



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2016

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD) .No.17690 to 17692 and 17069 of 2015

and

M.P. (MD) Nos.1, 1, 1, 1, 2, 2 and 2 of 2015

- 1.P.Balamurugan .. Petitioner in W.P.(MD)No.17690 of 2015
- 2.G.Gopala Krishnan .. Petitioner in W.P.(MD)No.17692 of 2015
- 3.K.Muthukamatchi .. Petitioner in W.P.(MD)No.17691 of 2015
- 4.M.Rajasangili .. Petitioner in W.P.(MD)No.17069 of 2015

Vs.

1.The Deputy Inspector General of Police,
Madurai Range, Madurai District.

2.The Superintendent of Police,
Madurai District, Madurai.

.. Respondents in all the writ petitions

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned termination orders passed by the second respondent in his proceedings in C.No.F2/41403/2014; C.No.F2/41401/2014; C.No.F2/41399/2014 and C.No.F2/41402/2014, D.O.No.305/2015, dated 14.03.2015; and the consequential rejection orders passed by the first respondent in his proceedings in C.No.A4/6570/AP-13/2015; C.No.A4/3942/AP-12/2015; C.No.A4/6569/AP-11/2015 and C.No.A4/6571/AP-14/2015, R.O.285/2015; dated 31.08.2015 and 24.07.2015 and quash the same as illegal, respectively.

For Petitioners in
all the W.Ps.

: Mr.M.Ajmal Khan, Senior Counsel
for
Mr.Ajmal Associates and
for Mr.K.Mahendran

<https://hcservices.ecourts.gov.in/hcse/Pics/> For Respondents in

both the W.Ps. :

Mr.S.Chandrasekar
Government Advocate



COMMON ORDER

These Writ Petitions have been filed for issuance of writ of Certiorarified Mandamus calling for the records relating to the impugned termination orders passed by the second respondent in his proceedings in C.No.F2/41403/2014; C.No.F2/41401/2014; C.No.F2/41399/2014 and C.No.F2/41402/2014, D.O.No.305/2015, dated 14.03.2015; and the consequential rejection order passed by the first respondent in his proceedings in C.No.A4/6570/AP-13/2015; C.No.A4/3942/AP-12/2015; C.No.A4/6569/AP-11/2015 and C.No.A4/6571/AP-14/2015, R.O.285/2015; dated 31.08.2015 and 24.07.2015 and quash the same as illegal, respectively.

2. The petitioners are all selected and appointed as Special Police Youth Brigade on a consolidated pay of Rs.7,500/-. After the initial training, they joined the Youth Brigade at Samayanallur Police Station, Madurai District; Koodal Pudur Police Station, Madurai District and Avaniyapuram Police Station, Madurai respectively and later they were transferred to different places. While so, pursuant to the order of the second respondent, the petitioners assembled on 02.09.2014 in the Armed Reserve Ground at Madurai, when the Deputy Superintendent of Police announced that the work of two wheeler patrolling duty so far attended by the Youth Brigade in two shifts per day, would be modified into three shifts. Following the announcement, the Youth Brigade personnel aired their views that such increase to three shifts would cause inconvenience to them, since they were coming from far of places. Later, the petitioners went to the second respondent office by bus and gave petitions for returning the original certificates, as required by the authorities. At that time, the other Youth Brigade personnel, who had assembled in the conference hall, requested them to accompany them to attend the meeting and accordingly, the petitioners attended the meeting. While so, the second respondent in his proceedings, dated 05.09.2014 placed the petitioners under suspension based on the report received from the Deputy Superintendent of Police, Armed Reserve, Madurai District. Followed by the suspension order, show cause notices were also issued on 08.10.2014 along with preliminary report calling upon the petitioners to submit their explanation within seven days. Accordingly, written explanations were given on 16.10.2014 by the petitioners. But the preliminary enquiry report was dated 19.09.2014, which was prepared even without enquiring the petitioners. As the explanations called for from the petitioners shows subsequent date to the preliminary enquiry report, evidently, the report was prepared behind the petitioners' back without giving them an opportunity.

<https://hcservices.ecourts.gov.in/hcservices/>

3. In the suspension order, the respondents have given a reason that on 02.09.2014, at 09.30 a.m. without permission, the

enquiry a
notice

on the statements obtained during the preliminary enquiry, are not

substantive evidence as they are obtained behind the back of the

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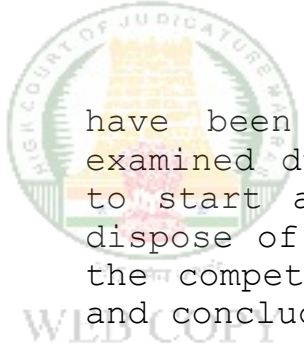
petitioners. It was also contended on behalf of the petitioners that the statements made during preliminary enquiry alone cannot be taken as the basis for arriving at the conclusion of delinquencies.

