

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.34997 of 2003

J.Ponraj

.. Petitioner

Vs.

1. The Executive Engineer,  
Tamil Nadu Science and Technology Centre,  
Chennai - 600 025.
2. The Chairman,  
Tamil Nadu Science and Technology Centre,  
Chennai - 600 025. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.4771/E1/2003, dated 08.11.2003, to quash the same and to direct the respondents to regularize the suspension period with all consequential and attendant benefits.

For Petitioner : Mr.R.Sankarappan

For Respondents : Mr.S.Ilamvaludhi (for R1)

No Appearance (for R2)

ORDER

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.4771/E1/2003, dated 08.11.2003, to quash the same and to direct the respondents to regularize the suspension period with all consequential and attendant benefits.

2. The facts in a nutshell are as under: The petitioner, who was working as a Sergeant in B.M.Birla Planetarium in the Tamil Nadu Science and Technology Centre, was served with an order of suspension dated 25.04.1991 passed by the first respondent and he was also served with a charge memo under Rule 17(b) of the

Tamil Nadu Civil Services (Classification, Control and Appeals) Rules. The gravamen of the charge was that the petitioner misbehaved with girl students inside the auditorium while they were witnessing the programme. The petitioner denied the charges. Thereafter, an Enquiry Officer was appointed and enquiry was conducted. Based on the enquiry report, which held the charges proved, the first respondent issued a memo dated 27.01.1992 directing the petitioner to submit his explanation within 15 days. The petitioner submitted his explanation on 10.02.1992. The first respondent, by proceedings dated 06.05.1992, removed the petitioner from service.

3. It is stated that there was some issue with regard to the appeal preferred by the petitioner, which was ultimately decided by the second respondent by proceedings dated 08.11.2003. The second respondent rejected the appeal filed by the petitioner finding no reason to interfere with the same.

4. Assailing the above said order passed by the second respondent, the present writ petition is filed.

5. It is the contention of the learned counsel for the petitioner that the second respondent has taken into consideration new material, i.e., the evidence of the Headmistress and accompanying teachers, but the statements of the witnesses were not furnished to the petitioner, they were also not examined.

6. He further contended that the alleged statements of the girls have also not been furnished to the petitioner. In effect, he contended that no such incident, as alleged, ever happened and that is the reason for non examination of the girl students.

7. Per contra, the learned counsel appearing for the first respondent reiterated the reasons that weighed with the respondent authorities in passing the impugned order citing the gravity of the allegation levelled against the petitioner.

8. On a perusal of the documents available on record, it is clear that enquiry was conducted on 12.07.1991 in which five witnesses were heard by the Enquiry Officer and due opportunity was given to the petitioner to cross examine the witnesses. It is recorded in the impugned order that the petitioner did not adduce any witness in defence. Therefore, it is not a case of violation of principles of natural justice as claimed by the petitioner.

9. The above said view of this Court is fortified by a decision of the Supreme Court in Hira Nath Mishra and others v.

The Principal, Rajendra Medical College, Ranchi and another, AIR 1973 SC 1260, wherein it was held that principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justice cannot remain the same applying to all conditions. It was held that when a proper enquiry is held by an enquiry committee, the rules of natural justice do not require that statement of girl students should be recorded in the presence of the delinquent.

10. That apart, it is seen from the records that the petitioner was placed under suspension and charge memo was issued only after the complaint given by the Headmistress, St. Anne's Girls Higher Secondary School, Royapuram, Chennai - 600 013, was thoroughly enquired, by way of a preliminary enquiry, by two responsible officials, who gave a report. This only goes to show that proper enquiry was conducted before placing the petitioner under suspension.

11. Disciplinary action relates to employer losing trust and confidence on the employee on account of alleged misconduct affecting the image and reputation of the employer. The relationship of employee-employer is based on trust and confidence of the employer on the employee. If the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service. However, before taking action against an employee in public service, the employer is required to follow due process and on establishment of charges levelled against him, appropriate punishment can be imposed.

12. In a domestic enquiry on the charges levelled against the employee what is required is preponderance of probabilities of the charges levelled against him. Nature of evidence required in the departmental proceedings is quite different from the nature of evidence that is required in criminal proceedings. As has been held in the impugned order, the probability of the incident has been adequately proved by the witnesses heard.

13. That apart, there is nothing on record produced by the petitioner to show that the charges have been foisted against the petitioner to wreak vengeance.

For the foregoing reasons, this writ petition is dismissed.  
No costs.

vs

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Executive Engineer,  
Tamil Nadu Science and Technology Centre,  
Chennai - 600 025.
2. The Chairman,  
Tamil Nadu Science and Technology Centre,  
Chennai - 600 025.

+lcc to Mr.R.Sankarappan, Advocate SR.NO.60367

sm:6.9.2018

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