



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition(MD)No.9587 of 2016andW.M.P(MD)No.7623 of 2016

S.Surendran

... Petitioner

vs.

1)The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai.

2)The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Trichy,
Trichy District.

3)The Fit Person cum Joint Commissioner,
Executive Officer,
A/m.Mariamman Thirukkoil,
Samayapuram, Trichy.

4)K.Thennarasu,
The Fit Person cum Joint Commissioner,
Executive Officer,
A/m.Mariamman Thirukkoil,
Samayapuram,
Trichy.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st & 2nd respondents to conduct the enquiry proceeding in Se.Mu.Na.Ka.1508/1425/A2-2 on the file of the 3rd respondent by appointing a neutral enquiry officer without the influence of the 3rd respondent, based on the petitioner's representation dated 21.05.2016.

For Petitioner

: Mr.AN.Ramanathan

For R1 & R2

: Mr.V.R.Shanmuganathan

Special Government Pleader

: Mr.K.Govindarajan

ORDER

The writ petitioner was appointed as an Assistant Elephant Mahout on 11.11.2005, on a daily wage of Rs.100/- per day from the date of appointment. On his representation made on 17.07.2006 to the 3rd respondent/Joint Commissioner cum Executive Officer, Samayapuram, Trichy, he was brought under monthly wages from daily wages, by order dated 13.10.2009 of the 3rd respondent. Subsequently, since the Temple Elephant due to its old age, was surrendered to the Forest Authorities, he had been deputed to various other works in the Temple.

2. In the above background, learned counsel for the petitioner would submit that when the petitioner approached the 3rd respondent office, enquiring about his regularisation proceedings, the officials in the 3rd respondent office showing a proceedings dated 25.05.2015 bearing No.421/1424/A2, that was communicated by the 3rd respondent to the 1st respondent/Commissioner, HR & CE, Chennai, asked him to copy the proceedings in a white paper and copy of the said proceedings was not served to him, hence, the petitioner filed W.P(MD)No.3781 of 2016 before this Court, seeking regularisation of his post and finally the writ petition was allowed, by order, dated 23.02.2016, with a direction to the 1st respondent to conclude the proceedings in respect of regularisation. In the facts and circumstances, the 4th respondent has issued a show cause notice, dated 09.03.2016, on an allegation that the petitioner showing false documents has filed W.P(MD) No.3781 of 2016 before this Court and obtained an order, for which, he has submitted a reply dated 11.03.2016, specifically denying such manipulation.

3. Adding further, he would submit that while filing W.P(MD) No.3781 of 2016, seeking his regularisation, the petitioner has specifically mentioned in the affidavit that since copies of certain proceedings were not furnished to him, in spite of his request, he has relied upon copies of papers permitted to be copied by the officials of the 3rd respondent. Although the petitioner's case was recommended for regularisation on 19.05.2015, he was not regularised, however, without considering his reply dated 11.03.2016 submitted to the show cause notice dated 09.03.2016, the 4th respondent has issued a charge memo dated 22.03.2016, on an allegation that the petitioner has committed manipulation of official records, in order to get an order of regularisation from this Court, and as an offshoot, the petitioner has been issued with an order of suspension by the 4th respondent. Aggrieved by the charge memo and the order of suspension dated 22.03.2016, the petitioner has filed W.P.No.8406 of 2016 and the same is also pending before this Court. In the meanwhile, the 4th respondent is trying to expedite the enquiry and moreover, he is trying to conduct enquiry by himself, therefore, it is pleaded



that the complainant and the person interested in the enquiry cannot conduct enquiry, because if the same is done, it will be only a biased enquiry.

4. Continuing his arguments, learned counsel for the petitioner would submit that since the 4th respondent has initiated enquiry, he is taking hectic steps to complete the enquiry without giving any reasonable opportunity to the petitioner, to cross examine the witnesses nor allowing the petitioner to examine the documents. After conducting enquiries on 20.04.2016, 25.04.2016, and 02.05.2016 respectively, the 4th respondent has issued a communication dated 06.05.2016 to the petitioner, to submit his further explanation within seven days, for which, the petitioner has sought for extension of time of 7 more days on medical grounds. But, now, hurriedly the 4th respondent is going to pass final order, therefore, he pleaded, the disciplinary proceedings should be stayed.

