

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED: 16.04.2019****CORAM****THE HONOURABLE MR. JUSTICE V.PARTHIBAN****WP.No.28724 of 2011**

Jawahar Santhakumar .. Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Chief Secretary to Government,
Public (Special-A) Department,
Secretariat, Chennai-09.

2. The Tribunal for Disciplinary proceedings,
Kuralagam,
Chennai-108.

3. Tamilnadu Public Service Commission,
rep. by its Secretary, Greaves Road,
Chennai.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records from the file of 1st respondent in connection with the orders passed by him in Letter No.6010/Spl.A/98-21, dated 13.11.2008 and G.O.Ms.No.1125 Public (Special-A) Department dated 26.11.2011, quash the same and consequently, direct the

respondents to reinstate the petitioner with all monetary and service benefits.

For Petitioner : Mr.Mr.K.Venkataramani, SC for
Mr.Mohana Murali

For Respondents : Mr.A.Kumar,
Addl.Advocate General
assisted by J.Ramesh, AGP
for R1 & R2
Mr.M.Devendran for R3

ORDER

This Writ Petition has been filed by the petitioner, praying to issue Writ of Certiorarified Mandamus, to call for the records from the file of 1st respondent in connection with the orders passed by him in Letter No.6010/Spl.A/98-21, dated 13.11.2008 and G.O.Ms.No.1125 Public (Special-A) Department dated 26.11.2011, quash the same and consequently, direct the respondents to reinstate the petitioner with all monetary and service benefits.

2. The brief facts which gave rise to the filing of the Writ Petition, are stated hereunder:

The petitioner when he was working as District Revenue Officer, Karur, was placed under suspension and an enquiry was initiated and conducted against him by the second respondent vide TDP case No.36 of 2007. A charge against the petitioner was that he had in possession of disproportionate assets to his known source of his income and the conduct of the petitioner was in violation of Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973. There were two sets of charges framed against the petitioner, which resulted in two TDP cases conducted against him, viz., In TDP Case NO.22 of 2007 and 36 of 2007. The substance of the charges is that he was having disproportionate assets to his known source of income and the income amassed, actuated by dishonest motive and he failed to maintain absolute integrity and devotion to duty. After a detailed enquiry, based on the available evidence on record, a report has been submitted in both TDP Case Nos.22 and 36 of 2007, holding that the charges were not proved. The enquiry report in favour of the petitioner was submitted on 07.07.2008.

According to the petitioner, the second respondent had taken into consideration of the material evidence that was made available for coming to the conclusion in favour of the petitioner. Thereafter, the first respondent by his letter dated 13.11.2008, passed an order, holding that the findings of the second respondent were not acceptable and he had decided to deviate from the findings. Therefore, the petitioner was called upon to make his representation as to why the Disciplinary Authority should not accept the findings of the second respondent. A detailed representation was made by the petitioner on 20.11.2008 in respect to the disagreement of the Disciplinary Authority, stating that the findings rendered by the second respondent were well founded and therefore, the disagreement of the Disciplinary Authority was not called for. However, the first respondent has passed order vide G.O.Ms.No.1125 dated 26.11.2011, dismissing the petitioner from service. As against the said order of dismissal, the present Writ Petition has been filed by the petitioner.

3. Shri K.Venkataramani, learned Senior Counsel appearing for the petitioner would submit that without touching upon various grounds raised in support of the Writ Petition, he would confine his arguments only in regard to the letter of Disciplinary Authority dated 13.11.2008 which is also impugned in the Writ Petition, wherein, the Disciplinary Authority has decided to deviate from the findings of the Enquiry Officer and to hold the charges as proved, as according to him, such course adopted by the Disciplinary Authority is in complete violation of the established principles of natural justice and also contrary to the legal principles as laid down by the Hon'ble Supreme Court in number of decisions. He would therefore, urge this Court to interfere with the procedure adopted by the Disciplinary Authority in not giving any opportunity to the petitioner to explain and submit his representation in support of the favourable findings rendered by the second respondent Tribunal. The Disciplinary Authority has straight away concluded that the charges framed were proved without putting the petitioner on

notice to explain his stand in regard to the findings of the Disciplinary Authority.

4. The learned Senior Counsel would draw the attention of this Court to a decision reported in “(2006) 9 440 (***Lav Nigam versus Chairman & MD., ITI Ltd. and another***)”, wherein, particularly to paragraphs 9 to 13, which are extracted hereunder:

“9. Challenging the orders of the respondent authorities the appellant filed a writ petition before the High Court. The appellant specifically raised the issue that the disciplinary authority was obliged to give a separate show- cause notice if the disciplinary authority differed with the inquiry officer. The High Court also held that there was no need to give two separate show- cause notices - one before the disciplinary authority found against the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined in one. The

writ petition was accordingly dismissed.

10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. In *Punjab National Bank v. Kunj Behari Misra*, ((1998) 7 SCC 84), a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p.97, para19)

"19. The result of the aforesaid discussion would be that the

principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

12. This view has been reiterated in *Yoginath D. Bagde v. State of Maharashtra*, (1999)7 SCC 739. In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an

opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p.758, para 29)

"But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'tentative' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered with. "

(See also State Bank of India v. K.P.

Narayanan Kutty, (2003)2 SCC 449).

13. We have already quoted the extracts from the show-cause notice issued by the disciplinary authority. It is clear that no notice at all was given before the disciplinary authority recorded its final conclusions differing with the finding of fact of the inquiry officer. The notice to show cause was merely a show-cause against the proposed punishment. In view of the long line of authorities, the decision of the High Court cannot be sustained. The appeal is accordingly allowed and the decision of the High Court is set aside.”

