.

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8.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. This Court carefully perused the materials available on record.

9.The petitioner was initially appointed as an Office Helper (Trainee) on 14.01.1999 and her service was regularised from 13.01.2000 as a Regular Helper. Later, she was promoted as Junior Assistant through interim selection, with effect from 05.06.2007 (FN). Thereafter, she was promoted as Administrative Assistant with effect from 13.08.2008, and she is serving in the said post continuously for the past 22 years. While so, the petitioner was visited with a show-cause notice, dated 26.04.2017 by the 4th respondent for non filing of TDS returns for the period between 2012-2016 at Rural Division, Tuticorin, Electricity Distribution Circle, Tuticorin. On receipt of the same, the petitioner had taken diligent steps, thereby, all the pending TDS returns for the period between 2012-2016 at Rural Division, Tuticorin, Electricity Distribution Circle, Tuticorin were filed before September, 2017 and the same was also duly reported to the fourth respondent on 16.09.2017.

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10.It is brought to my attention by the learned counsel for the petitioner that the petitioner's duty as an Administrative Assistant was only to prepare pay bills and deduct TDS amount from salary, and that she was not entrusted with the duty of attending other works such as remittance of the TDS amount, preparation of statement for all the concerned employees and preparation of Form No.26 and filing of concerned tax returns to the Income Tax Department. He categorically submitted that the training for filing TDS returns were provided only to Drawing and Disbursing Officers and Staff in Account Section and the petitioner, being an Administrative Assistant, was never imparted with any training or any instructions in this regard at any point of time.

11.The learned counsel for the petitioner drew my attention to Letter No. CFC.GL.FC.ACCTS.DFC.AQ.TAXATION/F.TDS/D.211/2018, dated 11.01.2018 of Director of Finance Chennai to all Chief Engineers / Institution, Thermal Stations, TANGEDCO with respect to income tax - TDS default and demands in TDS quarterly returns and rectification of defaults by engaging external Consultancy services. The relevant operative portions of the said letter is extracted as follows:

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"9, The reports of the Agencies on the nature of defaults may be forwarded to the nominated persons to provide information for making corrections in the TDS/TCS returns. The Superintending Engineer/Circles are also to be insisted to provide fortnightly progress reports in the format enclosed, as compiled by the external agencies, It is also requested to expedite the process so as to achieve Nil TDS defaults with respect of each and every Circle before the end of the current Financial Year 2017-18. In respect of TDS defaults in any of the returns from April 2018, the responsibility is fixed with the concerned officer and staff who actually handle the TDS returns and TANGEDCO will not bear TDS demand/penalty/late fees, consultant fees, etc. Thereafter:

10. The following time line may be adhered, with an aim to rectify the TDS defaults as early as possible:

1.Identification of external consultancy agency - within a week

2.Assigning the work along with TAN of circles / offices under CE's jurisdiction, user ID & password for login to the TDS portal and also the PAN and DoB of concerned Officer - within the fortnight.

3.Initial report from consultant on the data required to rectify the errors in the returns - within a week from assignment:

4.Furnishing of data to consultant on warfoot basis - at the earliest

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5.Completion of work by consultant - immediately on receipt of data from circles / offices.

11. A report on the rectification progress along with the defaults outstanding in respect of various Quarters at the beginning of the assignment and the reduction in defaults achieved in every fortnight shall have to be monitored at the Chief Engineer office and communicated to Head Quarters, through mail to (dictaxation@tnebnet.crg) taxation division.

12. Suitable Officer in the Office of the Chief Engineer may be assigned with the above task so as to effectively complete the assignment through external consultant Firm, in co-ordination with circles / offices who hold TAN with TDS defaults"

12.The extracted portion of the letter cited supra would throw light on the fact that the issue as to the TDS defaults in any of the returns from April 2018 ought to have been assigned to suitable officers in the office of Chief Engineer so as to effectively complete the same through external consultantancy firm in co-ordination with Circle /Officers who hold TAN, TAN with TDS defaults.

