

(2010) 07 MAD CK 0251

In the Madras High Court

Case No : Writ Petition No. 6753 of 2006 W.P.M.P. No. 7325 of 2006

V. Manivannan

APPELLANT

Vs

The Superintending Engineer, (Purchase and Administration),
Ennore Thermal Power Station, Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Citation : (2010) 07 MAD CK 0251

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; M. Vaidyanathan, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to quash the charge memo dated 30.12.2005 issued against the petitioner for the alleged production of bogus Diploma Certificate.

2. The grievance of the petitioner is that the petitioner was already proceeded with for the alleged production of bogus Diploma Certificate and an order dated 15.12.2005 was passed by the Superintending Engineer, Chennai Electricity Distribution Circle/North, Chennai-2, reverting the petitioner to the post of Wireman, by revoking the order of suspension passed earlier. The petitioner also joined in the reverted post as Wireman. In spite of the same, after 15 days, the impugned charge memo was issued calling for explanation from the petitioner for the very same charge of production of bogus Diploma Certificate.

3. The learned Counsel for the petitioner submitted that the petitioner having been already proceeded with for the alleged production of bogus Diploma Certificate and the punishment having been imposed, the respondent is not justified in again issuing the impugned charge memo for the very same allegation and the said action of the respondent amounts to double jeopardy.

4. Even though the respondent was served as early as on 26.4.2006, no counter

affidavit is filed by the respondent till date to sustain the impugned charge memo.

5. On perusal of the order of reversion dated 15.12.2005, it is evident that the petitioner was already proceeded with and suspended from the post of Technical Assistant by order dated 16.11.2005 and final order was passed on 15.12.2005 imposing the punishment of reversion to the post of Wireman. The said order of reversion was passed after revoking the suspension order already passed.

6. (a) In the decision reported in (2004) 13 SCC 342 Lt. Governor, Delhi v. HC Narinder Singh in para 4 the Supreme Court held as follows:

4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action....

(b) In (2006) 12 SCC 28 Union of India v. Kunisetty Satyanarayana in para 18, the Supreme Court held thus,

18. We agree with the learned Counsel for the respondent that if the charge which has been levelled under the memo dated 23.12.2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable. ...

(c) A Division Bench of this Court in the decision reported in Union of India (UOI) and Another Vs. V. Sekar and Another, held as follows:

15. An employer who desires to initiate the disciplinary action, should bestow all his attention while framing the charges and once the charges were framed against the delinquent employee, the employer should stand or fall by the charges framed against the delinquent and can never be permitted to revive the charges after the conclusion of the whole proceedings and allowed to contend that the proceedings can be revived by framing a new set of charges.

7. In view of the above cited decisions of the Honourable Supreme Court and Division Bench of this Court, the impugned show cause notice, issued for the charge of producing bogus Diploma Certificate while joining duty, is definitely not permissible on the sole accepted principle of double jeopardy. On the said ground alone the writ petition is allowed and the impugned charge memo dated 30.12.2005 is quashed. No costs. Connected miscellaneous petition is closed.