7. Admittedly, during the preliminary enquiry, no opportunity was given to the petitioners and the enquiry officer recorded only the official witnesses and none of the Youth Brigades had been examined. The preliminary enquiry officer did not sit with an open mind to hold an impartial domestic enquiry, which is an essential component of Principles of Natural Justice.

8. Though there were more than 150 Youth Brigades, who participated in the demonstration in the second respondent office, only a few of them lead a march to the Superintendent of Police office. Even without verifying the said fact whether the petitioners actually participated in the said march, the disciplinary action has been taken against the petitioners. Primarily the punishment was effected based on the Preliminary enquiry, which is not substantive evidence and it is without the participation of the petitioners. The learned Senior Counsel appearing for the petitioner also placed reliance on the following decisions:-

(1) In UNION OF INDIA v. MOHD. IBRAHIM reported in 2004 (1) SCC 87, the Hon'ble Supreme Court has held as follows:-

"2. Union of India is in appeal against the order of the Tribunal setting aside an order of the dismissal of the respondent as well as the order of the High Court refusing to interfere in its jurisdiction under Article 226 of the Constitution. In a disciplinary proceeding against the respondent, a set of charges leveled against which charges appear to be grave and serious, the ultimate conclusion of the enquiring officer having been based upon statement of persons made in the course of preliminary enquiry, the Tribunal came to hold that the conclusion is vitiated since the same was based upon the statement of persons examined in the preliminary enquiry and accordingly the Tribunal set aside the order of dismissal. The High Court on being approached has refused to interfere with the order in an application under Article 226 of the Constitution. When the matter was listed for admission, learned ASG requested that the power of the employer to start a fresh proceeding should not be whittled down in any manner, particularly in view of the nature of charges against the delinquent. He however fairly stated that in the procedure adopted in the case in hand, the order cannot be found fault with. Pursuance to the notice, respondent has entered appearance and the learned counsel for the respondent vehemently contested on the ground that 17 long years have elapsed and it will cause great hardship to start a proceeding afresh. We are unable to persuade to agree with the submission of the learned counsel for the respondent, particularly looking at the charges leveled against. In that view of the matter, though we are of the considered opinion that the order of dismissal was vitiated as the findings



have been based on consideration of statement of the persons examined during the preliminary enquiry but the power of employer to start a fresh proceeding cannot be taken away. Therefore, we dispose of the matter with the observation that it will be open to the competent authority to start a fresh disciplinary proceeding and conclude the same in accordance with law."

(2) In NIRMALA J. JHALA v. STATE OF GUJARAT reported in 2013(3) MLJ 621 (SC), the Hon'ble Supreme Court has observed and held as follows:-

"19. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the Enquiry Officer, the High Court on Administrative side as well on Judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr. G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.

20. A Constitution Bench of this Court in Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar, AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

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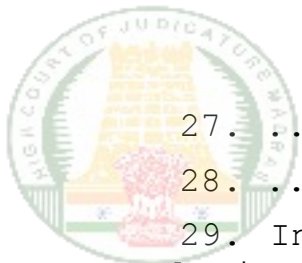
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24. In Ayaubkhan Noorkhan Pathan v. State of Maharashtra & Ors., AIR 2013 SC 58, this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

25. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

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29. In view of the above, we reach the following inescapable conclusions:-

WEB COPY i) The High Court failed to appreciate that the appellant had not granted long adjournments to the accused-complainant as the appellant wanted to conclude the trial at the earliest. The case of accused-complainant which was taking its time, had suddenly gathered pace, thus, he would have naturally felt aggrieved by failing to notice it. The High Court erred in recording a finding that the complainant had no ill-will or motive to make any allegation against the appellant.

ii) The Enquiry Officer, the High Court on administrative side as well as on judicial side, committed a grave error in placing reliance on the statement of the complainant as well as of Shri C.B. Gajjar, Advocate, recorded in a preliminary enquiry. The preliminary enquiry and its report loses significance/importance, once the regular enquiry is initiated by issuing chargesheet to the delinquent. Thus, it was all in violation of the principles of natural justice.

iii) The High Court erred in shifting the onus of proving various negative circumstances as referred to hereinabove, upon the appellant who was delinquent in the enquiry.

