

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.2150 of 2013

N.Boopathi

... Petitioner

Vs

1.The Director,
I.R.T. Perundurai Medical College & Hospital,
Perundurai, Erode District.

2.The Deen,
I.R.T. Perundurai Medical College & Hospital,
Perundurai, Erode District.

3.K.Elango,
Enquiry Officer,
I.R.T. Perundurai Medical College & Hospital,
Perundurai, Erode District.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records relating to the impugned order passed by the first respondent dated 21.12.2011 in Proceedings No.367/Vu4/Sa.Po.Ni/2006, in confirming the order passed by the second respondent dated 13.06.2011 in Proceeding No.62/E3/Sa.Po.Ni-Pe.Ma.Ka/2005, and quash the same as illegal and unsustainable and direct the respondents to refund the amount recovered from the petitioner illegally.

For Petitioner : Mr.S.N.Ravichandran
for M/s.R.Govindaraj

For Respondents : Mrs.M.E.Raniselvam (for R1)
Addl. Government Pleader

M/s.Kala Ramesh (for R2)

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling to call for the records relating to the impugned order passed by the first respondent dated 02.12.2001 in Proceedings No.367/Vu4/Sa.Po.Ni/2006, in confirming the order passed by the second respondent dated 13.06.2011 in Proceeding No.62/E3/Sa.Po.Ni-Pe.Ma.Ka/2005, and quash the same as illegal and unsustainable and direct the respondents to refund the amount recovered from the petitioner illegally.

2. Briefly stated, the case of the petitioner is that he joined as Pharmacist on 10.04.1995 in I.R.T. Perundurai Medical College and Hospital. While he was working as such, the petitioner was issued with a charge memo dated 25.04.2004 alleging certain misconduct said to have been committed by him. Thereafter, the petitioner was suspended by an order dated 06.05.2005. The petitioner submitted an explanation to the charge memo. Being not satisfied with the explanation offered by the petitioner, the second respondent conducted an enquiry by appointing the third respondent as Enquiry Officer.

3. According to the petitioner, without affording opportunity, the third respondent proceeded with the matter and submitted his report on 31.07.2005 holding that all charges were proved. Thereafter, the second respondent issued a second show cause notice, wherein he had proposed punishment of stoppage of increment for two years with cumulative effect.

4. Challenging the disciplinary proceedings, the petitioner filed W.P.No.3086 of 2006. By an order dated 28.9.2010, this Court disposed of the writ petition with a direction to the respondents to issue a fresh show cause notice within a period of four weeks and the petitioner was directed to co-operate in placing his explanation to the respondents.

5. On 10.02.2016, the second respondent allowed the petitioner to join duty from 10.02.2006 onwards. On 22.11.2010, the second respondent issued a show cause notice calling upon the petitioner to submit explanation on the basis of the enquiry report. On 29.11.2010, the petitioner submitted his explanation denying all charges framed against him and requested to drop the disciplinary proceedings. The second respondent instead of considering the request of the petitioner, on 22.02.2011, issued a second show cause notice proposing to impose punishment of stoppage of increment for two years with cumulative effect. On 01.03.2011, the petitioner submitted his explanation seeking to drop the proceedings.

6. Thereafter, on 13.06.2011, the second respondent issued the impugned proceedings imposing punishment of stoppage of increment for two years with cumulative effect. On 26.07.2011, the petitioner preferred an appeal to the first respondent. By an order dated 21.12.2011, the first respondent without considering the various claims made by the petitioner, dismissed the appeal. Challenging the order of the appellate authority, the petitioner had filed the writ petition.

7. Resisting the writ petition, the first respondent filed the counter stating that the Enquiry Officer conducted an enquiry without any bias and he was common for both the parties of the case. In the enquiry, the petitioner was given full opportunity to defend his case and for cross-examination of the management witnesses. Only after analysing the evidence, the Enquiry Officer has submitted his report holding that all charges were proved beyond doubt. Since the explanation submitted by the petitioner was not satisfactory and/or acceptable, he was issued with the impugned proceedings imposing punishment of stoppage of increment with cumulative effect for a period of two years and ordered to recover the misappropriated amount of Rs.11,933.42 from the salary of the petitioner in four equal monthly instalments from June 2011 onwards. It is stated that since the enquiry was conducted without any bias and the misappropriation was proved beyond all doubts and on the basis of the proven charges, minimum punishment was imposed on the petitioner. Since the petitioner had failed to produce any material to set aside the punishment, his appeal petition was dismissed and prayed for dismissal of the writ petition.

