

(2013) 08 MAD CK 0248
In the Madras High Court
Case No : Writ Petition No. 23178 of 2002

R. Duraikkannu

APPELLANT

Vs

Superintending Engineer, Trichy Electricity Distribution Circle

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2014) 1 MLJ 44

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Mani for T. Sellapandian, for the Appellant; Fakhir Mohideen for TNEB, for the Respondent

Judgement

C.S. Karnan, J.—The brief facts of the case are as follows:

The writ petitioner submits that he is working as a Commercial Inspector in Tamil Nadu Electricity Board. While he was working as a Commercial Inspector, a charge memo dated 31.5.2000 was issued to him on three counts for the occurrence which took place during 1995-97. He submitted a detailed explanation denying all charges levelled against him. Enquiry was conducted and the Enquiry Officer submitted his report. Subsequently, the second show cause notice was issued calling upon him to submit explanation as to why punishment of stoppage of increment with cumulative effect for one year should not be imposed. He also submitted detailed explanation to the second show cause notice. However, by order dated 31.10.2000, punishment of stoppage of increment for one year with cumulative effect was imposed and he accepted the punishment. Thereafter, the Executive Engineer, Perambalur issued an order dated 30.11.2000, cancelling the punishment imposed on 31.10.2000. Challenging the above said order dated 30.11.2000, the writ petitioner has filed a writ petition before this Court in W.P. No. 21565 of 2000 and this Court issued a notice and granted interim stay. Thereafter, it was reported by the respondent that the impugned order in the above writ petition has been cancelled and the Court dismissed the W.P. No. 21565 of 2000 as infructuous on 2.3.2001. Now,

the respondent had issued the present charge memo, dated 23.4.2002, on him under three counts. The charges are the same which came to be issued on 31.5.2000 which ultimately ended in punishment of stoppage of increment by way of proceedings dated 31.10.2000. Therefore, he is challenging the present charge memo dated 23.4.2002 before this Court. Hence, the petitioner has filed the above writ petition to quash the impugned charge memo, dated 23.4.2002 passed by the respondent/TNEB.

The respondent so far has not filed a counter statement for the past 10 years, therefore, this Court is constrained to pass a final order since the writ petition is pending for about 10 years on this Court's file.

2. The highly competent counsel for the respondent argued that there are three charges levelled against the writ petitioner which are of serious nature. The first charge was that the writ petitioner had taken 20 stay rods and gave the same to one Mani who is a blacksmith and made the material as per his specification and as such, he had committed the fraud. The second charge was that on 27.1.1997, in order to effect service connection to one Sarangapani for his agricultural field, he assessed the materials that would be required favouring the consumer, i.e., the said Sarangapani after receiving a bribe from him and also mentioned incorrectly, in the service connection that a 3 H.P. Motor had been fixed instead of 5 H.P. motor and as such, the writ petitioner has committed fraud for his personal gain. The third charge was that the writ petitioner has not followed the Tamil Nadu Electricity Department Rules and had also not sought the actual particulars and information relating to assessment and preparation from his supervisors.

3. The very competent counsel appearing for the respondent further submits that all the three charges have been framed after relying on 16 documentary evidences. So far, the erring officer had not been punished after detailed enquiry. The Department also listed 9 witnesses, out of which, 2 prime witnesses are one Mani, Blacksmith and one Sarangapani, native of Padallur who had service connection No. 300 from him and from whom he had received bribe and prepared assessment regarding material requisition for his personal gain. Besides this, other seven witnesses are also crucial witnesses in the said case. On the same charges, the impugned order has been issued to find out the veracity of the case, as the erring officer had not yet been punished by way of Departmental action. The order passed by this Court in W.P. No. 21565 of 2007 is not against the present impugned order. Therefore, the writ petitioner cannot escape from the said three serious charges.

4. The very competent counsel for the petitioner argued that the same charges have been framed and disciplinary proceedings initiated in which punishment of stoppage of increment for one year with cumulative effect was imposed. Therefore, it is no longer open for the respondents to issue present charge memo on the same set of charges, because a person cannot be punished twice for the same allegation. There is absolutely no justification to initiate one more

disciplinary proceeding on the same issue. The petitioner had already been punished. Further, during the pendency of W.P. No. 21565 of 2000, the respondent has withdrawn the order dated 30.11.2000 which has been passed by the Executive Engineer, Perambalur. Once the competent and authorized officer i.e., an executive engineer cancelled his order and informed the Court, as per recording made in the judicial order and as such, the earlier impugned order has become defunct. Subsequently, as an afterthought, the respondent issued the current impugned order which is not sustainable under law and also against the principles of natural justice. The highly competent counsel further pointed out that the earlier impugned order has been concluded after conducting an enquiry and on the basis of the said enquiry, the disciplinary authority has imposed punishment after issuing a second show cause notice and as such, the respondents have no locus-standi to issue a second impugned order for enquiry on the same set of facts which is nothing but one more parallel enquiry by the same officer against the same writ petitioner. Hence, the learned counsel entreats the Court to set-aside the impugned order.

5. Per contra, the highly competent counsel for the respondent submits that the Executive Engineer had cancelled the punishment imposed on the writ petitioner. Subsequently, it was challenged by the writ petitioner before this Court in the earlier writ proceedings. The punishment has not been imposed since it was challenged earlier before this Court. Therefore, a detailed enquiry is necessary in order to take suitable action against the writ petitioner and hence, the second impugned order dated 23.4.2002 has been issued with 16 documents being annexed. Besides this, 9 crucial witnesses have been listed. The earlier impugned order has not been annexed to the documentary evidences and listed witnesses. Therefore, the second impugned order will not alter the character of the charges.

6. On verifying the factual position of the case and hearing the arguments of the learned counsels on either side and on perusing the impugned order of the respondent, this Court is of the view that the same proceedings had been challenged before this Court in W.P. No. 21565 of 2000. At the time of hearing, the respondent reported before this Court that the impugned order has been cancelled and hence, the Court had dismissed the said writ petition. However, the respondent has not sought permission from this Court to initiate a fresh charge memo on the same set of allegations. Hence, this Court is inclined to interfere with the respondent's impugned order, dated 23.4.2002. In the result, the above writ petition is allowed. Consequently, the charge memo No. Ku. Aa. No. 1936/Nibi.4U.1 Ko. Kattu.2002-1, dated 23.4.2002, on the file of the respondent/TNEC is quashed. Accordingly ordered.