5. The main contention of the petitioner is that the 4th respondent/Fit Person cum Joint Commissioner and Executive Officer of the Temple, having issued a charge memo, cannot conduct enquiry by himself and again, cannot pass any final order, as this would amount to allowing the disciplinary authority to act as Enquiry Officer, Prosecutor and Judge, which is not permissible in law. In support of his contentions, he has relied upon the following judgments:-

(i) M.N.Srinivasan vs. Additional Director of Sugar, Chennai 35 and another, reported in (2012) 2 MLJ 378.

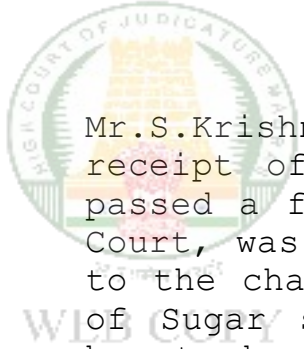
(ii) M.Natanam vs. The Assistant Commissioner, HR & CE, reported in 1999 (III) CTC 657.

(iii) Deputy Inspector General, Central Industrial Security vs. S.Ambigapathy, reported in (2009) 2 MLJ 334.

(iv) State of Uttaranchal and others vs. Kharak Singh, reported in 2008 (8) SCC 236.

6. In **M.N.Srinivasan vs. Additional Director of Sugar, Chennai 35 and another**, reported in (2012) 2 MLJ 378, this Court held that appointment of enquiry officer and passing of final order of punishment in his official capacity by complainant himself is violative of principles of natural justice and fair play and any such order of punishment is illegal and liable to be set aside.

6.1. First of all, it must be remembered that there is no any quarrel on the proposition that 'No one can be a Judge of his own cause'. The same is a well settled principle of law. But the facts involved in **M.N.Srinivasan's case** shows that the Additional Director of Sugar, Chennai, while passing a suspension order against the delinquent officer therein, appointed one



Mr.S.Krishnamoorthy, Assistant Director as an enquiry officer. On receipt of a report from him, the Additional Director of Sugar passed a final order. The point considered in that case by this Court, was that the delinquent employee while submitting his reply to the charge memo, made a representation before the Commissioner of Sugar stating that one S.Krishnamoorthy, Assistant Director, has to be examined as a witness and his further request was that in view of the fact that Mr.S.Krishnamoorthy, Assistant Director, has to be examined as a witness, he may not be permitted to act as Enquiry Officer, but the said request was rejected by the Commissioner of Sugar and finally, the said Krishnamoorthy conducted enquiry and submitted his report. Based on the enquiry report, an order of punishment of reversion was passed. The said punishment order was challenged in that case, mainly on the ground that when the writ petitioner allegedly behaved arrogantly, the said S.Krishnamoorthy was available in the 2nd respondent office and therefore, he should be examined as a witness. A counter affidavit was also filed, denying the petitioner's contention that Mr.S.Krishnamoorthy was not at all present in the Chambers on 03.08.2006 and therefore, there is no illegality in appointing S.Krishnamoorthy as Enquiry Officer.

6.2.While dealing with the aforesaid contentions, this Court held that the Additional Director of Sugar, who suspended the petitioner, appointed the Enquiry Officer and also passed the final order in the disciplinary proceedings, ignoring the request of the delinquent employee to examine Mr.S.Krishnamoorthy as a witness, who conducted the enquiry, therefore, violation of principles of natural justice and bias in the proceedings were clearly established.

6.3.But, in the present case, the contention of the petitioner is, the 4th respondent/Fit Person cum Joint Commissioner and Executive Officer having issued a charge memo cum suspension order, cannot be an Enquiry Officer and disciplinary authority to pass final order. This contention although sometime appears to be correct, legally it is not valid and it is bereft of any merit. In this regard, the Constitution Bench of the Apex Court in the case of **Managing Director, ECIL, Hyderabad vs. B.Karunakar**, reported in **(1993) 4 SCC 727**, vividly held that where the Enquiry Officer is other than the disciplinary authority, after the enquiry, copy of the enquiry officer's report shall be given to the delinquent employee. The Apex Court has further held that where the enquiry officer is the disciplinary authority, on completion of the enquiry, copy of the enquiry report need not be furnished to the delinquent employee/officer. It is also made it clear that where the enquiry officer is other than the disciplinary authority, copy of the enquiry report should be given to the delinquent officer and failure to furnish the same, would amount to denial of reasonable opportunity and violation of



