

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 20011 of 2005 (G)

PETITIONER(S):

**N.PRAKASAN,
EXECUTIVE OFFICER GR.V., HINDU RELIGIONS AND
CHARITABLE ENDOWMENTS DEPARTMENT (ON ORDER OF
REINSTATEMENT), NOW RESIDING AT KALLYANIKA
JYOTHI NAGAR, WEST HILL, CALICUT-5.**

**BY ADVS.SRI.P.C.SASIDHARAN
SRI.E.S.ASHRAF**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEVASWOM DEPARTMENT, SECRETARIAT, TRIVANDRUM.**
- 2. THE COMMISSIONER,
HINDU RELIGIONS AND CHARITABLE ENDOWMENTS
CIVIL STATION, KOZHIKODE.**
- 3. THE DEPUTY COMMISSIONER,
HINDU RELIGIONS AND CHARITABLE ENDOWMENTS
CIVIL STATION, KOZHIKODE.**
- 4. SRI.BALAKRISHNAN,
DEPUTY COMMISSIONER, HINDU RELIGIONS AND
CHARITABLE ENDOWMENTS, NOW WORKING AS
DEPUTY COMMISSIONER, PERALASSERY DEVASWOM, KANNUR.**

**R,R1 TO 3 BY ADV. GOVERNMENT PLEADER
R,R2-3 BY ADV. SRI.K.MOHANAKANNAN,SC,MALABAR DEVASWOM
R,R2-3 BY ADV. SRI.R.LAKSHMI NARAYANAN,SC,MALABAR DEVA
R2 & 3 BY ADV. SRI.V.KRISHNA MENON, SC, MALABAR DEVASWOM BOARD
R2 & 3 BY ADV. SRI.KRISHNAKUMAR.S, SC, MALABAR DEVASWOM BOARD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 20011 of 2005 (G)

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1	COPY OF OBJECTION RAISED BY THE PETITIONER DTD. 17.5.02 BEFORE THE 2ND RESPONDENT.
EXT.P2	COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P. NO. 17848/02 DTD. 23.7.02.
EXT.P3	COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER.
EXT.P4	COPY OF THE ORDER OF THE 2ND RESPONDENT DTD. 12.8.04
EXT.P5	COPY OF THE REVISION PETITION FILED BY THE PETITIONER.
EXT.P6	COPY OF THE ORDER ISSUED BY THE GOVT. DTD. 3.5.05
EXT.P7	COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE COMMISSIONER, HR& CE, KOZHIKODE DTD. 26.5.05
EXT.P8	COPY OF THE ACKNOWLEDGMENT CARD EVIDENCING THE RECEIPT OF EXT.P7 BY THE COMMISSIONER, HR & CE.
EXT.P7	COPY OF THE LETTER ISSUED BY THE ASSISTANT COMMISSIONER DTD. 29.10.05 (PRODUCED IN I.A NO. 1531 OF 2006)

RESPONDENTS EXHIBITS:

NIL

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.20011 of 2005 - G

=====

Dated this the 21st day of October, 2015

J U D G M E N T

The petitioner, a delinquent employee, who was imposed with punishment of dismissal as per Ext.P4, which was modified and re-instated in service with lesser punishment as per Ext.P6, is before this Court alleging bias and total procedural irregularity in the conduct of the enquiry. The petitioner was issued with a charge sheet by the 4th respondent, who was at that time holding the office of the 3rd respondent.

2. The petitioner is said to have filed detailed objections, dissatisfied with which, the Commissioner had ordered an enquiry, in which the 4th respondent was appointed as an Enquiry Officer. The petitioner at that point of time itself,

approached this Court alleging bias on the 4th respondent, since he had conducted the preliminary enquiry, which led to the charges alleged against the petitioner. This Court by Ext.P2 judgment left open all such contentions to be urged at the time of challenge to any punishment imposed; as a result of the proceeding.

