

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2018

Coram:

The Honourable Mr.Justice S.M. SUBRAMANIAM

W.P.No.21679 of 2016
and
W.M.P.Nos.18528 & 31308 of 2016

L.Felix Reginald

...Petitioner

Versus

The Labour Officer (SSS)-cum-Inquiry Officer,
Tiruchy Road, Ramanathapuram,
Coimbatore - 641 045.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent in Na.Ka.No.A1/613/2015 dated 03.06.2016 and quash the same and consequently, direct the respondent to reopen the enquiry and furnish the documents to the petitioner that were relied on by the respondent to substantiate the Articles of charges contained in the charge memo dated 24.04.2015.

For Petitioner : Mr.Balamuralikrishnan
for Mr.V.Rajinikanth

For Respondent : Ms.A.Srijayanthi,
Special Government Pleader

ORDER

The enquiry report submitted by the Enquiry Officer in the proceeding dated 03.06.2016 is under challenge in this Writ Petition. The grievance of the writ petitioner is that he participated in all the hearings during the course of the enquiry. In spite of that, the Enquiry Officer submitted a Report stating that the writ petitioner/delinquent was set ex-parte.

2. The learned counsel appearing for the petitioner contended that when the writ petitioner had appeared before the Enquiry Officer on all the hearings and submitted the

statement of defence and further the petitioner requested the Presiding Officer to furnish the documents which were related upon by the Officer, the Enquiry Officer took an unilateral decision and set the writ petitioner/ex-parte. Thus, it is an erroneous finding made by Enquiry Officer which prompted the writ petitioner to file the present writ petition.

3. The learned Special Government Pleader appearing on behalf of the respondent made submissions by relying on the counter affidavit filed by the respondent. The Writ Petitioner had not attended all the hearings, in spite of the information provided to him. The non co-operation of the writ petitioner during the course of enquiry, has been stated in paragraph No.11 of the counter affidavit filed by the respondent which reads as follows:

"11. As stated in para supra, the petitioner was set ex-parte from the enquiry proceedings on 03.06.2016 due to his non co-operation. Subsequently witnesses were examined on behalf of the prosecution side. The enquiry was proceeded further even on 20.06.2016, 21.06.2016, 22.06.2016, 27.06.2016, 28.06.2016, 05.07.2016, 08.07.2016 and 11.07.2016. The petitioner was informed about the ex-parte proceedings by this Respondent even on 03.06.2016 itself. However, the petitioner has refused to sign in the proceedings on 03.06.2016 and thereafter signed in the enquiry proceedings on 06.06.2016 and also made various unwanted allegations against this respondent."

4. The learned counsel for the writ petitioner states that the statement made in the counter affidavit is factually incorrect and the petitioner had actually participated in the enquiry proceedings. However, such factual disputes now raised in the writ petition need not be gone into. In view of the fact that the Enquiry Officer has conducted the enquiry and the petitioner was retired on attaining the age of superannuation and the learned counsel for the petitioner also admits that a new Enquiry Officer has been appointed, and even if no Enquiry Officer has been appointed, it is for the Disciplinary Authority to appoint an Enquiry Officer for the purpose of concluding the enquiry and pass final orders in the disciplinary proceedings. The disciplinary proceedings, once initiated, need not be prolonged unnecessarily for a long time. In these circumstances, the respondent is directed to appoint an Enquiry Officer, if not appointed and the respondent shall proceed with the enquiry in all respects. In the meanwhile, the representation submitted by the writ

petitioner for furnishing all the documents which are all relied by the Department is also to be complied with. Thus, if those documents need not be furnished to the writ petitioner during the course of enquiry, then the writ petitioner be furnished with a copy of the documents or atleast allow him to peruse the documents in the presence of the Enquiry Officer. At the outset, all reasonable opportunities to be provided to the delinquent Official, while conducting the domestic enquiry. After affording reasonable opportunities to the petitioner, the Enquiry Officer has to consider all the materials available on record and submit a fresh enquiry report to the Disciplinary Authority and proceed with the Departmental Disciplinary proceedings.

5. In this view of the matter, the enquiry report issued by the respondent in Na.Ka.No.A1/613/2015 dated 03.06.2016 is hereby quashed and the Disciplinary Authority is directed to appoint a new Enquiry Officer, if not already appointed and proceed with the de novo enquiry from the place from which the error took place, by giving an opportunity of hearing to the writ petitioner. On receipt of the enquiry report from the Enquiry Officer, the Disciplinary Authority is at liberty to consider the materials available on record and pass final orders in the Departmental Disciplinary Proceedings. The Disciplinary Authority is directed to pass final orders as early as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs.

6. In the upshot, this Writ Petition shall stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

mrr/gmd

To

The Labour Officer (SSS)-cum-Inquiry Officer,
Tiruchy Road, Ramanathapuram,
Coimbatore - 641 045.

+1cc to Mr. V.RAJINIKANTH, Advocate SR.No. 45587

+1 CC TO GOVERNMENT PLEADER SR.NO. 45759

W.P.No.21679 of 2016

kgk(Co)

ASK(10/09/2018)