

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.09.2017
CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
WRIT PETITION No.20860 of 2015
and
W.M.P.Nos.1 & 2 of 2015

P.Premkumar

.. Petitioner

Vs.

1. The General Manager I/C (RS),
Indian Oil Corporation Limited,
No.139 Uttamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
2. The General Manager (HR),
Indian Oil Corporation Limited,
No.139 Uttamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
3. Mr.V.Z.Kumar
DGM (M&I), SRO,
The Enquiry Officer,
Indian Oil Corporation Limited,
No.139 Uttamar Gandhi Salai,
Nungambakkam, Chennai-600 034.
... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the issue of the impugned order dated 08.07.2015 issued by the 3rd respondent and quash the same and consequently to direct the respondents to permit the petitioner to engage an Advocate to assist him in the departmental enquiry initiated against the petitioner by the respondents.

For Petitioner : Dr.Fr.Xavier Arul Raj
Senior Counsel
for Mr.G.Mutharasu

For Respondents : Mr.G.Anandgopalan
for T.S.Gopalan (IOC)

O R D E R

The order impugned in this writ petition dated 8th July, 2015, is a notice of domestic enquiry.

2. On a perusal of the order impugned, it is seen that the writ petitioner made a request for engagement of lawyer as co-defendant for attending the enquiry proceedings on the ground that the domestic enquiry is Quasi judicial in nature and he is in a depressed condition and also raised certain allegations. Further, it is stated by the petitioner that the charges are complex in nature and therefore, he requires a lawyer to assist him in the course of enquiry.

3. The learned senior counsel appearing on behalf of the writ petitioner states that the writ petitioner joined as a Typist Clerk in the Indian Oil Corporation on 04.08.1983 and thereafter, promoted to the post of Operations Officer(LPG) in the year, 1998 and posted to Salem. Subsequently, the writ petitioner was posted as Deputy Manager on 30.05.2011 and posted at Bangalore and thereafter, transferred to Chennai and joined on 12.05.2014. On account of certain allegations, a charge memo was issued against the writ petitioner on 30.04.2015 and the charges are extracted hereunder:

"Charge No.1. The petitioner failed to carry out the assigned duties from time to time at Meenambakkam AFS in spite of specific advice from his controlling Officer/Location In Charge.

Charge No.2. The petitioner failed to report duty w.e.f.30.12.2014 and remaining absent unauthorized which affected normal functioning and smooth operations of Meenabakkam AFS.

Charge.3. The petitioner failed to submit the application in proper form for qualifying quality Control Signatory (QCS) in spite of specific advice from the controlling Officer which is a mandatory requirement for officer working in field at Meenabakkam AFS.

Charge.4. The petitioner failed to attend training programmers on two occasions in spite of specific advice."

4. On a perusal of the charges, this Court is of the opinion that the 1st charge relates to the failure of the writ petitioner to carry out the assigned duties from time to time. The 2nd Charge is relating to unauthorised absence. The 3rd charge is relating to his failure to submit the application in proper form for qualifying quality control signatory(QCS). The 4th charge is relating to his failure to attend the training Programmes.

5. This Court is of the clear opinion that these charges are not complicated in nature. Thus, the arguments advanced by the learned senior counsel, the charges are complicated, deserves no merit consideration. On perusal of the charges, it is clear that these all are the charges, which can be established by submitting explanation/objections and by producing relevant records, which may be available with the writ petitioner. Thus, the arguments that the charges are complicated in nature cannot be accepted.

6. The writ petitioner is holding the post of Deputy Manager and having vast experience in the field of administration. This Court is of the view that a person working in the rank of Deputy Manager can defend himself in respect of the charges, as stated above, which are more administrative in nature. Thus, the claim made out by the writ petitioner seeking the assistance of an advocate is unnecessary, however, made in order to protract and prolong the enquiry proceedings for personal gains.

7. The learned counsel further cited a judgment of the Hon'ble Supreme court in the case of J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd, the learned senior counsel referred paragraph 8 & 9 of the judgment are extracted hereunder:

"8. It would appear that in the inquiry, the Respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail dismissal from service the enquiry-authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and the denial of a real and reasonable opportunity for defence by reason of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in

order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner'' which was kept open in Board of Trustees of the Port of Bombay V. Dilipkumar, 1983(1) SCR.