3. However, this Court was careful to notice that there is no proposition that the disciplinary authority himself cannot hold enquiry. The 3rd respondent was the disciplinary authority of the petitioner, which post, the 4th respondent was holding at that point of time. The petitioner was also directed to take up such contentions before the Commissioner, who had ordered the enquiry and had appointed the 4th respondent as the Enquiry Officer. The petitioner is said to have taken up such contention, which was rejected and the enquiry was proceeded with, which is alleged to be ex-parte and eventually an order at Ext.P4 is seen to have been passed, imposing the punishment of dismissal.

4. The petitioner challenged Ext.P4 by a revision before the Government. The Government by Ext.P6, directed to reinstate the petitioner with certain conditions, which were as follows:

(1) The petitioner was to refund the excess salary drawn.

(2) The period spent out of employment, not be treated for any benefits.

(3) Cumulative reduction of three increments.

(4) Denial of promotion for five years and

(5) Not to post the petitioner in any important temple during his service.

5. Bias is alleged, on the basis that the preliminary enquiry, which led to the charge sheet itself was carried on by the 4th respondent, who was also appointed as the Enquiry Officer. It was also contended that the proceedings were carried on ex-parte, despite the petitioner having requested for time to

effectively defend the proceedings.

6. The allegation of bias stands further substantiated by the fact that the Enquiry Officer included charges on the conduct of the petitioner at the enquiry, which also were found to be proved in the enquiry. It was thus the combined consequence, of the charges earlier alleged and levelled during the enquiry that resulted in the punishment imposed. Further it is contended that the enquiry report was not supplied to the petitioner before a decision was taken on the findings of the enquiry report and there is a premeditated approach on the part of the Enquiry Officer as also the officer who imposed the punishment by Ext.P4. It was specifically pointed out that even the Government while considering the revision had indicated that one of the charges was with respect to the delinquent employee having behaved in a disobedient manner during the conduct of the enquiry and non co-operation with the Enquiry Officer. The Government though modified and reduced the

punishment, nevertheless was influenced by the finding on the charge of misconduct during the enquiry, goes the argument.

7. The learned Government Pleader however would contend that to support the allegation of bias, the petitioner has not even produced the charge sheet or the enquiry report. It is also contended that the ground of the enquiry having been carried on ex-parte, cannot be sustained since Ext.P4 order clearly indicates the various opportunities given to the petitioner, which was not properly utilised by the petitioner. The conduct of the delinquent employee at the enquiry was also deprecable and it clearly indicated non-co-operation with the Enquiry Officer. The allegation of bias cannot be sustained, contends the learned Government Pleader since, it is not the Enquiry Officer, who had found the charges against the petitioner. The Enquiry Officer had merely recorded the evidence and made his recommendations, which the Commissioner had no obligation to follow. The Commissioner independently had, on the basis of

the evidence recorded found that the petitioner is guilty of the offences alleged and had dismissed the petitioner. The learned Government Pleader also specifically points out that the Government had been indulgent insofar as taking the petitioner back into services on certain conditions. There is nothing to interfere with the findings or the punishment imposed, is the argument in defence.

8. The petitioner has not produced the charge sheet or the enquiry report. In the present case, a reading of Ext.P4 would indicate that on an allegation of the petitioner having drawn excess salary and having committed misappropriation of funds set apart for construction activities in a temple, in which he was appointed as an Executive Officer, were first enquired into by the 4th respondent, who was holding the office of the 3rd respondent. The 3rd respondent admittedly is the disciplinary authority and he is competent to conduct a preliminary enquiry into the conduct of his subordinate staff and also issue a charge

sheet, on detection of misconduct. As was noticed in Ext.P2 the disciplinary authority could also conduct the enquiry and impose the punishment. But herein, presumably on the allegation of bias raised, it was the Commissioner; the superior officer of the 3rd respondent, who initiated the enquiry and imposed the punishment.

9. The further contention urged, to cause interference of the enquiry report, is the fact that the petitioner was declared ex-parte and the enquiry proceedings were conducted in his absence. The proceedings of the enquiry were also put to scrutiny, under Ext.P4 order since the petitioner had also raised a contention with respect to the conduct of the enquiry before the Commissioner. Ext.P4 reveals that there were two charges issued one on 15.12.2001 and the other on 27.12.2001 with respect to, (i) excess drawal of salary and (ii) misappropriation of funds respectively at Sri Kannanchery Mahaganapathy temple and Sri Thirunelly temple. A separate enquiry was held as directed by

the Commissioner; by the 3rd respondent.

