



W.P.(MD)No.21791 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.21791 of 2017
and
W.M.P.(MD)No.18085 of 2017

D.Gurusamy

... Petitioner

versus

1. The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Maintenance Division,
TWAD Complex,
Mattuthavani Road,
K.Pudur, Madurai – 625 007.

2. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chepauk, Chennai – 600 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records connected with the impugned order dated 01.02.2017 issued by the first respondent vide his Charge Memo No.Ko.863/Ka kaa/2016-1 and quash the same.



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For Petitioner : Mr.N.Sekar

For Respondents : Mr.R.Satheesh

ORDER

The petitioner was appointed as Turn Cock (Valve Operator) in the Tamil Nadu Water Supply and Drainage Board on 01.04.1993. His service was regularized with effect from 25.07.1994. Thereafter, he was designated as Maintenance Assistant, vide Board proceedings dated 13.06.2013 and Managing Director's Proceedings dated 19.06.2013. While he was working at Elumalai Vilakku Pumping Station, he was unauthorisedly absent from 22.12.2016. The first respondent found that the petitioner was arrested in connection with a case in Crime No.697 of 2016 on the file of the Chinnamanur Police Station and kept in prison for more than 15 days. Therefore, he was suspended from service, by proceedings dated 29.12.2016. Thereafter, he was issued with a charge memo dated 01.02.2017 under Regulation 9(a) of the Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations, 1972. The charge memo dated 01.02.2017 is challenged in this writ petition on the ground that the petitioner is a workman, which comes under the TWAD



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Board Standing Orders for Workmen, 1998, and not under the Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations, 1972. On this ground, this writ petition has been filed and it is kept pending for the past seven years.

2. The learned counsel appearing for the petitioner, by referring the TWAD Board Service Regulations, 1972, submits that the category 'Turn Cock' in the General Subordinate Service comes under the category No.VIII as defined in the TWAD Board Service Regulations 1972. If there is any act or omission or any misconduct committed, the workman has to be treated only under the TWAD Board Standing Orders for Workmen 1998 and not under the Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations, 1972.

3. The learned counsel appearing for the petitioner has also produced the TWAD Board Standing Orders for Workmen, 1998 and submits that the “Workman” is defined as that of the “Workman” as defined under Section 2(i) of the Industrial Employment (Standing Orders) Act 1946. The Workman is also classified in clause 3 of the TWAD Board Standing Orders



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for Workmen 1998 that even a permanent workman is also a workman and a separate procedure has been contemplated under clause 32 of the TWAD Board Standing Orders for Workmen 1998 for conducting any disciplinary proceedings, if any omission or any misconduct committed by a workman.

4. The learned counsel appearing for the petitioner has also relied on a Judgment of the Hon'ble Apex Court in S.L.P.(C) No.7571 of 1992 (***M.D.Vijayakumar vs. The Tamil Nadu Water Supply and Drainage Board and others***), wherein, a similar set of disciplinary proceedings was initiated against a workman invoking the provisions of TWAD Board Employees (Discipline and Appeal) Regulation, 1972, instead of the provisions of Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, was quashed. The learned counsel further submits that there is no connection in between the affairs of the TWAD Board and duties and responsibilities of the petitioner and the petitioner was working in a remote village as a Turn Cock and the first respondent has issued the impugned charge memo in a mechanical manner, under the Regulation 9(a) of TWAD Board Employees (Discipline and Appeal) Regulations 1972. Therefore, the impugned charge memo is liable to be set



aside.

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3. The learned Standing Counsel submits that the order impugned in this writ petition is only a charge memo and this Court is not expected to interfere at the stage of charge memo. The charge memo cannot be a subject matter of challenge, as it does not adversely affect the rights of the delinquent, unless it is established that the same has been issued by an authority not competent to initiate disciplinary proceedings. According to the learned Standing Counsel, the first respondent is the competent authority to issue the charge memo and the petitioner has not raised any ground that the first respondent is not the competent authority. Further, the petitioner has also not attributed any *mala fide* for issuing the charge memo.

