

(2002) 10 MAD CK 0147

Madras High Court

Case No: Writ Petition No. 24459 of 2002

A. Matheswaran

APPELLANT

Vs

The Superintending Engineer,
Tamil Nadu Electricity Board, The
Chief Engineer, Tamil Nadu
Electricity Board and The
Chairman, Tamil Nadu Electricity
Board

RESPONDENT

Date of Decision: Oct. 1, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: V. Kanagaraj, J

Bench: Single Bench

Advocate: R. Sankarasubbu, for the Appellant; V. Radhakrishnan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Kanagaraj, J.

Writ petition praying to issue a Writ of Certiorarified Mandamus calling for the records in TNEB circular in memo a) 42467-PI/95-1 dated 01.07.1997 issued by the third respondent and b) memo No. 117/Ni.Pi.5/U.1/Oo.Na.62/2001 dated 24.05.2002 on the file of the first respondent and quash the same and direct the respondents to reinstate the petitioner into service with backwages.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that originally he was a contract worker and was absorbed in the Tamil Nadu Electricity Board by the first respondent pursuant to the recommendation of Justice Khalid Committee Report; that he was working as Helper and the Educational Qualification was "Nil" for the contract workers at the time of absorption; that as

many as 21 workmen, on ill advice, submitted their School Certificates on the same day and it was the subject matter of the disciplinary proceedings; that they participated in the enquiry, submitting their explanations even at the time of absorption; that on enquiry being conducted, the first respondent caused the second show cause notice dated 05.10.2001 directing the workmen to submit their explanations within a week as to why they should not be dismissed from service; that their representations dated 12.11.2001 seeking three weeks' further time to submit detailed explanations were not considered nor had they been rejected, but construing the representation dated 12.11.2001 itself as explanation to the second show cause notice, the first respondent passed the order of dismissal dated 15.11.2001 which is bad in law and is violative of the principles of natural justice; that he challenged the said order dated 15.11.2001 in W.P. No. 4772 of 2002 and the same was allowed on the ground that substantial opportunity was not given to the petitioner and hence violative of principles of natural justice.

3. The further case of the petitioner is that thereafter he submitted a representation dated 06.05.2002 to the first respondent explaining that the extreme penalty of dismissal is unwarranted; that though, for similarly placed persons, a lesser punishment of reduction in rank was inflicted, the first respondent, unmindful of the grounds urged, passed a mechanical order of dismissal in the impugned order relying on the circular dated 1.07.1997 which is advocating compulsory punishment of dismissal through the original authority; that even though the circular is not applicable to the contract workers employed pursuant to the report of Justice Khalid Commission, the original authority's refusal to exercise his benevolence for lesser punishment is unjustified ; that the circular perse was not applicable to him; that the disciplinary proceeding was an empty formality, since decision had already been arrived at. On such grounds, the petitioner would come forward to file the above writ petition seeking the reliefs extracted supra.

4. During arguments, the learned counsel appearing on behalf of the petitioner, besides relying on the facts and circumstances of the case in the writ petition, would also cite two judgments, both of the Hon"ble Apex Court, the first one delivered in [Commissioner of Police, Bombay Vs. Gordhandas Bhanji](#), and the second one delivered in [Anirudhsinhji Jadeja and another Vs. State of Gujarat](#), .

5. So far as the first judgment cited above is concerned, the Hon"ble Apex Court while dealing with a case u/s 45 of the Specific Relief Act, 1877 analysing the scope of an order against person holding public office held therein:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order

itself."

6. In the second judgment cited above, the Hon"ble Apex court while dealing with a Criminal Appeal under "Terrorists and Disruptive Activities (Prevention) Act, 1987" particularly dealing with the aspect of the recording of information about the offence under the said Act and the grant of approval by the authority, the Deputy Superintendent of Police, and when the said authority, the Deputy Superintendent of Police, instead of giving approval on his own sought permission of the Additional Chief Secretary in order to proceed under TADA Act, The Honourable Apex Court held this act of the authority designated by law as a case of `exercise of power on basis of external dictation" and hence found lack of application of mind, leading to quash the proceedings.

7. On the part of the respondents, though no counter has been filed, the learned counsel appearing on behalf of the TNEB would take notice and argue on instructions. Besides the learned counsel for the respondents stoutly denying the allegations of the writ petition, he would exhort that the proposition held in the above two judgments cited on the part of the petitioner are entirely different from the situation that is prevalent in the case in hand. The learned counsel would also point out that the facts and circumstances of the cases in the judgments of the Hon"ble Apex Court and the law applied are entirely different and there is absolutely no nexus to the case in hand. The learned counsel would further point out that the first judgment cited above is specifically dealing with Section 45 of the Specific Relief Act, 1877 and the second judgment has been decided on a criminal case, dealing with the Terrorists and Disruptive Activities (Prevention) Act and the case in hand being a service matter, the legal norms and procedures adopted are entirely different, which cannot be equated so as to apply, those norms held by the Hon"ble Apex Court to meet with different situations.

8. The learned counsel would also establish that there is alternative appeal remedy available for the petitioner before the Chief Engineer Distribution, Vellore.

9. In consideration of the facts pleaded by the petitioner, having regard to the materials placed on record and upon hearing learned counsel for both, what could be gathered is that the petitioner, in filing the above writ petition, has sought for not only the circular dated 01.07.1997 issued by the third respondent, the Chairman, Tamil Nadu Electricity Board but also the memo dated 24.05.2002 issued by the first respondent, the Superintending Engineer, Tamil Nadu Electricity Board to be quashed as illegal and further sought for the direction to the respondents to reinstate him into service with backwages.