10. Enquires were proceeded with on two different dates. With respect to the charge sheet dated 27.12.2001, the petitioner appeared and sought for time to appoint a lawyer. However the proceedings sheet was refused to be signed by the petitioner. On the next posting date on 10.05.2002, the petitioner and his lawyer appeared and one witness was examined on the side of the Management. The examination was continued on 15.05.2002 and the enquiry was posted to 25.05.2002. On that date, neither the petitioner nor the lawyer appeared and the matter was posted to 03.06.2002. When the petitioner again failed to appear on 03.06.2002, a registered notice was issued, posting the enquiry on 04.07.2002, on which date also the petitioner did not appear. Hence, one more opportunity was given by posting the enquiry to 22.07.2002 and on the petitioners failure to appear, the enquiry was proceeded with and a report was prepared.

11. As to the show cause notice on 15.12.2001, the proceedings commenced on 16.01.2002, on which date, the petitioner appeared and sought for examination of the documents, which was permitted and the enquiry was posted to 22.01.2002. On 22.01.2002, the petitioner absented himself and the matter was posted to 13.02.2002 and then to 12.04.2002, on which later date, the petitioner and his lawyer appeared. It was also submitted on 12.04.2002 that there was no further evidence beyond the written submission made. Again on the petitioner being asked to sign the proceedings, he refused. Hence, the enquiry was posted to 25.04.2002, on which date, though the petitioner and the lawyer were present; the lawyer refused to appear against the temple. Despite further time being granted, none appeared and the enquiry was proceeded with, in the absence of the petitioner and concluded.

12. In such circumstance, this Court does not find any reason to interfere with the enquiry report on the contention that

the petitioner was declared ex-parte. The petitioner on his own volition refused to attend the enquiry and co-operate with the proceedings. The bias alleged on the Enquiry Officer cannot also be sustained on the mere factum of the petitioner having been declared ex-parte; which was only due to his default.

13. The petitioner relies on the following decisions reported in **Arjun Chaubey v. Union of India and others [(1984) 2 SCC 578]**, **Saji v. District Court [2000 (1) KLT 767]** and **State of Uttaranchal and others v. Kharak Singh [(2008) 8 SCC 236]** to further contend that the Deputy Commissioner ought not to have been appointed as the Enquiry Officer.

14. **Arjun Chaubey** (supra) was a case in which an employee of the Railways was dismissed from service on charges of misconduct. The dismissal was made after a charge sheet was issued and the explanation was received. No enquiry was conducted, which even as per the order was not reasonably practicable; as permissible under the Railway Servants

(Discipline and Appeal) Rules, 1968. The challenge was on account of the absence of enquiry; but the Hon'ble Supreme Court allowed the appeal on another ground. That, the misconducts alleged were in relation to the delinquent employees conduct against the disciplinary authority, who passed the order of dismissal. It was held that the disciplinary authority hence was the complainant and if an enquiry was held, he would have been the primary witness. It was held that

"No person can be a judge in his own cause and no witness can certify that his own testimony is true. Anyone who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry" (sic)

15. In **Saji** (supra) also a somewhat similar circumstance arose where the District and Sessions Judge was the key officer who initiated the complaint and alleged misdemeanors of delivery of official documents unauthorisedly. **Kharak Singh** (supra) was also on the facts as noticed in paragraph 17, which is extracted hereunder:-

17. On the other hand, Mr.P.C.Lohani, Dy. Divisional Forest Officer, Nandhaur acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16.11.1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the enquiry officer himself has acted as the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

No such personal interest can be imported on the 3rd respondent herein.

16. All the above decisions were on the peculiar facts of the enquiry officer being a witness insofar as the misconducts alleged. A preliminary enquiry conducted by the disciplinary authority would not make him a witness. The charges levelled after the preliminary enquiry is to be established at the enquiry and the same again has to be looked into by the disciplinary authority before a punishment is imposed. The 3rd respondent by no stretch of imagination could be said to be a witness to the

specific allegations herein being excess drawal of salary and misappropriation of funds. Neither does the fact that a preliminary enquiry was conducted by the 3rd respondent, disable him from conducting the enquiry. Nor was the petitioner declared ex-parte for reason of any bias of the 3rd respondent as disclosed from the proceedings. The ground of bias hence remaining unsubstantiated.

