

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.06.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.9525 of 2019

&

W.M.P.No.10147 of 2019

T.Sekar

...Petitioner

Vs.

The Superintendent,
Central Prison-II, Puzhal,
Chennai - 600 066.

...Respondent

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus to call for the records relating to the impugned order of the respondent in 2773/Po-3/2018 dated 19.03.2019 and quash the same and direct the respondent to proceed with the disciplinary proceedings on the basis of the enquiry report submitted by the Enquiry Officer on 23.02.2019.

For Petitioner : Mr.P.Rajendran

For Respondent : Mr.J.Pothiraj,
Special Government Pleader

ORDER

The petitioner was initially appointed as Warder on 27.03.1998. Thereafter, he was promoted as Head Warder and then as Chief Head Warder. The petitioner was placed under suspension by an order of the Superintendent of Central Prison-II, Puzhal, dated 02.05.2018, on the allegation that there was a telecast in Polimer TV on 01.05.2018 showing that the petitioner and another Warder receiving money from one of the inmates of the prison for providing facilities in the prison.

2. Thereafter, a charge memo was issued on 08.05.2018 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the respondent/Superintendent of Central Prison II, Puzhal, wherein two charges were framed against the petitioner. The charges were framed in respect of the above mentioned allegations. Subsequent to the issuance of the charge memo, an enquiry was conducted. After completion of detailed

enquiry, a report was submitted by the Enquiry Officer on 23.02.2019 stating that the charges against the petitioner were partly proved.

3. On submission of the enquiry report, a copy was furnished to the petitioner and the petitioner also submitted his explanation to the enquiry report. The Disciplinary Authority, the respondent herein, however passed an order on 19.03.2019 to conduct a re-enquiry and submit a report on the ground that the finding of the Enquiry Officer was not to his satisfaction. The said order ordering re-enquiry by the respondent/Disciplinary Authority is put to challenge in the present writ petition.

4. Shri. P. Rajendran, the learned counsel appearing for the petitioner would submit that the order passed by the Disciplinary Authority directing re-enquiry to be conducted against the writ petitioner is per se illegal and contrary to the legal principles laid down by the Courts and hence the same is liable to be interfered with by this Court. According to him it is not open to the Disciplinary Authority to order re-enquiry because of the fact that the enquiry report was not to his satisfaction. In support of his contention, he relied on the decision of the Hon'ble Supreme Court of India in the case of Vijay Shankar Pandey Vs. Union of India and another reported in (2014) 10 SCC 589. The learned counsel would draw the attention of this Court to paragraph Nos. 24 and 25 of the decision, which are extracted hereunder;

"24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority should be a single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R. Deb V. CCE, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a Sub-Inspector, central Excise (the appellant before this Court). The Enquiry Officer held that the charge was not proved. Thereafter, the disciplinary authority appointed another enquiry officer "to conduct a supplementary open inquiry". Such supplementary enquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another enquiry officer should be appointed to inquire afresh into the charge."

25. The Court in K.R.Deb [(1971) 2 SCC 201] has held that:

"12.It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13.In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant." (Emphasis supplied)

Therefore, the learned counsel for the petitioner would submit that the course adopted by the Disciplinary Authority is not permissible either in law or authorized by any Rules. It is always open to the disciplinary authority to differ with the findings of the Enquiry Officer, but certainly it is not open to him to order re-enquiry for the purpose of getting a favourable report in order to take action against the petitioner.

5.At this, Mr.J.Pothiraj, the learned Special Government Pleader, appearing for the respondent would submit that though the impugned order is not happily worded, but what is intended was that there were certain procedural lapses committed by the Enquiry Officer while conducting and concluding the enquiry. Therefore, in order to set right the procedural lapses, re-enquiry was ordered and therefore, the petitioner cannot said to be prejudiced by such order passed by the Disciplinary Authority.

6.In fact, the learned Special Government Pleader appearing for the respondent would draw the attention of this Court to a counter affidavit filed on behalf of the respondent.

In the counter affidavit, a particular paragraph has been referred to stating that it was only to rectify the procedural lapse and defect, the Disciplinary Authority passed the impugned order of re-enquiry.

7.The point for consideration before this Court is as to whether the order passed by the Disciplinary Authority, which is impugned in the writ petition, is sustainable in law or not or whether it is a simple order of re-enquiry in order to rectify any procedural lapses committed by the Enquiry Officer while conducting and concluding the enquiry.