4. The learned Standing Counsel further submits that the petitioner was involved in a criminal case, for which, he was arrested and he was unauthorisedly absent for more than 15 days without any leave application and also without intimating the same to the TWAD Board and therefore, he is liable to be prosecuted for his misconduct and there is no reason to interfere with the charge memo at this stage. The learned Standing Counsel



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further submits that the petitioner is designated as Maintenance Assistant on time scale of pay and he is a regular employee and therefore, the first respondent is entitled to initiate disciplinary proceedings against the petitioner under the TWAD Board Employees (Discipline and Appeal) Regulations 1972.

5. This Court considered the rival submissions made and perused the materials placed on record.

6. The issue raised in this writ petition is that whether the petitioner is a Workman? and whether he can be prosecuted under the TWAD Board Employees (Discipline and Appeal) Regulations 1972 or under the TWAD Board Standing Orders for Workmen 1998?

7. The TWAD Board, in its service regulations 1972, has classified each service as under:

I. Tamil Nadu Water Supply and Drainage Board
General Service:-

Category - 1. Secretary to the Board
1A. Deputy Secretary



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2. Chief Accounts Officer
3. Assistant Secretary to the Board
4. Non-Technical Personal
Assistant to Chief Engineer.

II. Tamil Nadu Water Supply and Drainage Board
Engineering Service.

Category -

1. Chief Engineer
2. Superintending Engineers.
3. Executive Engineers
(including Deputy Chief
Engineer)
4. Assistant Executive Engineers
(B.P.Ms.No.124 dt. 6.4.88)
5. Chief Head Draughtsman
6. Assistant Engineer
(B.P.Ms.No.124 dt. 6.4.88)
7. Assistant Water Analyst
(B.P.Ms.No.124 dt. 6.4.88)
8. Assistant Geologist
(B.P.Ms.No.124 dt. 6.4.88)
and
9. Geological Assistant
(B.P.Ms.No.124 dt. 6.4.88).

III. Tamil Nadu Water Supply and Drainage Board
Engineering Subordinate Service:-



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Category -

1. Junior Engineers
(B.P.Ms.No.124 dt. 6.4.88)
2. Head draughtsman
3. Draughtsman, Grades I, II and III
4. Assistant Draughtsmen
5. Blue Print Operators
6. Water Works Superintendent
including Electrical Superintendent
(B.P.Ms.No.141 dt. 4.3.86)
7. Work Assistant including
Technical Assistant
(B.P.Ms.No.141 dt. 4.3.86)

NOTE: A Junior Engineer or Assistant Engineer or Assistant Executive Engineer or Executive Engineer when posted to a Municipality shall be designated as Municipal Engineer, Grade III, Grade II and Grade I respectively (B.P.Ms.No.124, dated 06.04.88)

IV. Tamil Nadu Water Supply and Drainage Board
Ministerial Service.-

Category -

1. Superintendents
2. Managers
3. Office Assistants
4. Assistants



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5. Confidential Stenographer
6. Upper Division Stenographer
(Camp Clerk to Chief Engineer)
7. Junior Assistants
8. Typists including Steno-typists
9. Store – Keepers
10. Receptionist-cum-Telephone
Operator
11. Works Clerk (B.P.Ms.No.141,
dated 4.3.86) and
12. Record Assistant (B.P.Ms.No.
141, dated 4.3.86)

V. Tamil Nadu Water Supply and Drainage Board
Basic Service:-(B.P.Ms.No.585, dated 10.12.81)

- | | |
|------------|--|
| Category - | 1. Daffedar |
| | 2. Basic Servants and |
| | 3. Basic workers including
Watchman, Lascars,
Gardeners and Sweepers |

VI. Tamil Nadu Water Supply and Drainage Board
Accounts Service:- (B.P.Ms.No.321, dated 2.7.84)

- | | |
|------------|-----------------------------------|
| Category - | 1. Accounts Officer (Entitlement) |
| | 2. Other Accounts Officers. |



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VII. Tamil Nadu Water Supply and Drainage Board
Accounts Subordinate Service (B.P.Ms.No.321, dated
2.7.84)