8. I heard Mr.S.N.Ravichandran for Mr.R.Govindaraj, learned counsel for the petitioner, Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the first respondent and also M/s.Kala Ramesh, learned counsel for the second respondent. I have also perused the materials available on record.

9. The learned counsel for the petitioner submitted that the impugned orders of respondents 1 and 2 were passed in total violation of principles of natural justice. In fact, in the domestic enquiry, the third respondent/Enquiry Officer acted as one-sided and had miserably failed to give any opportunity to the petitioner to prove his claim. He would submit that the Enquiry Officer has failed to consider the oral evidence adduced on the side of the petitioner to disprove the alleged misconduct committed by him. The learned counsel further submitted that the Enquiry Officer has completely overlooked the claim of the petitioner and filed his report in cryptic way by holding all the charges framed against the petitioner are proved. The reasoning given by the respondents 1 and 2 in imposing the punishment on the petitioner is illegal, unsustainable and

liable to be set aside.

10. In support of the above contention, the learned counsel relied upon the decisions in (i) B.Padmaiah v. The Union of India, rep. by the Secretary, Ministry of Home Affairs, New Delhi and others, reported in 2007 Writ L.R. 7; (ii) Roop Sing Negi v. Punjab National Bank and others, reported in (2009) 2 SCC 579; (iii) Kuldeep Singh v. Commissioner of Police and others, reported in (1999) 2 SCC 10; (iv) N.Sivakumara v. State of Tamil Nadu, rep. by the Secretary to Government, Chennai and others, reported in (2009) 1 MLJ 701 and (v) Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and others, reported in (2009) 4 SCC 240.

11. Per contra, the learned Additional Government Pleader appearing on behalf of the first respondent submitted that during audit conducted by the audit staff, they found that instead of issuing branded syringes and medicines, which were to be issued to the Tamil Nadu State Transport Corporation patients, the petitioner sold the same to the other patients and got money for his personal use and misappropriated a sum of Rs.11,933.42. She would submit that only after affording reasonable opportunity, the enquiry was concluded and charges were proved beyond doubts. Hence, the management fixed the liability on the petitioner. Since, Enquiry Officer conducted the enquiry without any bias and the charges were proved, the petitioner was imposed punishment of stoppage of increment with cumulative effect for a period of two years. As the petitioner failed to produce any materials to disprove the charges and since the punishment imposed on the petitioner is minimum punishment, the appellant authority was right in dismissing the appeal petition and the same need not be interfered with.

12. The charges levelled against the petitioner reads thus:

- (1) As per the complaint, from 1.6.2001 onwards on various dates, for the Tamil Nadu Government Transport Corporation Employees, who were getting treatment as inpatient in the wards were provided (i) medicines procured from TNMSC instead of branded medicines by preparing bills for branded item; (ii) prepared bills for costly sterile gloves but issued cheaper examination gloves.
- (2) In this process from 01.6.2011 onwards on the respective dates, sold branded medical items to outpatients without bills and collected money and in this respect there was misappropriation of Rs.10,500.82 belongs to the management.

- (3)As referred above since bills were prepared for branded items and distributed medicines procured through TNMSC, the remaining lesser quantity of TNMSC item were sold without mentioning particulars such as OP/IP/Ward No. and sold to an individual by preparing a single bill on the respective dates.
- (4)Without mentioning the name of the concerned Doctor, bills were prepared by wriging as "Dr" only and in this process there was misappropriation of Rs.1,432.60.
- (5)The above said misconduct has under minded the reputation of the management.
- (6)By the aforesaid act, the management has lost its confidence reposed.

13. On a perusal of the typed set of papers, it is seen that earlier, challenging the second show cause notice dated 05.10.2005 issued to the petitioner and three others, they have filed W.P.Nos.35118, 35136 of 2015; 3085 and 3086 of 2006 stating that the respondents have committed serious error in predetermining the punishment even at the stage of show cause notice, and hence, such predetermination vitiates the entire proceedings.