17. However, it is to be noticed that during the course of the enquiry, the conduct of the petitioner was reduced to a charge and the Enquiry Officer had also conducted an enquiry into such charge. Though the 3rd respondent was the disciplinary authority of the petitioner, the specific charges against which the enquiry was conducted, was with respect to the incidence of excess drawal of salary and misappropriation; respectively at the two temples above referred. There was no warrant for the Enquiry Officer, who was not acting in the capacity of the disciplinary authority, to have initiated charges in the course of

the enquiry, which has to be found to be without any notice to the petitioner and without taking any explanation for the said charges.

18. It is to be emphasised that the Commissioner has independently considered the issues at Ext.P4. Hence while upholding the procedure of the enquiry, it is to be declared that the additional charge raised by the Enquiry Officer against the petitioner during the course of the enquiry and the findings with respect to that as also the evidence adduced, has to be totally eschewed in consideration of the guilt of the delinquent employee and also in arriving at a decision on the punishment to be imposed.

19. The further contention of the petitioner is that after the enquiry, report was not supplied to him and that the findings on the charges alleged were entered into before the supply of the enquiry report. A reading of Ext.P4 would indicate that after the conclusion of the enquiry; the Commissioner had

issued two orders respectively on 17.01.2003 and 04.02.2003 read as (1) and (2), finding the petitioner guilty of the offences alleged and tentatively deciding to dismiss the petitioner from the service. The further recital in the 1st paragraph of Ext.P4, itself would indicate that the enquiry report was not supplied to the petitioner. The petitioner is said to have specifically requested for the enquiry report upon which alone, by covering letter dated 29.01.2003, he is said to have been issued with the enquiry report. It was then, after hearing the petitioner on 24.07.2003 and 29.07.2003, the Commissioner passed Ext.P4 order imposing the punishment of dismissal of the petitioner.

20. Primarily, it is to be noticed that the Commissioner, who acted as the disciplinary authority concurred with the Enquiry Officer, on the finding of guilt, without the supply of the enquiry report to the petitioner. The petitioner though heard was also not specifically asked to show cause regarding the findings in the enquiry report. The supply of the

enquiry report and calling for objections as to the findings, is a necessary concomitant of the principles of natural justice as has been held by the Hon'ble Supreme Court in **E.C.I.L v. Karunakar [AIR 1994 SC 1074]**.

21. Ext.P4 also takes note of the conduct of the petitioner during the enquiry and the fresh charge levelled and the findings thereon, which were raised at the time of the enquiry. It is already found that there was no separate show cause notice issued on the said charge nor the petitioner granted an opportunity to answer the same or defend it. Obviously the said findings also influenced the Commissioner in coming to a decision, which eventually resulted in the dismissal of the petitioner.

22. In such circumstance, necessarily, the order at Ext.P4 has to be set aside for reason of violation of principles of natural justice. Ext.P6 also hence would stand set aside. It is trite that when an order of punishment pursuant to a disciplinary

proceeding is set aside on grounds of procedural irregularities; this Court has to direct resumption of proceedings from the stage at which such procedural irregularities occurred. In the present case, this Court is of the opinion that the procedural irregularity occurred in the non-supply of the enquiry report. Since enquiry report has already been supplied to the petitioner, the petitioner shall within two weeks from the date of receipt of the certified copy of this judgment, file his objections to the Commissioner. The Commissioner shall look into the enquiry report as also the objections of the petitioner and decide on the same, within three months thereafter, after hearing the petitioner.

23. It is made clear that the findings with respect to the additional charges, which was raised at the time of the enquiry, shall not at all be considered by the Commissioner. It is also made clear that when the Commissioner imposes punishment, it shall not be in excess of what has been ordered

W.P.(C) No.20011 of 2005 - G

by the Government in Ext.P6.

With the above observations, the writ petition would stand allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/26/10/2015

// true copy ///

P.A to Judge.