IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 6908 of 2013 (K)

PETITIONER :

R.SIVARAJAN CHETTIAR, U.D.CLERK (UNDER SUSPENSION),
AGED 51 YEARS, KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
VANCHIYOOR, THIRUVANANTHAPURAM - 695 035
RESIDING AT "DEVIKRIPA", CHEMPAKAMANGALAM, KORANI P.O.
TRIVANDRUM -695 104.

BY ADV. SRI.S.JAMES VINCENT

RESPONDENTS :
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1. THE KERALA KHADI AND VILLAGE INDUSTRIES BOARD,
   VANCHIYOOR, THIRUVANANTHAPURAM - 695 035
   REP. BY ITS SECRETARY.

2. E.N.GOVINDANKUTTY, DIRECTOR (ADMINISTRATION),
   THE ENQUIRY OFFICER, DO. DO.

R1 & R2 BY ADV. SRI.R.S.HARI KUMAR ,SC,
BY ADV. SRI.TOM K.THOMAS, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/11/2014, THE COURT ON 30-01-2015 DELIVERED THE FOLLOWING:

bp

WP(C).No. 6908 of 2013 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF ORDER NO.KB.9370/10/A.5(II) DATED 1-6-2011 ISSUED BY THE 1ST RESPONDENT.**

EXT.P2: **TRUE COPY OF ORDER NO.KB.9370/10/A.5(1) DATED 1-6-2011 ISSUED TO THE PETITIONER TO HAND OVER CHARGE.**

EXT.P3: **TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT ON 18/06/2012.**

EXT.P4(COLLECTIVELY): TRUE COPY OF MEMO OF CHARGES NO.KB.3614/11/E4 DATED 17/1/2013, WITH THE STATEMENT OF ALLEGATIONS, THE PRELIMINARY ENQUIRY REPORT, ALONG WITH COPIES OF CERTAIN STATEMENTS (WITH LEGIBLE COPIES OF FIRST FIVE PAGES)

EXT.P5: **TRUE COPY OF APPLICATION DATED 21/1/2013 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**

EXT.P6: **TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT ON 11/2/2013.**

EXT.P7: **TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT ON 15/02/2013**

EXT.P8: **COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE R1 BOARD ON 21/3/2013.**

EXT.P9: **COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE R1 BOARD ON 5/5/2013.**

EXT.P10: **COPY OF THE WRITTEN STATEMENT OF DEFENCE SUBMITTED BY THE PETITIONER TO THE BOARD ON 10/6/2013.**

EXT.P11: **COPY OF MEMO NO. KB-3014/2011/2011/E4/A14 DT 24/2/2014 ISSUED TO THE PETITIONER.**

EXT.P12: **COPY OF REPLY SUBMITTED BY THE PETITIONER ON 27/2/2014.**

RESPONDENT(S)' EXHIBITS :

EXT.R1(A): **COPY OF THE ENQUIRY REPORT.**

//TRUE COPY//

P.A. TO JUDGE

bp

C.R.

P.B.SURESH KUMAR, J.

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W.P.(C).No.6908 of 2013
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Dated 30th January, 2015.

JUDGMENT

The disciplinary proceedings initiated against the petitioner by the Kerala Khadi and Village Industries Board[`the Board' for short] is the subject matter of this writ petition.

2. The petitioner, a Lower Division Clerk in the service of the Board has been in charge of the cash of the Board from 15.1.2001. On 1.6.2011, as per Ext.P2 order, he was placed under suspension by the Board, alleging that on a verification of the accounts of the Board, it was found that the petitioner has committed misappropriation of cash, tampering of official records etc. Later Ext.P4 memo of charges was issued to the petitioner, alleging that during the period from 15.1.2001 to 31.5.2011, the petitioner had misappropriated an amount of Rs 18,39,498/- by making improper and inaccurate entries in the cash book, short remittances of amounts at the Treasury and Bank, short accounting of loan repayments, short accounting of provident fund withdrawals, non-remitting of pension contributions, misappropriation of permanent advances

using false vouchers, withholding of unutilised balanced funds, tampering of records etc.

3. According to the petitioner, Ext.P4 memo of charges does not specify the source of power of the Board to initiate disciplinary action against him with reference to the Conduct Rules. He, therefore, preferred Ext.P6 representation before the secretary of the Board to let him know the provision on the basis of which the disciplinary proceedings have been initiated against him on the allegations raised in Ext.P4 memo of charges. The petitioner also requested for copies of the various documents relied on by the Board to arrive at the conclusion that he had misappropriated a sum of Rs.18,39,498/-. The writ petition was filed thereafter seeking orders to quash Ext P2 order of suspension and Ext.P4 memo of charges.