Articles 14 and 21 and also principles of natural justice. This was the view of the Apex Court in **Union of India vs. Mohd. Ramzan Khan**, reported in **(1991) 1 SCC 588**. It is pertinent to extract below paragraph 27 of the Constitution Bench judgment in **B.Karunakar's case:-**

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''It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings. ''

6.4. Therefore, the weak contention made by the learned counsel for the petitioner that the disciplinary authority cannot function as Enquiry Officer against the delinquent employee which will amount to denial of reasonable opportunity and violation of Articles 14 and 21 and principles of natural justice, is bereft of any merit, in the light of the judgment of the Apex Court in **B.Karunakar's case**.

7. It is also necessary to deal with the other judgments placed by the learned counsel for the petitioner.

7.1. In **M.Natanam vs. The Assistant Commissioner, HR & CE**, reported in **1999 (III) CTC 657**, a learned single Judge, while dealing with the correctness of the impugned punishment inflicted against the delinquent employee, has held that the Enquiry Officer being a fact finding authority and not being disciplinary authority, has no jurisdiction to propose or suggest penalty. The Enquiry Officer while submitting his report holding the employee guilty of most of the charges, has proposed a penalty of removal from service and the disciplinary authority also relying upon the said Enquiry Officer's Report, fully accepting the findings and penalty proposed by the Enquiry Officer, passed an order of removal from service. Therefore, a challenge was made against the order of removal passed by the disciplinary authority, on the ground that neither the Enquiry Officer can make any recommendation proposing penalty of any nature to the disciplinary authority, nor the disciplinary authority acting on the said proposal, impose punishment as suggested by the Enquiry Officer.



7.2. Accepting the argument of the writ petitioner that the action of the Enquiry Officer in proposing a penalty of removal from service and the acceptance of the same by the disciplinary authority, is illegal, because the same vitiates the impugned proceedings, this Court set aside the order imposing the punishment of removal on the delinquent employee.

7.3. It is a well settled legal position that when an Enquiry Officer is assigned with a Quasi-judicial duty to probe into the allegation/charges, to give a finding as to whether the charges are genuine or false, on the basis of the explanation offered by the delinquent employee and the evidence produced by both sides, he can maximum give his finding on the charges levelled against such a delinquent employee, after giving reasonable opportunity to both sides. The Enquiry Officer not being the disciplinary authority, has no jurisdiction to propose or suggest penalty, because, it has to be decided only by the disciplinary authority, on the basis of the report, evidence, explanation and other documents produced before the Enquiry Officer, therefore, when that issue is neither involved nor raised in the present writ petition, the judgment in **M. Natanam's case** is totally inapplicable.

8. Yet another Division Bench judgment has been cited by the learned counsel for the petitioner in the case of **Deputy Inspector General, Central Industrial Security vs. S. Ambigapathy**, reported in **(2009) 2 MLJ 334**, on a proposition that the disciplinary authority himself cannot sit over in his own cause. The facts dealt with by the Division Bench shows that allegation was made against the disciplinary authority that when the delinquent employee raised slogans against the disciplinary authority, he cannot sit on his own decision in a matter where he himself related to the incident, because, if any direct allegation is made against the disciplinary authority and such a disciplinary authority is made to pass any final order, the order of such disciplinary authority naturally cannot be free from *bias*. On this basis, applying the principle that no man could be a Judge in his own cause and no witness could certify that his testimony was proved, the Division Bench held that any one who had a personal stake in the enquiry must have kept himself aloof from the enquiry.

8.1. But, in the present case, there is no personal allegation against the disciplinary authority. Secondly, the 4th respondent/disciplinary authority was not personally connected to any allegation made in the charge memo issued to the petitioner, therefore, the argument advanced by the petitioner that the principle of "No person could be a Judge in his own cause" would



apply to this case, is far from acceptance.

