

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Writ Petition No.35628 of 2015

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri G.Tuhin Kumar, Learned Counsel for the petitioner, and Sri P.Ravi Prasad, Learned Standing Counsel for the High Court and, with their consent, the Writ Petition is being disposed of at the stage of admission. The relief sought for in this Writ Petition is to quash the proceedings of the 3rd respondent dated 21.09.2015, and the preliminary enquiry report of the 4th respondent, as arbitrary, illegal, in violation of principles of natural justice, contrary to Rule 20 of the A.P.C.S. (CC&A) Rules, 1991 and in violation of Articles 14, 16 and 21 of the Constitution of India.

The petitioner, the Chief Administrative Officer of the IX Additional District Court, Wanaparthi, Mahabubnagar District, has invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, aggrieved by the proceedings of the Principal District Judge, Mahabubnagar dated 21.09.2015 framing articles of charge against him. The grievance of the petitioner is that, while he was issued a notice to be present in the preliminary enquiry on 21.05.2015 and was again informed that he should appear in the preliminary enquiry on 06.06.2015, the preliminary enquiry officer submitted his report on 05.06.2015 itself denying the petitioner the opportunity to participate therein.

Sri G.Tuhin Kumar, Learned Counsel for the petitioner, would submit that the preliminary enquiry report forms the basis for issuance of the charge memo; as reliance is sought to be placed upon the statements, of persons examined in the preliminary enquiry, which were recorded behind his back, the petitioner has been denied the opportunity to cross-examine those witnesses; the action of the respondents, as is evident from the proceedings of the Registrar (Administration) dated 28.04.2015 is to fix responsibility on him; and the enquiry proposed to be

conducted is an empty ritual as the respondents have already pre-determined to hold the petitioner guilty of the charge. Reliance is placed by the Learned Counsel on **Nirmala J. Jhala v. State of Gujarat**.

A preliminary enquiry is conducted to decide, prima-facie, whether or not disciplinary action should be initiated against an employee. The employee, against whom disciplinary action is initiated, cannot claim, as of right, that he should have been given an opportunity of being heard in the preliminary enquiry. The only requirement is that, if the preliminary enquiry report is sought to be relied upon in the subsequent departmental enquiry, the charge-sheeted employee should be furnished a copy of the preliminary enquiry report. It is not in dispute that, in the present case, a copy of the preliminary enquiry report was made available to the petitioner, along with the other documents enclosed to the charge memo. The mere fact that the petitioner was called upon to appear before the preliminary enquiry officer does not render the report, submitted by the preliminary enquiry officer without hearing him, illegal. No statutory rule, which requires an employee to be given an opportunity of being heard, in a preliminary enquiry, has been brought to our notice.

In **Nirmala J. Jhala**¹ on which reliance is placed by Sri G. Tuhin Kumar, Learned Counsel for the petitioner, the question which arose for consideration was whether it was permissible for the enquiry officer, conducting the departmental enquiry, to take into consideration statements recorded in the preliminary inquiry which was held behind the back of the charged employee and, for which, she had no opportunity to cross-examine them. The Supreme Court held that the evidence, recorded in preliminary inquiry, cannot be used in a regular inquiry as the delinquent was not associated with it; opportunity to cross-examine the persons, examined in such inquiry, is not given; and using such evidence would be violative of principles of natural justice.

The law declared by the Supreme Court, in **Nirmala J. Jhala**¹, is that it is impermissible for an enquiry officer, conducting a departmental enquiry, to take into consideration statements recorded in a preliminary enquiry held behind the back of the charge-sheeted employee.

Sri P. Ravi Prasad, Learned Standing Counsel for the High Court, would fairly state that witnesses, on whose evidence reliance would be placed by the presenting officer, would be examined in the departmental enquiry; the petitioner would be

permitted to cross-examine them; and the statements of persons, recorded in the preliminary enquiry, would not be relied upon unless such persons are also examined in the departmental enquiry, and are made available for cross-examination by the petitioner. In view of what Sri P. Ravi Prasad, Learned Standing Counsel for the High Court, has stated we see no reason to interfere with, or to prevent, departmental enquiry proceedings being continued.

The submission of Sri G.Tuhin Kumar, Learned Counsel for the petitioner, that the respondents have already decided to hold the petitioner guilty of the charge is without any basis. Reference to the letter of the Registrar (Administration) dated 28.04.2015 in this regard is also of no avail. All that the Registrar (Administration) had informed the District Judge, Khammam, vide his letter dated 28.04.2015, is that a preliminary enquiry should be ordered for fixing responsibility on the employee concerned for misplacement of the case record in M.V.O.P.No.1440 of 2001. The words "fixing responsibility" cannot be read in isolation, but must be read in conjunction with the words "on the employee concerned" which can only mean that a preliminary enquiry was required to be conducted to identify the person who had misplaced the case record in M.V.O.P.No.1440 of 2001. The Principal District Judge, Khammam informed the Registrar (Administration), vide his letter dated 09.06.2015, that they had ordered the Principal Junior Civil Judge, Khammam to conduct a preliminary enquiry, and to submit a report; the Principal Junior Civil Judge, Khammam had conducted a preliminary enquiry, and had submitted his report fixing responsibility on the petitioner; and a preliminary enquiry report was being submitted for taking further action in the matter.

A preliminary enquiry report, as the very words indicate, is a report preliminary to disciplinary action being initiated against an employee. As the conclusion drawn by the preliminary enquiry officer is based on the statements recorded behind the back of the charged employee, any finding recorded in a preliminary enquiry report has no bearing on the disciplinary proceedings initiated against the charged employee. The views expressed by the preliminary enquiry officer, in the preliminary enquiry report, are tentative and cannot form the basis for holding an employee guilty of the charges levelled against him. Suffice it to make it clear that the enquiry officer shall not rely on the statements recorded in the preliminary enquiry, unless the persons, whose statements were recorded in the preliminary enquiry, are examined in the departmental enquiry also, and are made

available for cross-examination by the petitioner. The proceedings under challenge do not, however, necessitate interference.

Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also dismissed. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date:12.11.2015.

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