828. However, it was held in that case:

''...In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant his request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated....''

9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice, particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of the Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in Pett's case that in defending himself one may tend to become ''nervous'' or ''tongue tied''. Moreover, the appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of the case, results in denial of natural justice.

8. On a perusal of the judgment, the Hon'ble Supreme Court considered the case where the enquiry officer or the presenting officer is a legally trained person or a law graduate. Then the delinquent official is entitled to have assistance of an advocate in the enquiry proceedings but not otherwise.

9. The learned counsel appearing for the respondent Management made a submission that the enquiry officer is working in the Engineering Department. So also, the presenting officer is an engineer from Aviation Department. Thus, both the enquiry officer as well as the presenting officer are neither law graduates nor legally trained persons. A mere administrative power of an engineering person cannot be construed as if he is a legally trained person. Thus, it is clear that both the enquiry

officer as well as the presenting officer in the enquiry proceedings are not legally trained persons. Thus, the ratio laid down by the Hon'ble Supreme Court cited by the learned senior counsel appearing on behalf of the writ petitioner has no relevance to the facts and the circumstances of the case on hand.

10. The order challenged in this writ petition is a communication, rejecting the claim of the writ petitioner to permit him to engage a lawyer in the enquiry proceedings. Intermittent Intervention in departmental proceedings is to be exercised cautiously. Every disciplinary proceedings initiated against the officials should be allowed to be concluded within a reasonable period and the same should reach its logical conclusion. The attitude of the delinquent in prolonging or protracting the disciplinary proceedings in one way or other is to be deprecated. It is for the delinquents to establish their case before the enquiry officers by producing the relevant documents or evidences and accordingly prove their innocence. Instead, filing writ petitions, only with an idea to prolong the enquiry proceedings, cannot be accepted.

11. The learned counsel for the respondents further made a submission that this writ petitioner has filed a writ petition, challenging the charge memo itself in W.P.No.18599 of 2015 and the same was disposed of on 26.06.2015. Thereafter, he made a representation seeking appointment of an advocate and the same was rejected on 08.07.2015. Again, he filed the present writ petition challenging the notice of enquiry. Such an attitude of the writ petitioner for prolonging the enquiry proceedings is deprecated.

12. The writ petitioner is holding a responsible position as Deputy manager and if an allegation is set out against him, it is for him to defend the case in accordance with the rules and he has to submit his explanation/objections and prove his innocence before the enquiry officer. All such grounds available on merits, can be raised after the completion of the disciplinary proceedings and after passing of the final orders in the disciplinary proceedings, by the respective parties. However, Intermittent Intervention, on the basis of the points raised in this writ petition on merits regarding the facts cannot be considered by this Court under Article 226 of the Constitution of India. The writ petitioner has made all attempts to delay the enquiry proceedings by approaching the Court at every stage and such a claim cannot be entertained under Article 226 of the Constitution of India. All such writ petitions seeking intermittent Interventions can be entertained only on exceptional circumstances, when there is a gross injustice caused to the delinquents and not otherwise. Such being the legal principle to be followed, this Court is not

inclined to consider the grounds as raised in this writ petition at this point of time. The submissions made by the learned counsel appearing for the respondents make it very clear that both the enquiry officer and the presenting officer are engineers and they are not legally trained persons and therefore, the delinquent is not entitled to have the assistance of an advocate. It is needless to state that if the enquiry officer or the presenting officer is a legally trained person or a law graduate, then, the delinquent is certainly entitled to have the assistance of a lawyer, but not otherwise.

13. However, it is left open to the writ petitioner to engage a co-employee or retired official as co-defendant. If any such request is made by the petitioner, the respondents are bound to consider the same in accordance with Rules.

14. In this view of the matter, no further adjudication is required. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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+1 cc to M/s.T.S.Gopalan & Co Advocate sr 63619
+1 cc to Mr.G.Mutharasu Advocate sr 63867

W.P.No.20860 of 2015

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