iv) The onus lies on the department to prove the charge and it failed to examine any of the employee of the court, i.e., Stenographer, Bench Secretary or Peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17.8.1993.

v) The complainant has been disbelieved by the Enquiry Officer as well as the High Court on various issues, particularly on the point of his personal hearing, the conversation between the appellant and Shri C.B. Gajjar, Advocate on 17.8.1993, when they met in the chamber.

vi) Similarly, the allegation of the complainant, that appellant had threatened him through his wife, forcing him to withdraw the complaint against her, has been disbelieved.

vii) The complainant as well as Shri C.B. Gajjar, Advocate had been talking about the appellant's husband having collecting the amount on behalf of the appellant, for deciding the cases, though at that point of time, she was unmarried.

viii) There is nothing on record to show that the appellant whose defence has been disbelieved in toto, had ever been given any adverse entry in her ACRs, or punished earlier in any enquiry. While she has been punished solely on uncorroborated statement of an accused facing trial for misappropriation."



9. From the above decision, it is clear that the preliminary enquiry is only to find out whether the disciplinary action should be initiated against a delinquent officer. Once a regular enquiry is held under the Rules, the preliminary enquiry gets diluted and loses its importance, in the sense whether preliminary enquiry was held strictly in accordance with law or by observing Principles of Natural justice. When such is settled Law, the evidence recorded in the preliminary enquiry, cannot be used in regular enquiry, as no opportunity would have been given to the petitioners' cross examination. Therefore, usage of evidence recorded in the preliminary enquiry is prohibited as violative of principles of natural justice.

10. The second aspect urged by the learned Senior Counsel appearing for the petitioners is that even subsequent to the second show cause notice dated 03.03.2015, after the explanation was given by the petitioner on 09.03.2015, no enquiry was conducted. Therefore, without conducting enquiry, despite explanations being given, the petitioners are terminated, which is bad in law.

11. Admittedly, the first respondent had terminated the services of the petitioners based on the allegations on the preliminary enquiry and no proper enquiry was conducted, inspite of denial of allegations, as explained by the petitioners in their explanations, dated 09.03.2015. In this regard, the learned Senior Counsel for the petitioners relies on the following decisions:-

(1) In LAKSHMANAKUMAR, V.L. v. DISTRICT MANAGER, "TASMAL" LIMITED, MADURAI reported in 2006 (2) M.L.J. 317, whereby and where under this Court has held thus:-

"6. By the above reasoning the first respondent has found that the petitioner has committed certain misconduct and the impugned order is not an order of termination simpliciter. Whether an order is an order of simple termination or would amount to stigma, thereby resulting in civil consequences, is only to be determined considering the facts and circumstances of each case. A plain reading of the impugned order passed by the first respondent makes it clear that it is not an order of termination simpliciter.

7. The Apex Court, in more than one case, has held that when an order of termination involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the finding as to those charges. This proposition of law has been recently reiterated by the Apex Court in the judgment State of Haryana v. Satyender Singh Rathore . In that judgment, the Supreme Court has relied upon the earlier judgment Dipti Prakash Banerjee v. Satyendra Nath Base National Centre for Basic Sciences , and has held that if findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the

simple order of termination is to be treated as "founded" on the allegations and will be bad."

(2) In M.FATHIMA BEGUM v. TAMIL NADU STATE AIDS CONTROL SOCIETY reported in 2015 (1) CWC 597, wherein this Court has held as follows:-

"15. Thus, it is evident that the petitioner has specifically denied all the allegations including that of her absence on the date of surprise inspection on 7.10.2010. The said explanation along with remarks of the Medical Officer was forwarded to the first respondent by the third respondent on 15.11.2010. In spite of receipt of the same, without even considering or referring the show cause notice issued, explanation submitted, and the remarks of the superior officer, petitioner was terminated from service by the order of the first respondent dated 14.12.2010 stating that the petitioner's performance was poor, behaviour with the clients was indifferent, lethargic, casual and she declined to obey the instructions given by the District Supervisor, who is the representative of the project Director to monitor and supervise all the District level Programme activities. The said order of termination is definitely stigmatic in nature, which can be passed only after conducting enquiry since the petitioner has denied each and every allegation by way of explanation, which was also forwarded along with the report of the Medical Officer as stated supra. The first respondent also framed Service Rules for its employees and approved by the Government. The relevant Chapters of Tamil Nadu State AIDS Control Society Service Rules states as follows:

Clause-4 of Chapter-IV deals with Misconduct which states that habitual absence without leave or absence for more than 10 consecutive days without leave is a misconduct.