4. A counter affidavit has been filed by the Board. In the counter affidavit, it is stated that the petitioner was not participating in the enquiry ordered against him for one or other reasons and the Board is therefore not in a position to complete the enquiry ordered against him.

5. A reply affidavit has been filed by the petitioner to the counter affidavit filed by the Board. In the reply affidavit, it is stated that the petitioner has not been given the essential

documents requested for by him.

6. On 19.3.2013, this Court passed an interim order restraining the Board from passing final orders in the disciplinary proceedings initiated against the petitioner. It was however, clarified that the enquiry can go on. It was also clarified that it will be open to the petitioner to participate in the enquiry without prejudice to his contentions in the writ petition. In the light of the interim order passed by this Court, the petitioner submitted his written statement of defence to the memo of charges. Ext P10 is the written statement of defence submitted by the petitioner to the memo of charges. In the written statement of defence, the petitioner had contended *inter alia* that the Kerala Khadi and Village Industries Board Employees' Conduct Regulations and the Kerala Khadi and Village Industries Board Service (Punishment and Appeal) Regulations do not authorise the Board to initiate disciplinary proceedings against the petitioner on the allegations levelled against him in Ext.P4 memo of charges.

7. Heard Sri.James Vincent, the learned counsel for the petitioner and Sri.Tom.K.Thomas, the learned counsel for the first respondent.

8. The learned counsel for the petitioner contended

that Ext.P4 memo of charges has been issued in contravention of the provisions contained Regulation 8 of the Kerala Khadi and Village Industries Board Service (Punishment and Appeal) Regulations ["the Punishment and Appeal Regulations" for short] based on the report of the preliminary enquiry conducted, without affording any participation to the petitioner and therefore, the memo of charges and all further proceedings pursuant thereto are vitiated and liable to be set aside. The decisions rendered by this Court in **E.S.Nambiar v. Union Bank of India** (1991 (2) KLT 354) and **Cicily v. Corporate Manager** (2010(1) KLT 986) are also relied on by the counsel in support of the said contention.

9. True, if a statutory authority bound by rules and regulations commits any infraction of the rules or regulations which causes prejudice to anyone, this Court would correct the illegalities committed by the statutory authority exercising the power of review. The question therefore is whether there has been any infraction of the Punishment and Appeal Regulations, as contended by the learned counsel for the petitioner. Regulation 8[2], [3] and [5] of the Punishment and Appeal Regulations reads as follows :

8. Procedure for imposing major penalties :

x x x x x x x x x x x x

(2) (a) Whenever a complaint is received, or on consideration of the report of an investigation, or for other reasons, the disciplinary authority specified in regulation 7 is satisfied that a formal enquiry should be held into the conduct of an employee of the Board, a formal enquiry may be ordered.

(b) The formal inquiry may be conducted by :-

(i) The immediate superior officer in the Higher services.

(ii) The Secretary.

or

(iii) any other officer of the Board empowered by the appointing authority concerned who is superior to the employee concerned and is also a member in any of the higher services.

(3) The authority or officer conducting the inquiry (herein-after referred to as the inquiring authority) shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegations on which they are based, shall be communicated in writing to the employee of the board and he shall be required to submit, within such time as may be specified by the Inquiring Authority, written statement of his defence and also state whether he desires to be heard in person.

x x x x x x x x x x x x

(5) On receipt of the written statement of defence or if no such statement is received within the time specified, the Inquiring Authority may inquire into such of the charges as are not admitted.”

