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W.A.(MD) No.2067 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A.(MD)No.2067 of 2023

and

C.M.P.(MD)No.16549 of 2023 and 366 of 2024

- 1.The Chief Engineer/Personnel,
TANGEDCO, Administrative Branch,
N.P.K.RR.Maligai, No.144, Anna Salai,
Chennai.
- 2.The Chief Engineer,
TANGEDCO, Distribution Circle,
Tirunelveli Region, Tirunelveli.
- 3.The Superintending Engineer,
Kanyakumari Electricity Distribution Circle/Nagercoil,
TANGEDCO, Suchindram, Kanyakumari.
- 4.The Executive Engineer,
TANGEDCO/Distribution,
Nagercoil.
- 5.The Executive Engineer,
TANGEDCO/Distribution,
Kuzhithurai,
Kanyakumari District.

... Appellants

-Vs-

S.Perumal

...Respondent



W.A.(MD) No.2067 of 2023

PRAYER: Appeal filed under Clause 15 of the Letters Patent Act to set aside the order passed in W.P.(MD)No.17448 of 2023 dated 12.10.2023.

For Appellant : Mr.S.Arivalagan
For Respondent : Mr.A.K.Baskara Pandian
Standing Counsel

JUDGMENT

[Judgment of the Court was delivered by D.KRISHNAKUMAR, J.]

The present appeal has been initiated against the order of this Court dated 12.10.2023 in W.P.(MD)No.17448 of 2023.

2.The respondent filed the writ petition challenging the order of transfer issued to the respondent on the ground that the transfer order was not given on administrative ground but has been passed in view of the departmental proceedings pending against the respondent. The learned Single Judge after elaborately considering the submissions and the facts and circumstances of the case, had quashed the transfer order. Challenging the same, the present appeal has been preferred by the appellants/Department.



3.The learned Standing Counsel appearing for the appellants submitted that the order of transfer was passed only on administrative ground. The respondent had worked in Suchindram for more than 5 years and hence, he was transferred to Puthanchethai, which is hardly about 25 km away from the present working place. Further, after identifying continuous delinquency of theft of energy on the part of the petitioner, disciplinary proceedings were initiated and transfer order has been passed for the purpose of restraining the petitioner from this violation in order to safe guard the public interest. Hence, he prays for allowing this writ appeal.

4.The learned counsel for the respondent/writ petitioner filed counter affidavit stating that a charge memo alleging theft of energy was issued to the writ petitioner on 17.06.2023, but the same was served on the writ petitioner only on 05.07.2023. The writ petitioner has also filed his explanation to the said charge memo and the same is pending consideration. The grievance of the writ petitioner is that while the departmental proceedings initiated against the writ petitioner is pending, the appellants issued the impugned transfer order without providing him an opportunity of hearing to defend his case. Though the appellants state that the transfer order was made only on administrative ground, it appears that the order was passed by way of punishment. Considering the



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same, the writ Court has rightly quashed the transfer order issued to the petitioner. Hence, the same does not warrant any interference.

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

6. It is well settled by the Courts that the transfer order can be challenged in a writ proceedings if the same is issued by an incompetent authority or the allegation of *mala fides* are raised or if the same is in violation of the statutory rules in force. In the present case, the writ petitioner states that the transfer order was passed as a punishment order in view of the disciplinary proceedings pending against him, without granting him an opportunity of hearing. Perusal of the impugned order of transfer shows that the writ petitioner was transferred on administrative grounds, on the basis of the recommendations of the Vigilance Cell for initiating major disciplinary proceedings against him regarding theft of energy to avoid further inconvenience to the Administration. However, it is to be seen that as stated by the writ petitioner, the disciplinary proceedings initiated against him is pending without any progress.



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7. At this juncture, it is to be noted that the Chief Secretary to Government has passed G.O.Ms.No.81, Human Resources Management (N) Department dated 04.08.2022, wherein, time limit for finalisation of disciplinary proceedings has been fixed and direction was also issued to the authorities concerned to conclude the disciplinary proceedings, where criminal case was also pending, within the stipulated time. It is further stated in the aforesaid G.O. that if any failure on the part of the disciplinary authority, disciplinary action will be initiated by the Government/Department against the authorities concerned.

8. The learned Standing Counsel for the appellants submits that the explanation submitted by the writ petitioner will be considered by the authorities concerned in the light of the above G.O.Ms.No.81 dated 04.08.2022 and appropriate orders will be passed on its own merits and in accordance with law within a period of six weeks. The learned counsel for the respondent/writ petitioner also undertakes to cooperate with the enquiry.

9. In view of the above submission and also considering the facts and circumstances of the case and to meet the ends of justice, the following directions are issued:



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i) The appellants/competent authority are directed to consider the explanation submitted by the writ petitioner and pass orders on its own merits and in accordance with law, by taking note of G.O.Ms.No.81 dated 04.08.2022, as early as possible, within a period of six weeks from the date of receipt of a copy of this order.

(ii) If the appellants are not able conclude the disciplinary proceedings within the said time, the appellants shall file a proper application seeking extension of time.

(iii) Till the disciplinary proceedings are concluded, the impugned order of transfer shall be kept in abeyance.

10. Accordingly, the order passed in the writ petition is modified to the extent stated above and the writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] & [R.V., J.]
14.02.2024

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