14. By an order dated 28.09.2010, the learned Single Judge of this Court, allowed the writ petitions. The relevant paragraphs are read thus:

"4.It is no doubt true that as far as the show cause notice issued to the petitioners are concerned, even before obtaining any reply objections from the petitioners, the notice indicates the punishment proposed, considering the fact that the action needs to be just and fair. I have no hesitation in accepting the plea of the petitioners that the show cause notice indicating the nature of punishment proposed in the above cases is bad in law. When the show cause notice called for explanation on the charges levelled against the petitioners, the question as to the punishment to be inflicted at that stage does not arise. At the same time, the punishment to be imposed depends upon the satisfactory explanation offered by the petitioners. On a mere identical nature of allegation, one cannot possibly contend that the result of the disciplinary proceedings cannot be different.

5.In the above circumstances, without saying anything about the kind of punishment that would

flow, on facts, this Court feels that ignoring the paragraph indicating the punishment, the respondents have to proceed from the state of the show cause notice that the petitioners may have the chance to answer the charges. Therefore, the respondents are hereby directed to issue fresh show cause notice so as to enable the petitioners to place their objections. Depending on the explanation given to the satisfaction of the disciplinary authority, it is open to the officer concerned to proceed further in this regard.

6. Without going into the merits of the contentions raised, the respondents are hereby directed to issue fresh show cause notice to the petitioners within a period of four weeks from the date of receipt of a copy of this order and after receipt of the same, the petitioner shall cooperate in placing their explanation to the respondents so as to proceed further in this regard.

In the circumstances, the writ petitions are allowed. No costs. Consequently, connected M.Ps. are closed."

15. It is seen that pursuant to the order of this Court in the aforesaid writ petitions, on 20.11.2010, a memo was issued to the petitioner along with findings of the enquiry report and called for explanation as to why disciplinary action should not be taken against the petitioner for the proven charges. On 29.11.2010, the petitioner submitted his explanation denying all the charges. Since the explanation of the petitioner is not satisfactory, on 22.02.2011, the second respondent issued a second show cause notice imposing the punishment, for which the petitioner had also submitted his explanation on 01.03.2011. Since the explanation offered by the petitioner was not acceptable, he was imposed with the punishment of stoppage of increment with cumulative effect for a period of two years and also ordered to recover a sum of Rs.11,933.42 from the petitioner's salary.

16. On a perusal of the enquiry report and the order of original authority, I find that in the enquiry, the petitioner had duly participated and in fact, he had also examined one Kolanchiappan as his witness. The Enquiry Officer, in his report, recorded that what has been stated in his explanation has been stated by the petitioner in the enquiry also. From the above, it is seen that the Enquiry Officer had conducted the enquiry without any bias and the petitioner was given adequate opportunity to put forth his case during enquiry. Therefore,

the contention of the petitioner that he was not afforded sufficient and reasonable opportunity to defend his case and that the disciplinary proceedings are conducted violating the principles of natural justice cannot be countenanced.

17. In view of the categoric finding as aforesaid based on the pleadings and submissions on record, I do not propose to delve into the various decisions relied upon by the learned counsel appearing for the petitioner qua principles of natural justice. It is reiterated that during enquiry, the petitioner was afforded sufficient opportunity to defend his case.

18. Aggrieved by the order of imposition of punishment by the second respondent, the petitioner had filed appeal petition before the first respondent on 26.07.2011. By an order dated 21.12.2011, the first respondent dismissed the appeal petition by observing as under:

