

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.5143 OF 2001

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioner to issue a writ, order or direction more particularly one in the nature of writ of *certiorari* calling for the records in proceedings in Rc.No.A2/Prl/Estt/16098/96 dated 05.02.2001; wherein, the 1st respondent imposed penalty of compulsory retirement by reducing the original penalty of removal from service and quash the same as illegal, arbitrary without jurisdiction and consequently reinstate the petitioner into service with all consequential benefits.

The petitioner was directly recruited as Head Master in Z.P.P. High School, Medak on 11.03.1971; thereafter, he was transferred to the Andhra Pradesh Social Welfare Residential Educational Institutions Society, at his option, with effect from 01.01.1985. While working as Principal, Andhra Pradesh Social Welfare Residential School (APSWRS), Ibrahimpatnam, the petitioner suffered an order of suspension dated 17.12.1996 on the basis of *ex parte* inquiry report dated 13.12.1996; thereupon, the petitioner made a request of personal hearing to remove the doubts as to the allegations levelled against him but the respondents did not accede to his request; instead, appointed an Inquiry Officer on 01.01.1997 and she was directed to conduct the disciplinary inquiry. Smt. Rani Kumidini, the Joint Collector of Ranga Reddy District was appointed as Inquiry Officer and she issued a charge memo dated 12.03.1997 and on the basis of the report of Deputy Director, Social Welfare, Ranga Reddy District dated 13.12.1996, she framed 3 charges therein; the 1st charge framed against the petitioner was that he sent 20 bags of PDS rice pertaining to the APSWR School, Ibrahimpatnam to Manchal on 02.12.1996 in a Van bearing No.AP 28 T 946 and sold the same to one Muneer,

general merchant of Manchal; the second charge was that he irregularly sent rice bags to Manchal on the pretext of clearing loan taken from the BC Girls Hostel, Manchal and sold the same; and, the third and last charge was that he transported rice in connivance with the Matron of the BC Girls Hostel, Manchal. On receipt of the charge memo, the petitioner submitted his explanation on 02.04.1997, and again on 19.04.1997, explaining the alleged irregularities attributed against him but the Inquiry Officer, without taking into consideration his defence, proceeded further to conduct regular departmental enquiry. A messenger was sent to the school by the Inquiry Officer to give her a copy of the explanation submitted by the petitioner on 02.04.1997 and, thereafter, the Inquiry Officer heard the narration of events by the employees separately. After submission of the explanation, no further inquiry was conducted in his presence and no opportunity was given to him to hear the narration of the employees nor any opportunity was afforded him to cross-examine them. Therefore, inquiry was conducted against the procedure keeping him in dark totally. The Inquiry Officer found the petitioner guilty of the charges framed against him, which is against the principles of natural justice and vitiated by irregularity.

The 1st respondent subsequently issued a show-cause notice dated 11.08.1998 calling his written submission about the punishment proposed to be imposed and also pointed out the irregularities committed by him in the promotions of Attenders as Record Assistants totally in ignorance with Rule 6(1) of the Services (Discipline and Appeal) Rules 1987 of A.P.S.W.R.E.I. Society, Hyderabad. The petitioner submitted his detailed explanation on 10.09.1998 with a request to furnish a copy of the inquiry report so as to enable him to submit a detailed explanation but the respondents did not furnish him the copy of the enquiry report but allowed him to glance the report for 10 minutes thereby disabled him to submit his detailed explanation and forced him to submit a further explanation on the basis of his

memory only on 10.09.1998. Immediately, the 1st respondent issued a penalty of removal from service by order dated 26.10.1998; against which, the petitioner preferred an Appeal to the 1st respondent on 07.11.1998, which was referred to the Board and after long lapse of time, the Social Welfare Board modified the penalty reducing it to 'compulsory retirement' from 'removal from service' and communicated the same through proceedings of the 1st respondent on 05.02.2001.

Aggrieved thereby, the petitioner preferred the instant Writ Petition raising the following grounds:

- a) The inquiry conducted by the Joint Collector, Ranga Reddy District is totally in violation of the principles of natural justice and against the Services (Discipline and Appeal) Rules, 1987;
- b) The appointment of Joint Collector as an Inquiry Officer, who is a non-departmental candidate, belonging to Revenue Department, is an illegality and without jurisdiction;
- c) The disciplinary proceedings are quasi judicial in nature and the disciplinary proceedings can be held, either by the disciplinary authority or by appointing an Officer of the same department, after following necessary procedure prescribed under the Rules but the charges were framed contrary to the Rules by the Inquiry Officer herself and called for explanation, which is a serious irregularity;
- d) The petitioner was neither afforded an opportunity to cross-examine the witnesses, whose statements were recorded by the Inquiry Officer, nor even allowed to be present at the time of recording statements of the witnesses by the Inquiry Officer and such procedure vitiates the entire proceedings;

d) The basis for imposing such penalty is not only the alleged irregularity committed in discharging duties as a Principal under the charge memo but also the attributions made against him in promoting the Attenders as Record Assistants, which was not put to him during inquiry and called for explanation; therefore, the imposition of penalty of compulsory retirement on the basis of alleged irregularities committed in promotion of Attenders as Record Assistants is illegal and the order is liable to be set-aside;

e) The explanation submitted by the petitioner did not contain any unequivocal admission about the misconduct except admitting his failure to collect receipts from the messenger of Social Welfare Girls Hostel, Manchal and on the basis of such admission, the petitioner cannot be found guilty for the charges.

Finally prayed to allow the Writ Petition setting-aside the penalty of compulsory retirement, imposed by the 1st respondent, as it is illegal, arbitrary and consequently reinstate the petitioner into service with all consequential benefits.

During course of argument, Sri S. Lakshma Reddy, learned counsel for the petitioner, while reiterating the grounds urged in the writ petition, has drawn the attention of this Court to contend that the inquiry report is vitiated by irregularities and it is not even in the form of a report as required under the Rules. Failure to furnish the list of witnesses, documents to be relied upon by the Department along with the show-cause notice is a serious irregularity; failure to provide an opportunity to the petitioner to cross-examine the witnesses is another serious irregularity which vitiates entire disciplinary proceedings; apart from that, failure to furnish a copy of the report while calling for written submission is another grave irregularity. The alleged report of the

Inquiry Officer dated 15.07.1997 is not in accordance with the procedure and it is nothing but mentioning the specific charges framed against the petitioner, gist of the evidence of witnesses and findings of the Enquiry Officer without any discussion as to the truth in the testimony of witnesses examined before him. Therefore, the inquiry report itself is illegal and on the basis of such report, the petitioner cannot be found guilty and he does not deserve any punishment. Therefore, the penalty of compulsory retirement imposed against the petitioner is illegal, arbitrary and against the canons of law and finally prayed to set-aside the same while ordering reinstatement into service with all consequential benefits. However, the learned counsel for the petitioner fairly admits that the petitioner might have attained the age of superannuation by now and requested this Court to grant monetary benefits on account of such reinstatement.

Learned Government Pleader appearing for the Social Welfare Department, supported the proceedings issued by the 1st respondent imposing penalty of compulsory retirement while contending that the report submitted by the Inquiry Officer is in accordance with law and the report was submitted strictly adhering to the Rules governing the employees of Social Welfare Educational Institutions and finally prayed to dismiss the writ petition.

One of the major contentions of the petitioner is that admission allegedly made in the explanation of the petitioner dated 10.09.1998 is not unequivocal except to the extent of admitting that he did not obtain receipt from the matron of the concerned Girls Hostel; such admission cannot form the basis for finding the petitioner guilty and further the inquiry held by the Officer is not in accordance with the procedure and it is totally against the Rules governing the disciplinary proceedings against the employees of Social Welfare Residential Educational Institutions Society. Whereas the learned Government Pleader contended that the report dated 15.07.1997 is in accordance with the

procedure and that the admission is sufficient to find the petitioner guilty for grave misconduct of misappropriation.

As seen from the inquiry report submitted by the Inquiry Officer along with the letter dated 15.07.1997, it is only a table preparation consisting of 4 columns where he just extracted the explanation offered by the charged officer, evidence thereon and finally recorded a finding that the petitioner misappropriated the rice and diverted it to block marketing *etc.*,

Admission is sufficient to record a finding, if it is clear and unequivocal; even Rule 20 of Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the CCA Rules') say that if the Government Servant pleads guilty, the Inquiry Office may record a finding without further enquiry and send report to the disciplinary authority. The petitioner is governed by Service (Discipline and Appeal) Rules of the A.P. Social Welfare Residential Educational Institutions Society and Rule 2(a) is relevant Rule for conducting enquiries. As per Rule 2(a), admission alone is not a ground to dispense with regular departmental enquiry. Hence, finding the petitioner guilty on the basis of qualified admission, if any, is illegal. If the admission is not clear, the Inquiry Officer shall proceed to enquire into conducting final enquiry and record findings.

The report shall contain the charges framed against the Government Servant, the written statement of the defence, if any, submitted by the Government Servant, the oral evidence produced in the course of the enquiry and written briefs, if any, filed by the Presenting Officer or the Government Servant or both during the course of enquiry; and the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry but here the inquiry report did not satisfy various requirements of a report. Therefore, the inquiry report is not in accordance with the procedure.