10. The circular issued by the third respondent Chairman, Tamil Nadu Electricity Board, Chennai dated 01.07.1997 is in the form of instructions issued pertaining to the initiation of departmental proceedings in the matters of furnishing false information on the part of the employees adopting the instructions issued by the

Government, which is emphatical that if the Government servant, who has secured employment during initial recruitment in service, furnish false information or produce a false certificate, he should not be retained in service. The Tamil Nadu Electricity Board adopting the said instructions of the Government, has issued similar instructions in the above circular in respect of the Board's employees, the operative portion of which is as under:-

"In view of the rules position set out above, it is hereby ordered that an employee of this Board who was not qualified or eligible in terms of recruitment rules for the initial recruitment in service but has secured employment by furnishing false information or producing a false certificate in order to secure appointment or at any other during his service, should not be retained in service, if he is an approved probationer or a permanent employee disciplinary action shall be taken following the procedures prescribed under Discipline & Appeal Regulations or respective Standing Orders. If the charge is proved, the employee shall be removed or dismissed from service. Besides, such discharge termination, removal or dismissal from service, he shall also be liable for prosecution."

11. So far as the second memo. said to have been issued by the first respondent dated 24.05.2002 is concerned, it is nothing but the dismissal order passed by the authority, thereby dismissing the petitioner from the service of the Board by the said authority.

12. Needless to mention that the first circular issued by the third respondent, the Chairman, Tamil Nadu Electricity Board is testified pertaining to its legality and application in general to the employers of the Tamil Nadu Electricity Board and the second memo. is based on the facts and circumstances of the case particularly based on a domestic enquiry conducted on specific charges framed against the petitioner, against which the petitioner has got an appeal remedy before the Chief Engineer Distribution, Vellore.

13. So far as the circular issued by the Chairman, Tamil Nadu Electricity Board in the above proceedings cited dated 01.07.1997 is concerned, the objectionable portion of the same as per the petitioner is that but for the circular even in the event, the authorities arrive at the conclusion to hold the delinquent guilty of such charges framed, as it is in the present case, extreme penalty of dismissal from service should not be contemplated and finally by this circular which has been adopted from the proceedings of the Government pertaining to their service, institution of departmental proceedings and infliction of punishment that the Board has arrived at to award the extreme penalty of dismissal, termination, removal and discharge from service are resorted to file and hence the said circular is not applicable to the contract workers employed pursuant to the report of Justice Khalid Commission.

14. The petitioner's argument is that the original authority refused to exercise its benevolent jurisdiction for lesser punishment to be awarded on the petitioner as it

had done in the cases of similarly placed employees and passed the extreme punishment of dismissal in the case of petitioner; that since the said authority is bound by the circular dated 01.07.1997, calling the same unjust and illegal the petitioner has sought for quashing the same. It is the further case of the petitioner that the circular has to be declared void and inapplicable to the case of the persons who were absorbed pursuant to the recommendation of the Justice Khalid Commission Report.

15. Though the petitioner takes up the plea that the circular dated 01.07.1997 issued by the third respondent chairman, Tamil Nadu Electricity Board, is inapplicable to persons absorbed pursuant to the recommendation of the Justice Khalid Commission Report, no proper or tangible reasons have been assigned on the part of the petitioner as to how persons, absorbed pursuant to the recommendation of Justice Khalid Commission Report, deserve exemption from the circular dated 01.07.1997 or do not come under the fold of application of the circular and the mere pleading to the effect that the first respondent should not have applied the circular in his case, cannot help the petitioner in any manner, since the petitioner is not able to establish that the circular warranting extreme punishment of dismissal in cases of such nature is either illegal or unlawful or that it is violative of the Constitutional provisions or any other law for the time being in force. Therefore, there is no question of quashing the same just for the simple reason that the said circular works hardships or inconvenience to the petitioner in the matter of the disciplinary proceedings initiated against him, which ended in finding him guilty of the charges framed on facts, which this Court of judicial review is not supposed to go into, unless the same falls under the norms of law for a judicial review of the dismissal order cited in the first respondent's memo dated 24.05.2002.

16. So far as the judgments cited on the part of the petitioner are concerned, since the situations under which such conclusions are arrived at by the Hon"ble Apex Court in both the said cases are entirely different from that of the case in hand, this Court is unable to adopt the same so as to apply the said norms to the facts of the present case.

17. Since there are no strong legal grounds either in existence or brought forth on the part of the petitioner to quash both the circular and the memo., which are sought to be quashed by him, this Court is not inclined to cause interference into the circular issued by the third respondent Chairman, Tamil Nadu Electricity Board dated 01.07.1997 and the memo. of dismissal passed by the first respondent Superintending Engineer, Tamil Nadu Electricity Board, Dharmapuri dated 24.05.2002 and hence the following order:

In result,

(i) the above writ petition fails and the same is dismissed;

(ii) However, since the petitioner is at liberty to question the validity of the order of dismissal passed in Memo No. Ku. No. 117/Ni.Pi5/U.1/Oo.Na.62/2001 dated 24.05.2002 by the first respondent Superintending Engineer, Dharmapuri before the appropriate appellate authority i.e. the Chief Engineer Distribution, Vellore on facts and circumstances and in accordance with law pertaining to the subject, he can prefer an appeal before the said authority within 30 days from the date of receipt of this order.

(iii) No costs.

Consequently, W.P.M.P. Nos.33622 to 33624 of 2002 are also dismissed.