13.Obviously, the petitioner is a Class III employee/ Administrative Assistant, who is not an officer, who is not an employee in the

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cadre of Officer in the office of the Chief Engineer. That apart, the fact, that training for filing TDS returns has also not been given by the respondents and in paragraph 14 of the counter affidavit filed by the second Respondent, a self-contradictory pleading has been made contending that no specific training is required for filing TDS returns. However, a separate training was conducted in a later period of time. It is also admitted in the said paragraph that to rectify the long pending TDS defaults, the Chief Managing Director of the Respondent TANGEDCO has also approved to engage external Consultants so as to complete the exercise within a scheduled time frame.

14.A careful reading of the extracted portion of the letter of the Director Finance, dated 11.01.2015 extracted supra, in conjunction with paragraph 14 of the counter affidavit filed by the second Respondent, it has become clear that during the relevant period when the Petitioner was required to file the TDS returns by issuance of show-cause notice, dated 26.02.2017, she was not given any specific training in that regard and that TANGEDCO has engaged external Consultants so as to complete the said exercise within the stipulated time frame. It has been specifically highlighted in the aforesaid letter, dated 11.01.2018 by the Director of Finance that in respect of TDS defaults in

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any of the returns from 2018, the responsibility has to be fixed with the concerned officer and staff, who actually handle TDS returns and that TANGEDCO would not bear TDS demands / penalties / late fees etc., thereafter on whole.

15.It is understood from the said letter that suitable officers from the Office of Chief Engineer were also assigned with the said task from April 2018.

16.In view of the same, I am of the considered view that for any late filing of TDS returns prior to April 2018, no action can be initiated as there were no defined guidelines or instructions on the new TDS filing process and to be more specific, the petitioner, who was not trained in this exercise was compelled to complete the pending TDS returns for the period between 2012-2016, which she duly completed before September 2018.

17.In view of the same, the charge memo, dated 26.06.2018 issued to the Petitioner for late filing of TDS returns alleging dereliction of duty, insubordination and causing disrepute under Standing Orders for Workmen

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engaged in Clerical departments of TANGEDCO will not stand the scrutiny of law. That apart, without application of mind to the fact that, the Petitioner is only a class III employee, the recovery of an amount of Rs. 3,20,826 has also been imposed by the second respondent on the Petitioner, which is *per se* illegal. The imposition of such a punishment on the Petitioner has gone contrary to the instructions of Director of Finance, dated 11.01.2018 in paragraph 9 and the instructions of the Chief Engineer of Distribution, dated 31.01.2018. I have no hesitation to observe that the impugned order has been passed by the first and second respondents respectively by passing an order of recovery pre-empty against the Petitioner without loss. That apart, this Court expresses displeasure on the attitude of the first and second respondents for having inflicted recovery of Rs. 3,20,826/- without putting the petitioner on notice as to the quantum of the said amount and the same would amount to violation of principle of natural justice. That apart, the second respondent has issued yet another second show-cause notice, dated 28.05.2018 for the same set of charges, thereby, inflicting two punishments to the petitioner, who is a Class III employee, which is *per se* illegal. In view of the same, I have no hesitation to quash the impugned order passed by the first and second respondents.

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18.Accordingly, this writ petition is allowed and the impugned orders passed by the 1st respondent in Order No.18, dated 19.02.2021 and the order of the 2nd respondent in Ku.Aa.No. 008385/401/Ni.P./c.1/Co.ONa/2019, dated 03.09.2019 are hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To
1. The Chairman Cum Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
800,Anna Salai, Chennai -02.

2. The Chief Engineer (Distribution),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Office of the Chief Engineer,
Tirunelveli Region, Tirunelveli-11.

3. The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin-628 002.

4. The Executive Engineer,
Rural Division, Tuticorin Electricity Distribution Circle,
Tuticorin.

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L.VICTORIA GOWRI, J.

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ORDER IN
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