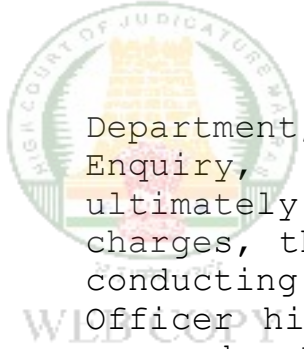
8.2. When the petitioner comes to this Court, seeking issuance of a Writ of Mandamus, directing the competent authorities to appoint an Enquiry Officer, he should make out a case, by showing what prejudice is going to be caused to him. Merely saying that the disciplinary authority cannot sit on his own decision, when he himself is not related to the incident in the instant case, has to be held only a merit-less argument.

9. Learned counsel for the petitioner finally referring to another judgment of the Apex Court in the case of **State of Uttaranchal and others vs. Kharak Singh**, reported in **2008 (8) SCC 236**, has contended that the Enquiry Officer himself cannot act as Investigator, Prosecutor and Judge and such approach is opposed to the principles of natural justice. Taking reliance from the said judgment, he has sought to apply the said principle to the present case. But, this Court is not able to find any relevancy to the facts and circumstances and the principles evolved therefrom, to connect the facts of the present case.

9.1. The Apex Court in the said case has found that the Divisional Forest Officer, Haldwani Forest Division, had suspended the delinquent employee on certain charges. Subsequently, the same Divisional Forest Officer served a charge memo upon the delinquent employee, who also gave his reply and thereafter enquiry was entrusted to Sri.P.V.Lohni, who also submitted his report dated 16.11.1985 to the Divisional Forest Officer, Haldwani. On the basis of the enquiry report, the Divisional Forest Officer passed the dismissal order dated 06.03.1986. Feeling aggrieved, the delinquent employee preferred an Appeal before the Conservator of Forests, Western Circle, Nainital, who also dismissed the same. Questioning the said order, a Writ Petition was filed before the High Court for issuance of a Writ of Certiorari, which was allowed, by quashing the dismissal order passed by the Divisional Forest Officer, Haldwani, as well as the Appellate Authority.

9.2. Aggrieved by the same, an Appeal was filed before the Supreme Court by the State of Uttaranchal. While dealing with the said issue, the Apex Court has found that no witnesses were examined and there was not even a Presenting Officer appointed to conduct the case on behalf of the Department. The Enquiry Officer himself has inspected the areas in the Forest and after taking note of certain alleged deficiencies, he has secured some answers from the delinquent by putting some questions and finally, the Enquiry Officer found the delinquent officer guilty.

9.3. In these facts and circumstances, when the Enquiry Officer himself has acted as Presenting Officer on behalf of the



Department, inspected the areas in the Forest and also conducted Enquiry, by putting questions to delinquent employee and ultimately gave a report holding the delinquent guilty of the charges, the Hon'ble Apex Court, considering these peculiar way of conducting cases by the Enquiry Officer, has held that the Enquiry Officer himself has acted as Investigator, Prosecutor and Judge, as such, the procedure is opposed to the principles of natural justice and holding so, the Apex Court has frowned upon the department.

9.4. But, in the present case, there is no allegation that there was no Presenting Officer nor the Enquiry Officer stepped into the shoes of the Investigator or Prosecutor. As I mentioned above, when the ratio laid down by the Apex Court in **B. Karunakar's case** is very clear that the disciplinary authority can be the Enquiry Officer, in which event, copy of the final report of the enquiry need not be furnished to the delinquent, the merit-less argument advanced by the petitioner that the disciplinary authority cannot be the Enquiry Officer, is absolutely unfounded. Further, correctness of the enquiry report in the present case is not questioned.

Therefore, for all these reasons, the writ petition fails and the same is dismissed. No costs. W.M.P(MD)No.7623 of 2016 is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

nbi

To

1) The Commissioner,
Hindu Religious and Charitable Endowment,
Chennai.

2) The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Trichy,
Trichy District.

3) The Fit Person cum Joint Commissioner,
Executive Officer,
A/m. Mariamman Thirukkoil,
Sandyapuram, Trichy.



4)K.Thennarasu,
The Fit Person cum Joint Commissioner,
Executive Officer,
A/m.Mariamman Thirukkoil,
Samayapuram,
Trichy.

+1 cc to Mr. AN.RAMANATHAN ,Advocate, Sr.No: 48057

+1cc to M/S Special Government Pleader, Sr No. 48588

JAM/SS 2/19.09.16/ 9P-7C

W.P (MD) No.9587 of 2016
AND
WMP (MD) NO.7623/2016
30.08.2016