- Category -
1. Junior Accounts Officer
 2. Divisional Accountants

VIII. Tamil Nadu Water Supply and Drainage Board
General Subordinate Service:-

(i) Maintenance and Operation Branch :-

- Category -
1. Electrician Grade I and II
 2. Fitters, Grade I and II (including
Crane Operator and Mixer
Machine Operator)
 3. Plumber
 4. Filter Operator & Mechanic
including Filter Bed Operator
 5. Turn Cock
 6. Pump Operator including
Assistant Mechanic
 7. Work Inspector Grades I and II
 8. Helper
 9. Cleaner Grades 1 and II and
 10. Boring Mechanic

(ii) Research branch:-

- Category -
1. Junior Water Analyst including



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Laboratory Assistant and Chemist,
and

2. Laboratory Attender

(iii) General Branch:-

Category -

1. Driver including Jeep, Van,
Lorry, Rigs and Tractor Driver,
and

2. Record Clerk

IX. Tamil Nadu Water Supply and Drainage Board
Mechanical Subordinate Service:- (B.P.Ms.No.141, dated
4.3.1986)

Category-

1. Junior Mechanical Engineer
2. Foreman (Mechanical/Electrical)
3. Assistant Foreman
4. Mechanic Grades I and II
5. Rewinder
6. Assistant Rewinder
7. Turner
8. Welder Grades I and II
9. Smith
10. Machinist
11. Tinker
12. Auto Electrician
13. Painter
14. Tool Room Attender



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15. Tool Keeper
16. Drilling Supervisor
17. Driller
18. Assistant Driller, and
19. Air Compressor Operator
including Air Compressor
Mechanic.

8. Admittedly, the petitioner was appointed as a Turn Cock and his nature of service even on the date of issuance of charge memo is only to operate the valve in a pumping station. Therefore, his nature of work is only as Turn Cock. The TWAD Board has framed separate Standing Orders for dealing with the misconduct if any committed by a workman. 'Workman' is classified in clause 3 of the TWAD Board Standing Orders for Workmen 1998 and a permanent workman comes under the TWAD Board Standing Orders for Workmen 1998. A separate procedure has been contemplated in TWAD Board Standing Orders for Workmen 1998 to deal with the departmental proceedings as against the workman. Further, the “Workman” is defined as that of the “Workman” as defined under Section 2(i) of the Industrial Employment (Standing Orders) Act 1946. Section 2(i) of the Industrial Employment (Standing Orders) Act 1946 is extracted as



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under:

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“2(i). “wages” and “workman” have the meanings respectively assigned to them in clauses (rr) and (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947).”

9. The learned counsel appearing for the petitioner has also relied on a Judgment of the Hon'ble Apex Court in S.L.P.(C) No.7571 of 1992 (***M.D.Vijayakumar vs. The Tamil Nadu Water Supply and Drainage Board and others***), wherein, a similar set of disciplinary proceedings was initiated against a workman invoking the provisions of TWAD Board Employees (Discipline and Appeal) Regulation, 1972, instead of the provisions of Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946, was quashed.

10. No doubt, the Courts are not supposed to entertain the writ petitions on a charge memo. However, if the charge memo has been issued by an incompetent authority or issued with *mala fide* or against the provisions of law, the Courts can interfere with the charge memo. In this case, though a separate provision is available for conducting the



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departmental proceedings as against the workman under TWAD Board Standing Orders for workman 1998, the first respondent has issued the charge memo in a mechanical manner as against the workman under the Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations, 1972. On this ground, this Court is inclined to allow the writ petition by setting aside the impugned charge memo.

11. Accordingly, this writ petition is allowed and the impugned charge memo dated 01.02.2017 issued by the first respondent is hereby quashed.

12. Though this Court has not granted any interim order preventing the Enquiry Officer from proceeding with the enquiry, it appears that the Enquiry Officer has not conducted the enquiry from the year 2017. Therefore, this Court directs the first respondent to appoint a new Enquiry Officer as contemplated under the TWAD Board Standing Orders for Workmen 1998 and issue a fresh charge memo under the TWAD Board Standing Orders for Workmen 1998 and conclude the enquiry within a period of six months from the date of receipt of a copy of this order. The



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petitioner is also expected to co-operate for the enquiry without taking unnecessary adjournments. No costs. Consequently, connected miscellaneous petition is closed.

21.11.2024

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

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