

(2008) 03 MAD CK 0015

In the Madras High Court

Case No : W.A. No. 354 of 2008 and M.P. No. 1 of 2008

The Superintending engineer, Tamil Nadu Electricity Board
and The Chief Engineer, Tamil Nadu Electricity Board, Trichy
Region

APPELLANT

Vs

T.A. Paramasivam

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Citation : (2008) 3 LW 199 : (2008) 4 MLJ 1006

Hon'ble Judges : K. Chandru, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant; Natarajan, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—The appellants are aggrieved of the order passed by the learned single Judge dated 9.9.2004 passed in W.P.

No. 10120 of 1997.

2. Challenge in the writ petition was to the order of dismissal dated 23.9.1995. The dismissal order was passed on the respondent, based on the

enquiry held into the charges, wherein he was issued with a charge sheet alleging that on 4.8.1992, he received a sum of Rs. 50/- by way of bribe

from one Ganesan for giving service connection. He also persuaded the said person to bribe the Junior Engineer by name Murugaiah Joseph for

effecting the said service connection.

3. By the order impugned in the writ appeal, learned Single Judge set aside the order of dismissal on the only ground that after issuance of second

show-cause notice, when the Respondent submitted his detailed explanation, the order of dismissal was passed without considering any of the

statements made in the explanation submitted by the respondent. In fact, learned Judge relied upon an earlier order passed by this Court in W.P.

No. 4094 of 1996 dated 20.6.2001 preferred by the other delinquent viz. Thiru Murugaiah Joseph, wherein identical order was stated to have been set aside in the other writ petition.

4. We heard Mr. Natarajan, learned Counsel appearing for the respondent, who entered caveat in this writ appeal.

5. In this context, it will be appropriate to refer to the decision of the Supreme Court reported in *Electronic Corporation of India Ltd. v. B.*

Karunakar 1994 I L.L.N. 9, wherein the Supreme Court has stated the legal position as under:

31. Hence, in all cases, where the inquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts

and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the

Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after

hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate

findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically

set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid

resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or

not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles

of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a

difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal

sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the

authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing

him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

6. Applying the above ratio to the case on hand, it has to be held that the impugned order of dismissal passed by the appellants dated 23.9.95 was defective inasmuch as none of the explanation submitted by the respondent was considered before passing the order. But, on that score, there cannot be mere cancellation of dismissal order passed by the appellants. The appellants should also be permitted to proceed further from the stage of submission of explanation to the second show-cause notice, consider the explanation submitted by the respondent properly and thereafter, pass appropriate orders in accordance with law. We feel that that would be the appropriate procedure to be adopted in the case on hand.

7. Further, we find that learned Single Judge passed the impugned order as early as 9.9.2004. This writ appeal is brought forth before us only in March, 2008. Learned Counsel for the respondent states that the respondent has reached the age of superannuation and that he is suffering from some ailment. Taking into account the aforesaid submissions, we feel that while upholding the order of the learned Single Judge, at the same time, permit the appellants to proceed with the disciplinary proceedings from the stage of submission of the explanation by the respondent to the second show-cause notice, consider the explanation submitted by the respondent and pass appropriate orders in accordance with law.

8. The appellant is directed to pay a sum of Rs. 10,000/- (Rupees Ten Thousand only) to the respondent, for the prejudice caused to the

respondent due to the undue delay involved in this writ appeal as against the order of the learned Single Judge, within a period of four weeks from

the date of receipt of a copy of this order and shall also pass orders as directed above within the aforesaid period. It is made clear that the

payment of Rs. 10,000/- is a condition precedent for permitting the appellants to pass final orders as against the respondent herein. With these

observations, the appeal is disposed of. Consequently, the connected M.P. is closed.