"பார்வை இரண்டில் கண்டுள்ள மேல் முறையீட்டு மனுவில் பார்வை ஒன்றில் வழங்கப்பட்டுள்ள தண்டனையை தள்ளுபடி செய்ய,மாறு வேண்டியுள்ளீர். உள்துறை விசாரணை இ விசாரணை நியதிப்படி நடத்தப்பட்டு உம்மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டுகள் நிரூபிக்கப்பட்டதாக விசாரணை அலுவலர் அறிக்கை சமர்ப்பித்துள்ளார். அதனடிப்படையில் பார்வை ஒன்றில் கண்டுள்ள செயல்முறை ஆணை வாயிலாக குறைந்தபட்ச தண்டனை வழங்கப்பட்டுள்ளது. உம்முடைய மேல் முறையீட்டு மனுவில் உம்மீது சுமத்தப்பட்ட குற்றச்சாட்டுக்களை தள்ளுபடி செய்ய,ம முகாந்திரத்திற்கான ஆதாரம் ஏதும் நீவிர் சமர்ப்பிக்கவில்லை. விசாரணையின் போது கூறிய விபரத்தையே மேல் முறையீட்டு மனுவில் மீண்டும் தெரிவித்துள்ளீர். எனவே தங்களுடைய மேல் முறையீட்டு மனு தள்ளுபடி செய்யப்படுகிறது."

19. According to the petitioner, the first respondent being the appellate authority ought to have considered the various objections of the petitioner raised against the order of the second respondent and ought to have passed a reasoned order.

20. On a perusal of the impugned order of the appellate authority/first respondent, it is seen that the first respondent has recorded that the petitioner has failed to produce any material to disprove the charges and what has been narrated during disciplinary enquiry, the same has been stated in the memorandum of appeal and, hence, the appeal is dismissed. From the above, it is clear that the appellate authority while passing the order, has not heard the petitioner and that there is no whisper in the order of the appellate authority that it had heard the petitioner. From the order of the appellate authority, it is also seen that it has not elaborated upon the order of the original authority.

21. The purpose of disclosure of reasons, as held by a

Constitution Bench of this Court in S.N.Mukherjee v. Union of India, reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not. Therefore, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

22. It is settled that appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Further, the appellate order should contain whether sufficient opportunity was granted to the delinquent.

23. In the case on hand, though the order of the appellate authority is not in one-line order, the reasoning given by the appellate authority for affirmation of the order of the original authority is not sufficient. In fact, in the appellate order, the appellate authority stated that the petitioner was imposed simple punishment. How the appellate authority could arrive such a conclusion that the punishment imposed on the petitioner is simple has not been elaborated. As stated supra, the appellate authority has not stated anything about the opportunity given to the petitioner at appellate stage.

24. There is yet another aspect of the matter. In a quasi-judicial proceeding, all orders have to be reasoned speaking orders basically for two reasons. Firstly, because such orders are subject to judicial review and, therefore, such orders must show conscious application of mind. Secondly, a party must know what is alleged against him, why his defence has not been accepted and what he has committed. All this must clearly appear from orders which are quasi-judicial, may it be original order of the Disciplinary Authority or the Appellate Authority. Reasons are the link between the facts found and the decision arrived and such reasons show how mind was applied to the facts and what were the considerations for arriving at the decision.

25. On a perusal of the typed set of papers, it is seen that the petitioner had presented the appeal petition before the first respondent on 26.07.2011 and the first respondent passed the impugned order on 21.12.2011. The appellate authority has not issued any notice to the petitioner intimating the date of hearing of the appeal. Within short span of days from the date of filing of the appeal that too without notice to the petitioner, the first respondent has hurriedly dismissed the appeal petition filed by the petitioner.

26.In the result:

(a) the writ petition is allowed and the impugned order in proceedings No.367/Vu4/Sa.Po.Ni/2006 passed by the 1st respondent dated 21.12.2011, in confirming the order passed by the 2nd respondent dated 13.06.2011 in proceeding No.62/E3/Sa.Po.Ni-Pe.Ma.Ka/2005, is quashed;

(b) the respondents are directed to refund the amount recovered from the petitioner;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vs

To

- 1.The Director,
I.R.T. Perundurai Medical College & Hospital,
Perundurai, Erode District.
- 2.The Deen,
I.R.T. Perundurai Medical College & Hospital,
Perundurai, Erode District.
- 3.K.Elango,
Enquiry Officer,
I.R.T. Perundurai Medical College & Hospital,
Perundurai, Erode District.

+1cc to Mr.Kalaramesh, Advocate SR.No.63034

+1cc to Mr.R.Govindaraj, Advocate SR.No.63605

W.P.No.2150 of 2013

GMV (04/10/2018)