8.From the pleadings and the materials placed on record, this Court is unable to appreciate the contention put forth on behalf of the respondent that it was a simple order of re-enquiry by the Disciplinary Authority in order to rectify certain lapses appeared to have crept in, in the conduct and completion of the enquiry. It appears from the records that the Disciplinary Authority was not satisfied with the findings by the Enquiry Officer in holding that the charges were partly proved. In such an event, it is certainly not open to the Disciplinary Authority to order re-enquiry in order to get a report to his liking and to his satisfaction to determine the further course of action to be proceeded against the petitioner.

9.Such action on the part of the Disciplinary Authority discloses a mala fide intention on his part and therefore, this Court is satisfied that the petitioner has made out a case for grant of relief in the writ petition. The order passed by the Hon'ble Supreme Court of India in the afore extracted paragraph squarely applies to the facts of this case. In any event, even in the counter affidavit, where the attention of this Court is drawn, it appears that the Disciplinary Authority has averred that without getting proper order from him, the enquiry was hastily concluded, which means that the Enquiry Officer has to take a final nod from the Disciplinary Authority before finalizing his report. Therefore, the intention of the Disciplinary Authority is quite writ large from the statement made by him in the counter affidavit and also in the impugned order passed by him.

10.For the aforesaid reasons, this Court is in agreement with the submissions made on behalf of the petitioner, and therefore is of the considered view that the petitioner has made out a case in all fours for allowing the writ petition. Accordingly, the writ petition stands allowed and the impugned order of the respondent bearing No 2773/Po-3/2018, dated

19.03.2019, is hereby set aside and consequently it is directed that the Disciplinary Authority shall proceed with the disciplinary proceedings on the basis of the Enquiry Report submitted by the Enquiry Officer on 23.02.2019 and pass final orders in the proceedings as he deems fit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

msk

To

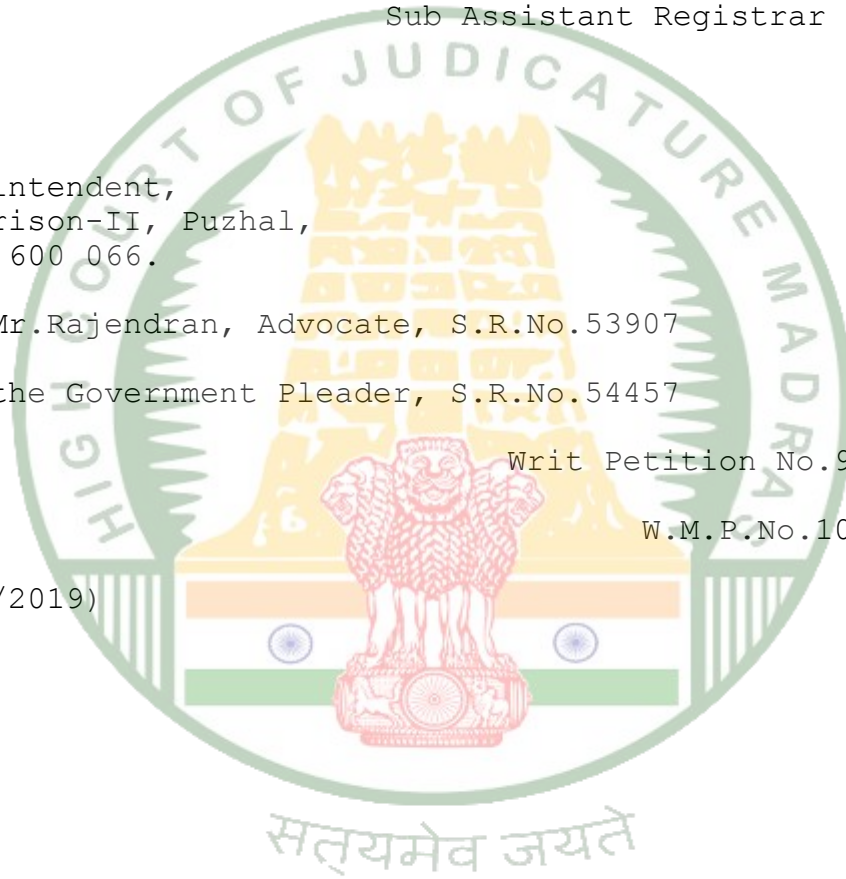
The Superintendent,
Central Prison-II, Puzhal,
Chennai - 600 066.

+1 cc to Mr.Rajendran, Advocate, S.R.No.53907

+1 cc to the Government Pleader, S.R.No.54457

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MG(CO)
SSM(19/07/2019)



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