Regulation 8[2][a] provides that whenever a complaint is received or on consideration of the report of an investigation or for any other reasons, the disciplinary authority is satisfied that a formal enquiry should be held into the conduct of an employee, a formal enquiry may be ordered. Regulation 8[3] provides that the authority or officer conducting the enquiry shall frame definite charges on the basis of the allegations on which the enquiry is proposed to be held. It also provides that such charges together with a statement of the allegations on which they are based shall be communicated in writing to the employee of the Board and he/she shall be required to submit his/her written statement of defence within such time as may be specified by the enquiring authority. Regulation 8[5] provides that on receipt of the written statement of defence or if no such statement is received within the time stipulated, the enquiring authority may enquire into the charges as are not admitted. It is thus evident that the Punishment and Appeal Regulations authorise the disciplinary authority to order an enquiry even at the stage of the complaint or on consideration of the report of an investigation. Further, Regulation 8[3] makes it clear that charges can be framed either by the disciplinary authority himself or by the officer conducting the enquiry. In the instant case, Ext P4 memo of charges is issued to the petitioner by the Secretary of the Board. Going by the provisions in Regulation 8, the secretary of the Board is authorised to conduct a formal enquiry into the conduct of any employee of the Board. As such, it cannot be said that Ext P4 memo of charges is vitiated for want of authority. The Punishment and Appeal Regulations do not provide that a preliminary enquiry shall not be conducted before issuing a memo of charges and before obtaining the statement of defence of the delinquent employee. The Punishment and Appeal Regulations do not also provide that the delinquent employee shall be given an opportunity to participate in the preliminary enquiry/investigation, if any, conducted by the Board into the conduct of the employee. On the other hand, the Punishment and Appeal Regulations authorise the conduct of a preliminary enquiry in the form of an investigation before ordering a formal enquiry. The Punishment and Appeal Regulations indicate that a memo of charges is contemplated only after a preliminary enquiry/investigation. As such, there is absolutely no basis for the contention that the preliminary enquiry conducted by the Board before issuing Ext.P4 memo of charges is contrary to the Punishment and Appeal Regulations, for the reason that the petitioner was not permitted to participate in that enquiry. The decisions of this Court in

E.S.Nambiar v. Union Bank of India (supra) and **Cicily v. Corporate Manager** (supra) may not have any application at all to the facts of this case, for , in those cases the enquiry was ordered contrary to the Rules and Regulations which provide that an enquiry shall be ordered only after receipt of the written statement of defence of the delinquent officer.

10. The learned counsel for the petitioner next contended that the allegations raised against the petitioner in the memo of charges do not constitute any misconduct, as provided for in the Kerala Khadi and Village Industries Board Employees' Conduct Regulations ["the Conduct Regulations" for short]. He placed reliance on the decisions of the Apex Court in **Rasiklal v. Ahmedabad Municipal Corporation** [AIR 1985 SC 504], **A.L.Kalra v. Project & Equipment Corporation of India Ltd.** [1984 (2) LLJ 186 (SC)], **Glaxo Laboratories (I) Limited v. Labour Court, Meerut and others** [1984 (1) LLJ 16 (SC)], **Workmen of Lakheri Cement Works Ltd. v. The Associated Cement Companies Ltd.** [(1969) II SCWR 237] and **Laxmi Devi Sugar Mills Ltd. v. Nand Kishore Singh** [1956 (2) LLJ 439 (SC)] in support of the said contention. According to the learned counsel, the allegations would only constitute offences punishable under the Indian Penal Code for

which the Board can only set the criminal law in motion. It was pointed out that the Board can also institute appropriate proceedings for recovery of the loss, if any, caused by the petitioner. According to the learned counsel, the Board as an employer can initiate disciplinary proceedings against an employee only for such acts of commission or omission as are included in the Conduct Regulations. It was also pointed out that the Conduct Regulations do not contemplate a misconduct of this nature. It was, however, conceded by the learned counsel for the petitioner that the Conduct Regulations provide that every employee of the Board shall, at all times, maintain absolute integrity and devotion to duty. According to the learned counsel, the said general statement is not sufficient to confer authority on the Board to initiate disciplinary proceedings against the petitioner on the so-called misconducts alleged against him in the show cause notice. He relied on paragraphs 21 and 22 of the decision of the Apex Court in **A.L.Kalra v. Project & Equipment Corporation of India Ltd.** (supra) in support of the said proposition. Paragraphs 21 and 22 of the said decision read thus:

> "**21.** And now to the facts. The gravamen of the two heads

of charges is that the appellant is guilty of misconduct as prescribed in Rule 4(1)(*i*) and (*iii*). It reads as under:

"4. (1) Every employee shall at all times:

(*i*) maintain absolute integrity;

(*ii*) * * *

(*iii*) do nothing which is unbecoming of a public servant.

Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the Rules.

22. Rule 4 bears the heading "General". Rule 5 bears the heading "Misconduct". The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in *Glaxo Laboratories (I) Ltd.* v. *Presiding Officer, Labour Court, Meerut*[6] where this Court

> held that “everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty”. Rule 4 styled as “General” specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

In the context of the said argument, the learned counsel for the Board pointed out that the misconducts attributed against the petitioner would come under Regulation 3 of the Conduct Regulations, which reads thus:

> "Every employee shall at all times maintain absolute integrity and devotion to duty"