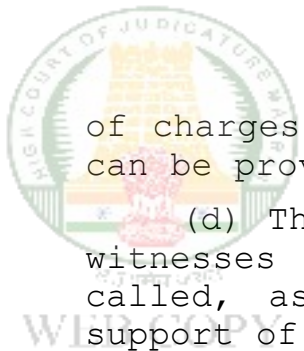
Clause-6 of Chapter-IV deals with Other acts of misconduct and Disciplinary proceedings and appeal are dealt in Chapter-V for imposing major penalties.

Enquiry shall be ordered as per Clause-7 of Chapter-V. As per the said Clause-7 of Chapter-V, if the employee of the Society is to be imposed major penalties, the following procedures shall be followed:-

(a) The ground on which, it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegation.

(b) Reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both.

(c) An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned and even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect



of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses.

(d) The person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish and he may also produced witnesses in support of his defence.

(e) The person concerned shall be heard in person at any stage if he so desires before passing of final orders.

(f) Enquiry report shall be prepared by the authority holding enquiry or personal hearing and such a report shall contain sufficient record of evidence, if any, and a statement of the findings etc.

(g) After enquiry or personal hearing, the authority competent to impose the penalty must follow the procedures and a proposal to impose punishment shall be communicated.

(h) After giving opportunity of making representation on the penalty proposed, the disciplinary authority can impose punishment.

Thus, it is beyond doubt that even in the Service Rules framed by the first respondent, which is in force from 11.7.2008, conducting of enquiry is a mandatory requirement, if the employee concerned denied the charges and the termination order is passed on the basis of the allegations of misconduct. The said mandatory procedure had not been followed in this case by the first respondent and the same is also not disputed by the first respondent in the counter-affidavit filed or by the learned counsel appearing for the first respondent.

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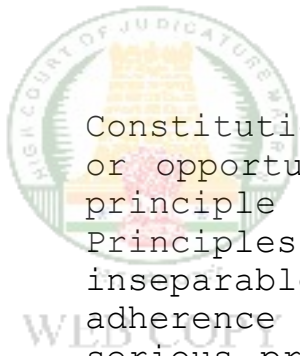
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20. In the decision reported in (2008) 2 SCC 479 (Nehru Yuva Kendra Sangathan v. Mehbub Alam Laskar) and in various other decisions, it was held that if a discharge is based on misconduct or if there is a live connection between the allegations of misconduct and discharge, then the same, even if couched in language which is not stigmatic, would amount to a punishment for which a departmental enquiry was imperative. Thus, it is beyond doubt that a temporary employee or probationer, if terminated or discharged from service based on the allegations/misconduct, the same should proceed by conducting enquiry and only after proving the misconduct, termination/discharge order can be passed."

12. From the above, it is evident that even a temporary employee is entitled to protection under Article 311 (2) of the



Constitution of India, where he/she has to be afforded an enquiry or opportunity for establishing his/her case. It is well settled principle that even the temporary employee is entitled to Principles of Natural Justice, as it is an in-built and inseparable ingredient of fairness and reasonableness. Non adherence of Principles of Natural Justice will resultant in serious prejudice. The respondents herein are unable to establish that even after the second show cause notices dated 03.03.2015, for which explanations were given by the petitioners on 09.03.2015, there was proper enquiry in the manner known to Law. Thus, the respondents committed a grave error in placing reliance on the preliminary enquiry, which they ought not to have done in passing the termination order and it is bad in the eye of Law.

13. In the result, the impugned orders of termination passed by the second respondent in his proceedings in C.No.F2/41403/2014; C.No.F2/41401/2014; C.No.F2/41399/2014 and C.No.F2/41402/2014, D.O.No.305/2015, dated 14.03.2015; and the consequential rejection orders passed by the first respondent in his proceedings in C.No.A4/6570/AP-13/2015; C.No.A4/3942/AP-12/2015; C.No.A4/6569/AP-11/2015 and C.No.A4/6571/AP-14/2015, R.O.285/2015; dated 31.08.2015 and 24.07.2015 respectively, are quashed and the writ petitions are allowed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(R)

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Sub-Assistant Registrar

To

1.The Deputy Inspector General of Police,
Madurai Range, Madurai District.

2.The Superintendent of Police,
Madurai District, Madurai.

+3ccs to M/s.Ajmal Associates, Advocate, SR.Nos.10831 to 10833

+One cc to Mr.K.Mahendran, Advocate, SR.No.11343

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