The main endeavour of the learned Government pleader is that admission of the petitioner is sufficient to find him guilty. No doubt, clear and unequivocal admission is sufficient to record a finding about guilty of a Government Servant but it must be directly accepting the attributions made against him. In the present case, the petitioner admitted his mistake of failure to obtain receipts from the concerned care taker and matron while returning the borrowed rice and no such entry was found in the register but such admission is not in respect of delivery of entire 20 bags of PDS rice and it only relates to 8 bags. Therefore, finding the petitioner guilty on the basis of such admission is not sufficient. In the letter dated 10.09.1998 the petitioner made the following crucial admission:

“I admit my mistake not being cautious in collecting the receipts from the matron while returning the borrowed rice.”

This is not a clear and qualified admission; therefore, finding the petitioner for the serious grave charge of misappropriation on the basis of admission is not proper.

It is further disclosed that the manner in which the disciplinary authority enquired into is not in accordance with the procedure. The witnesses statements were not recorded in the presence of the petitioner and no opportunity was afforded to him to cross-examine; even the report is silent as to whether any opportunity was afforded to the petitioner to cross-examine any of the witnesses. In the absence of affording such opportunity, finding the petitioner guilty for such grave charge of misappropriation is against the procedure and principles of natural justice since the alleged admission is not clear and unequivocal directly pointing out his guilt for the grave charge of misconduct. Therefore, on this ground alone the enquiry report is liable to be set-aside.

In a decision of the Apex Court in ***State Bank of Patiala Vs.***

S.K. Sharma^[1], the Apex Court discussed about the scope of applicability of principles of natural justice and laid down certain guidelines. However, non supply of copies is not a ground to set-aside the order unless prejudice is shown to when principles of natural justice are violated but in the guideline No.6 therein, the Apex Court held that while applying the rule of *audi alteram partem* (the primary principle of natural justice), the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said Rule, *i.e.*, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arose before them.

From the principle laid down by the Apex Court in the decision referred supra, that an opportunity should be given and failure to afford opportunity to cross-examine witnesses clearly amounts to violation of principles of natural justice. On this ground alone the report of the enquiry officer is to be set-aside.

Yet, the learned counsel for the petitioner would contend that admission alone is not sufficient and in support of his contention placed reliance on a decision of the Apex Court in **Roop Singh Negi Vs. Punjab National Bank and others**^[2], wherein the Apex Court held that so called confession itself was not sufficient; some evidence ought to have been brought on record that the appellant was involved in stealing. In the same decision, the Apex Court reiterated the duty of the Inquiry Officer to record reasons and that the admission made by a charged employee before the appellate authority cannot be taken into consideration. It was also further held therein that the inquiry report based on conjectures and surmises cannot be sustained.

By applying the principles laid down in the above decision, it can safely be concluded that the inquiry conducted by the Inquiry

Officer is not in accordance with the procedure and it is totally against the principles of natural justice.

Learned counsel for the petitioner further contended that the alleged admission made by the petitioner by way of explanation to the show-cause notice is only a part of preliminary enquiry and such admission would not determine the guilt of the misconduct of the petitioner.

The inquiry report is not in accordance with the procedure and consequential termination of the services of the petitioner is erroneous for the following reasons:

- 1) The admission made in the explanation by the delinquent in his explanation dated 10.09.1998 is not clear and unequivocal pertaining to alleged misappropriation of 20 bags of PDS Rice;
- 2) No opportunity was afforded to cross-examine any of the witnesses examined by the inquiry officer to elicit truth in the allegations and it amounts to violation of principles of natural justice;
- 3) The report is not satisfying the requirements of an inquiry report; and
- 4) The findings of the Inquiry Officer with regard to misappropriation of 20 bags of PDS rice is not supported by any reasoning except extracting the explanation and findings of the Inquiry Officer.

Therefore, the report submitted by the Inquiry Officer is contrary to the Rules and on the strength of such report, the disciplinary authority is not competent to impose severe punishment.

In view of my foregoing discussion, I find that it is a fit case to direct the respondents to appoint an Inquiry Officer, afresh, strictly adhering to the procedures prescribed under the Rules governing the

employees working in A.P. Social Welfare Residential Educational Institutions, to afford reasonable opportunity to the petitioner to enable him to defend himself, and take action in accordance with law.

In the result the Writ Petition is allowed setting-aside the proceedings in Rc.No.A2/Prl/Estt/116098/96 dated 05.02.2001.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 07-01-2015.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) AIR 1996 SC 1669

[\[2\]](#) 2009 (2) SCC 570