11. It is settled that unless in the service regulations of an employee an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and impose a penalty on the employee. It is also settled that where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy, so that, any *ex post facto* interpretation of some incident may not be camouflaged as a misconduct to initiate disciplinary proceedings against the employee. The principle behind the said propositions is that since the disciplinary proceedings are likely to result in penal consequences to the employees, they should be put to notice as to what act would constitute and what act would not constitute misconduct. The question therefore is, whether the misconducts attributed against the petitioner would come within the scope of Regulation 3 of the Conduct Regulations. As noticed above, there is a categoric prescription in the Conduct Regulations that every employee shall at all times maintain absolute integrity and devotion to duty. In other words, the Conduct Regulations require that every employee shall maintain the quality of being honest and be loyal to the employer in discharging the duties attached to

the office. When a person entrusted with cash is expected to act honestly and with loyalty, he cannot be heard to contend that misappropriation of the entrusted cash would not amount to a misconduct, merely for the reason that there was no prescription in the Conduct Regulations that he shall not commit misappropriation. Coming to the decision of the Apex Court in **A.L.Kalra v. Project & Equipment Corporation of India Ltd.** [supra] on which much emphasis was placed by the learned counsel for the petitioner, it is seen that in that case the allegation against the employee concerned was that he did not purchase a plot of land as also a vehicle, after having availed advances from the employer for the said purposes. As pointed out by the learned counsel for the petitioner, in the Conduct Rules of the employee involved in that case, there was a similar statement that every employee shall at all times maintain absolute integrity and do nothing unbecoming of a public servant. The Apex Court in that case noticed that apart from the said general statement, there was a specific rule in the Conduct Rules applicable to the employee defining the various acts and omissions which would amount to misconduct. It was found that the aforesaid allegations against the delinquent employee in that case would not come within the scope of the misconducts defined in the Conduct Rules. It is in the said circumstances, the Apex Court held that the failure to keep the general standards of moral and ethical behaviour befitting an officer of the company by itself cannot constitute misconduct, unless the specific conduct falls within the scope of any of the enumerated misconducts defined under the Rules. The Apex Court also noticed in that case that the specified misconducts do not also prescribe violation of the general standard referred to above as a misconduct. If the decision of the Apex Court is analysed in the light of the general principles indicated above, it can be seen that on the facts of that case, the Court was not convinced that the employee concerned could reasonably be expected to know that disciplinary proceedings would be initiated against him on the allegation that he has not purchased a plot after having availed an advance from the employer for that purpose. Coming to the facts of the case on hand, when the Conduct Regulations categorically prescribe that an employee shall maintain honesty and devotion in discharging his duties, there is no reason for an employee to think that misappropriation of the cash entrusted to him would not amount to a dishonest act, warranting disciplinary action. The decision of the Apex Court referred to above, in the circumstances, may not be of any help to the petitioner. Further, unlike the case dealt with by the Apex Court, the Conduct Regulations in this case only prescribe the conducts expected from the employees concerned. It does not define any act or omission as a misconduct. As such, there is no merit in the contention that infraction of the Conduct Regulations would not amount to misconduct.

12. The learned counsel for the petitioner further contended, relying on Regulation 8 (3) of the Punishment and Appeal Regulations that the charges against the petitioner are vague and uncertain and therefore, the proceedings are liable to be quashed. According to him, an enquiry without clearly informing the employee of the misconduct alleged to have been committed by him is no enquiry at all in the eye of law. He also relied on the decisions in **Anant R. Kulkarni v. Y.P. Education Society** (AIR 2013 SC 2098), **Govt. of A.P. and others v. A.Venkata Raidu** [(2007) 1 SCC 338], **Transport Commissioner, Madras-5 v. A.Radha Krishna Moorthy** [(1995) 1 SCC 332] and **State of Uttar Pradesh v. Mohd. Sharif** [(1982) 2 SCC 376] in support of the said contention.

