

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.21985 OF 2013

ORDER:

1. This Writ Petition is filed seeking to issue a writ of certiorari calling for the records relating to and connected with the proceedings dated 7.5.2012 issued by the 2nd respondent and the consequential rejection proceedings dated 11.6.2012, and to quash the same by holding them as arbitrary and illegal and violative of Articles 14 and 21 of the Constitution of India.

2. Heard Sri J.V.S.H. Sastry, learned Counsel for the petitioner and Sri P. Madhusudhana Reddy, learned Standing Counsel for the respondent-University.

3. It has been contended by the petitioner that she was initially appointed as an attender/record assistant on 31.5.1978 and subsequently, she was promoted as Junior Assistant and thereafter, as Senior Assistant and she has been discharging her duties to the best satisfaction of her superiors and the authorities concerned. Further, it has been contended by the petitioner that while she was working as senior assistant, she was placed under suspension vide proceedings dated 11.8.2010 pending disciplinary proceedings, and thereafter, the respondents issued a charge memo alleging that the petitioner had withdrawn excess amount of provident fund than the amount to which she was entitled, by fabricating records and

thereafter, a regular enquiry was conducted, and the enquiry officer filed his report holding that the charge leveled against the petitioner was proved, and then, the disciplinary authority issued a show cause notice enclosing the copy of enquiry officer's report and calling for explanation as to why she should not be removed from service, and thereafter, the 2nd respondent through proceedings dated 7.5.2012 passed orders removing the petitioner from service and then, the petitioner submitted a representation dated 11.5.2012 requesting to consider the whole issue, and the said representation was rejected vide proceedings dated 11.6.2012. Aggrieved by the same, the petitioner filed this writ petition.

4. The learned Counsel for the petitioner contends that the disciplinary authority ought to have furnished the enquiry officer's report first so as to enable the petitioner to file objections to the said report, but in the instant case the disciplinary authority has prejudged the issue and come to a conclusion that the petitioner is guilty of the charges, and then, issued the show cause notice proposing the punishment and enclosing enquiry officer's report. The learned Counsel for the petitioner further contends that when the disciplinary authority has already come to a conclusion that the charges leveled against the petitioner were proved, then the issuance of show cause notice asking the petitioner to file objections, is nothing

but an empty formality, and it has caused great amount of prejudice to the petitioner, and the petitioner was not in a position to defend her case properly and submit her objections to the enquiry officer's report. He further contends that though the petitioner submitted explanation to the show cause notice denying the allegations levelled against her and also filed objections to the findings of the enquiry officer's report, none of these factors were taken into account and the disciplinary authority mechanically imposed punishment of removal vide proceedings dated 7.5.2012 and aggrieved by the same, she filed a representation and the said representation was rejected vide order dated 11.6.2012, and challenging the same, the present writ petition is filed.

5. The learned Counsel for the petitioner contends that the Hon'ble Supreme Court in ***Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and Others***¹ held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him, and denial of the enquiry officer's report, before the disciplinary authority takes its decision on the charges, is a denial of

¹ (1993) 4 SCC 727

reasonable opportunity to the employee to prove his innocence and is a breach of the principle of natural justice; and the same has been reiterated by the Hon'ble Division Bench of this Court in ***SBQ Steels Limited, Chennai Vs. Commissioner of Customs, Central Excise and Service Tax, Guntur Commissionerate, Guntur***² as follows:

“The above passages in the impugned notice indicate that there is a lot of substance in the contentions of the petitioner. No doubt, at some of the places in the show cause notice to the respondent has also used the words “*prima facie*” and “*appears*” suggesting that his conclusion is only tentative but not final or conclusive but the overall impression one gets from a reading of the show-cause notice is that the respondent has predetermined the issue.

It is settled principle of law that a quasi judicial authority, while acting in exercise of its statutory power, must act fairly and must act with an open mind while initiating the show-cause proceeding. A show-cause notice is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. At the state of show-cause notice, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. At that stage, the authority issuing the charge sheet/show-cause notice, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in the present case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.”

² 2013(2) ALD 158(DB)

Relying upon the above judgments, the learned Counsel for the petitioner submits that appropriate orders may be passed by setting aside the order of removal and that the petitioner may be reinstated into service with all consequential benefits.

6. The learned Standing Counsel for the respondents contends that every opportunity was given to the petitioner during the course of enquiry, and after giving opportunity only, the disciplinary authority passed the orders of removal for the proven misconduct in the enquiry and that no irregularity or illegality has been committed by the respondents in passing the impugned orders and that the principles of natural justice were also extended at every stage, and therefore, the question of not giving any opportunity to the petitioner during the course of enquiry would not arise and that there are no merits in this writ petition, and the writ petition is liable to be dismissed.

7. This Court having considered the rival submissions made by the parties is of the view that the disciplinary authority had furnished the enquiry officer's report, along with the show cause notice where the disciplinary authority called upon to show cause why appropriate punishment proportionate to the misconduct proved against her be not imposed on her and a copy of the enquiry authority's report is enclosed therewith for her consideration before submitting her reply to show cause

notice within 15 days from the date of receipt of the show cause notice.

8. Perusal of the said show cause notice discloses two things that the disciplinary authority had already come to conclusion that the petitioner is guilty of the misconduct and thereafter, furnished enquiry officer's report along with the show cause notice calling her to submit explanation to the show cause notice within 15 days, which would show that the disciplinary authority has already made its mind about the guilt of the petitioner and thereafter, issued show cause notice and that the show cause notice itself is an empty formality as the disciplinary authority has already come to conclusion about the guilt of the petitioner. Therefore, the removal order dated 7.5.2012 and the rejection order dated 11.6.2012 are liable to be set aside only on this ground, and accordingly, they are set aside, and the matter is remanded to the disciplinary authority to proceed from the stage of furnishing enquiry officer's report to the petitioner and conclude the disciplinary proceedings within a period of two months from the date of receipt of a copy of this order.

9. It is needless to say that the period from the date of removal till the date of this order, whereunder the impugned orders were set aside, shall be treated as deemed suspension as the impugned orders are set aside on technical grounds.

The petitioner would be entitled for subsistence allowance during the above said period.

10. With the above direction, the Writ Petition is disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 26th December, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI



WRIT PETITION No.21985 OF 2013

26/12/2018

Nn.