5. The learned Senior Counsel would submit that the above referred decision of the Hon'ble Supreme Court would squarely cover the legal objection raised by the petitioner. Therefore, on this ground alone, the Disciplinary Authority's order/Letter No.6010/Spl.A/98-21, dated 13.11.2008 is liable to be interfered with.

6. At this, the learned Addl. Advocate General, who appeared for the respondents would submit that there were sufficient materials available in the disciplinary proceedings initiated against the petitioner and since the petitioner was involved in serious misconduct of corrupt practice, the Disciplinary Authority has rightly dismissed the petitioner from service. Therefore, the petitioner cannot be allowed to take a technical objection in regard to the decision of the Disciplinary Authority for differing from the findings given by the second respondent Tribunal. This Court is unable to appreciate as to how such argument could be accepted by this Court in view of the settled legal position that in case the Disciplinary Authority takes a decision to differ from the findings of the Enquiry Officer, it is incumbent upon the authority to issue show cause notice to the charged officer and only after obtaining his explanation, the Disciplinary Authority can proceed further in the matter. In this case, unfortunately, the Disciplinary Authority without giving any opportunity to the petitioner herein, has directly issued notice saying that he

would not accept the findings and would hold that the charges were proved against him. Such a course adopted by the Disciplinary Authority is in complete violation of established principles of natural justice and also contrary to the law declared by the Hon'ble Supreme Court of India on the subject matter.

7. As rightly contended by the learned Senior Counsel for the petitioner that the above decision of the Hon'ble Supreme Court would squarely cover the case in favour of the petitioner herein. Once the findings are in favour of the charged Officer, the charged Officer must be given due and reasonable opportunity to put forth his claim in support of the findings and he should be given opportunity to impress upon the Disciplinary Authority about the findings in his favour. Such opportunity is the very essence of complying with principles of natural justice, which cannot be termed as hyper technical.

8. The impugned Letter dated 13.11.2008 issued by the Disciplinary Authority, therefore, cannot be countenanced in

law as being violative of principles of natural justice and also being violative of legal principles as laid down by the Hon'ble Supreme Court in number of decisions including the decision extracted above.

9. On this short ground, this Court is of the view that the Writ Petition is liable to be allowed. The impugned Letter dated 13.11.2018 and also subsequent order of dismissal from service inflicted on the petitioner vide G.O.Ms.No.1125 Public (Special-A) Department dated 26.11.2011 are hereby quashed. The matter is remanded back to the Disciplinary Authority/first respondent herein, to issue show cause notice to the petitioner, calling for his explanation in regard to the findings of the second respondent and thereafter to proceed further in the matter in regard to his agreement or disagreement of findings after taking into consideration of the representation of the petitioner. It is also clarified that the petitioner is entitled to raise all the issues that are available to him before the Disciplinary Authority while submitting his

representation to the show cause notice issued by the Disciplinary Authority. It is also made clear that in case of adverse order is passed against the petitioner, the grounds as raised in the present Writ Petition in regard to other aspects are left open for him to urge in appropriate proceedings.

With the above observation and directions, the Writ Petition stands allowed. No costs. Consequently, connected MP is closed.

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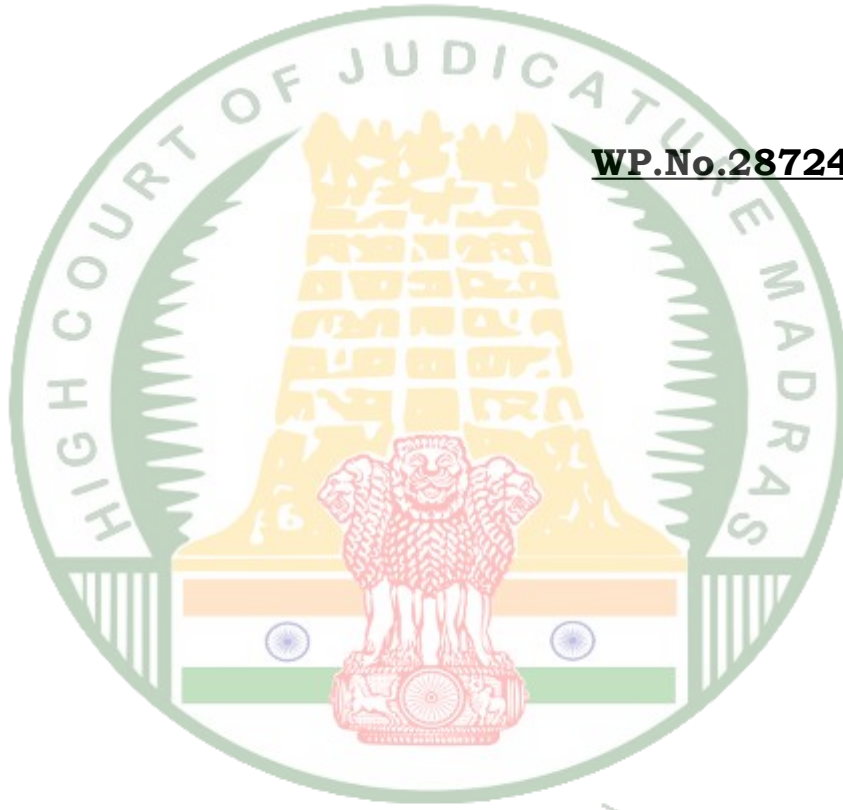
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To

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V.PARTHIBAN, J.

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