13. This contention of the petitioner cannot also be

accepted. No doubt, the charges in a disciplinary enquiry shall be definite and shall not be vague and if it is found on facts that the charges in a given case are vague and the delinquent employee did not get an opportunity to meet the allegations, the enquiry will be vitiated. But that does not mean that in every case where the delinquent employee feels that the charges framed against him are vague, he can approach this Court, invoking the jurisdiction under article 226 of the Constitution of India and this Court will examine the facts and decide whether the charges are vague or not. According to me, the question whether the charges are vague or not and whether the delinquent employee got an effective opportunity to meet the charges levelled against him are matters which are to be considered by the enquiring authority, especially when the issue whether the charges are vague or not in a given case is a pure question of fact which has to be decided with reference to the facts of the case, in the proceedings initiated challenging the orders passed on the basis of the report in the disciplinary enquiry. At this stage, it is premature for the petitioner to challenge the enquiry on that ground, for, it is not sure and certain that the proceedings would culminate against him. All the decisions relied on by the learned counsel for the petitioner except the decision of the Apex Court in **Transport Commissioner, Madras-5 v. A.Radha Krishna Moorthy** (supra) are cases where the question whether the charges framed against the delinquent employee were vague or not, was considered after the conclusion of the disciplinary proceedings, in matters challenging the decisions taken by the disciplinary authorities and the appellate tribunals based on the reports of the enquiry. In **Transport Commissioner, Madras-5 v. A.Radha Krishna Moorthy** (supra), the order under challenge before the Apex Court was an order allowing an application by the Central Administrative Tribunal, where the Central administrative tribunal had quashed the memo of charges in a disciplinary proceedings on the ground that the charges are vague. The said decision is purely a decision on the facts of that case and the question whether the charges in a disciplinary proceedings can be challenged during the pendency the proceedings on the ground that the same are vague has not been considered. The said decision also, in the said circumstances, has no application to the facts of this case.

14. The learned counsel for the petitioner then contended that despite several representations, the petitioner was neither given the copies of the basic records nor had he

been allowed to inspect the records and take copies. In this context, the learned counsel for the Board pointed out that copies of all the available records were furnished to the petitioner. As noticed above, the disciplinary enquiry initiated by the Board against petitioner is going on and at this stage, this Court cannot examine the question as to whether the petitioner has been given copies of all the relevant records on the basis of which disciplinary action has been initiated against him. The question whether the enquiry conducted against the petitioner was vitiated on account of the non-supply of the copies of the relevant records, is a matter to be considered at the culmination the enquiry, if any action is taken against the petitioner based on the report of the enquiry. As such, the said contention is also premature and does not merit consideration.

15. Yet another contention raised by the learned counsel for the petitioner was that the alleged embezzlement of money relates to the period from 15.1.2001 to 31.5.2011 and to disprove the charges, the petitioner has to rely on the records during the entire period, of which some are not available, and therefore, the delay on the part of the employer in initiating disciplinary proceedings against the petitioner has caused serious prejudice to the petitioner. According to the

learned counsel for the petitioner, the charges framed against the petitioner are, in the circumstances, liable to be quashed as violative of Articles 14 and 21 of the Constitution of India. The law on this point is also well settled. A memo of charges issued in furtherance to a disciplinary proceedings cannot generally be a subject matter of challenge before a Court as it does not adversely affect the rights of the delinquent employee, unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the memo of charges be quashed at the initial stage, as it would be a premature stage to deal with the issues. The proceedings are not liable to be quashed on the ground that the proceedings had been initiated at a belated stage or could not be concluded in a reasonable period, unless the delay creates prejudice to the delinquent employee. The Apex Court had summarised the law on the point in **Ministry of Defence v. Prabhash Chandra Mirdha** [(2012) 11 SCC 565] as follows;

> "Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been

> issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

The question whether in a given case any prejudice has been caused to the delinquent employee is again a question of fact, the decision of which is dependent on the pleadings and the materials made available in the proceedings. In the instant case, as noticed above, the allegations are that the delinquent employee has committed misappropriation of public funds running to several lakhs of rupees. There are also allegations of falsification of documents. The pleadings in the writ petition are vague and sketchy. There is no pleading in the writ petition as to the prejudice caused to the petitioner on account of the delay in initiating the disciplinary proceedings. Even assuming that some of the documents are not available, proceedings cannot be quashed on that sole ground and it cannot be said that prejudice would be caused to the petitioner on account of the said reason. As such, this contention of the petitioner also does not merit consideration.

16. Lastly, it was contended by the learned counsel for the petitioner that the petitioner has not been given the statements of the witnesses, if any, examined in the preliminary enquiry and that the enquiry is being proceeded without even affording to the petitioner an opportunity to cross examine the authors of the preliminary enquiry report. It cannot be disputed that a preliminary enquiry is conducted only to take a prima facie view as to whether there is substance in the allegations made against the employee which may warrant a regular enquiry. The evidence, if any, recorded in the preliminary enquiry cannot be used in the regular enquiry as the delinquent employee was not associated with it, and opportunity to cross examine the persons examined in such enquiry was not given. This again is a matter for the Court to consider after the conclusion of the enquiry, if further action is taken against the petitioner based on the report of the enquiry. This contention also, in the circumstances, does not merit consideration.

In the aforesaid facts and circumstances, there is no merit in the writ petition and the same is dismissed.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

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