

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Writ Petition No.24205 of 2018

ORDER: {Per Justice Ramesh Ranganathan}

Heard Sri M.Vijay Kumar Goud, learned counsel for the petitioner, and Sri O.Swaroop, learned Standing Counsel for the High Court appearing on behalf of the respondents and, with their consent, the Writ Petition is disposed of at the stage of admission. The relief sought for in this writ petition is for a mandamus to declare the proceedings issued by the 2nd respondent dated 06.01.2018, in not permitting the petitioner to examine defence witness No.14 viz, Sri Kolli Venkateswar Rao, as illegal, arbitrary, capricious, and against principles of natural justice.

By proceedings dated 06.01.2018, the petitioner was informed that, initially, summons were issued to DLW14 and he was absent; no steps were taken by the charged officer thereafter to examine him; a petition was later filed by the charged officer to examine certain other witnesses; an order was passed on 17.12.2016 giving permission to the charged officer to examine DLW.Nos.12, 16, 17, 22 to 24, 28 to 34 and 36; no permission was sought, by the charged officer, to examine DLW14 i.e K.Venkateswar Rao; even though more than 11 months had elapsed after 17.12.2016, when the absence of DLW14 was recorded, the charged officer did not take any steps to examine Sri K.Venkateswar Rao subsequently; even though the charged officer filed a petition on 24.06.2017, wherein he sought for issuance of summons to LWs 15, 17 and 1, he did not bother to seek summons to be issued to DLW14; and, therefore, the 2nd respondent did not find any reason to issue summons to Sri K.Venkateswar Rao at this belated stage.

Sri M.Vijay Kumar Goud, learned counsel for the petitioner, would submit that, if one further opportunity is given to the petitioner, he would himself call for Sri Venkateswar Rao, and have him examined as a defence witness; and this Court may impose a condition that, in case the petitioner fails to produce LW14 and examine him on the next date of enquiry, it would be open to the Enquiry Officer to proceed to hear arguments, and thereafter submit his enquiry report.

It is well settled that the Enquiry Officer cannot compel attendance of witnesses in a departmental enquiry and, if a charged officer wants to examine any witness in his defence, it is for him to produce the said witness and have him examined (**Tata Oil Mills Co. Ltd vs. Its Workmen : AIR 1965 SC 155**). In the present case, despite summons having been issued earlier by the enquiry officer, L.W.14 chose not to participate in the enquiry proceedings. The petitioner, thereafter, kept quiet till the stage of arguments, and it is only then that he made an application to have D.W.14 summoned for being examined as a defence witness.

While it does appear that the petitioner has been amiss in not taking steps to have L.W.14 summoned and examined as a defence witness earlier, we consider it appropriate to give him one final opportunity. On the next date of enquiry, fixed by the Registrar (Enquiries), the petitioner shall produce L.W.14 and examine him as his defence witness. In case L.W.14 appears in the enquiry, and deposes as a defence witness, he shall be cross-examined by the presenting officer on the same or on the next date of enquiry. In case, the petitioner fails to produce L.W.14, on the day fixed by the Registrar (Enquiries), he shall not be entitled for any further opportunity thereafter, and the enquiry officer may proceed to hear arguments, and submit his enquiry report.

The Writ Petition is disposed of accordingly. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

30th July, 2018

Note: Issue C.C by 01.08.2018.

JSU



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Date: 30.07.2018

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