IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2020

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.50236 of 2006

D.Kannan ..Petitioner

Vs

The Chairman,
The Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus to call for the records of the respondent vide proceedings bearing No.PER/CS/45485/2003 dated 14.09.2004 and quash the same and consequently direct the respondent for payment of salary together with all benefits and perks that the petitioner is entitled to till the date of his retirement if the impugned order had not been passed to the petitioner.

For Petitioner : Mrs.Chithra Sampath
Senior Counsel for
M/s.CPG.Yoganand and Associates

For Respondent : Mr.Ajith
for Mr.C.Kasi Rajan

O R D E R

The petitioner has come forward with the present writ petition seeking for a issuance of writ of certiorarified mandamus to quash the order of the respondent dated 14.09.2004 and consequently to direct the respondent to pay salary together with all benefits and perks to the petitioner.

2.1 The case of the petitioner is that he was working as a Deputy Director (F&A) in the respondent Board under the direct supervision and control of the then Chairperson of the respondent Board till 03.11.1999. Subsequently, a post of Financial Advisor, who is the head of Finance and Accounts Branch of the Board, was created and he was working under his supervision. From the date of joining, he rendered sincere and unblemished services with the active guidance and support of the various Chairpersons and other superior officers in the Board. Unfortunately, the petitioner was placed under suspension alleging grave charges contemplated against him. Subsequently, enquiry officer was appointed and the enquiry officer himself played dual role as an enquiry officer as well as the presenting officer and conducted enquiry. Despite repeated request, the documents sought for by the petitioner were not furnished to him and no one was examined as witness on the side of the respondent and no documents were marked through witnesses. It would deprive the petitioner's right to cross examine the witnesses and thereby, the enquiry process itself patently defective. However, the then Chairperson of the Board accepted the report of the enquiry officer in its entirety and passed an order imposing punishment of removal from service on 10.11.2003. Aggrieved over the same the petitioner preferred an appeal before the Board on 05.12.2003.

2.2 The Appellate Authority passed the impugned order dated 14.09.2004 and awarded punishment of compulsory retirement without considering the grounds raised in the appeal and also failed to consider the fact that the enquiry, was conducted without a presenting officer and non-examination of any of the witness on the side of the respondent, were found to be incorrect. Neither, all the documents relied on by the respondent substantiated the charges against the petitioner and nor the documents required and sought for by the petitioner to prove his innocence was furnished, which proves fatal for the entire enquiry. It is further stated that the impugned order was passed consequent to the per se illegal process, which was entirely one sided and which was not taken into account even one of the bona fide contentions of the petitioner. Therefore, the petitioner has invoked Article 226 of the Constitution of India and preferred the present writ petition.

3.1 The learned Senior Counsel appearing for the petitioner would submit that the petitioner was working under the direct supervision and control of the then Chairperson of the respondent Board till 03.11.1999. Subsequently, a post of Financial Advisor, who is the head of Finance and Accounts Branch of the Board, was created and he was working under his supervision as Deputy Director (F&A). Subsequently, he was in service he was placed under suspension alleging that grave charges were contemplated against him and explanation was called for from the petitioner. The petitioner submitted his explanation, however, without considering his bona fide explanation, the enquiry officer was appointed. Subsequently, the enquiry was conducted with out any presenting officer and the enquiry officer himself played dual role as enquiry officer as well as presenting officer. The documents sought for by the petitioner were not furnished to him and none of them were examined as witnesses on the side of the respondent. Further, without giving opportunity to cross examine the witnesses and the documents, the enquiry officer himself proceeded with the enquiry and ultimately found that out of seven charges, six charges were proved. She would further submit that the respondent can prove the charges only by examining the witnesses and marking of documents as exhibits by giving opportunity to the petitioner to cross examining them.

3.2 The learned Senior Counsel would further submit that charges 2, 4 and 7 were framed solely on the complaints and statements given by some of the employees of the respondent Board. However, no enquiry was conducted in respect of those complaints and none of them were examined as witnesses. Charges 1 and 4 were framed stating that there is misappropriation of funds, however, no evidence was adduced to that effect. The enquiry officer on his own given a vague and incorrect finding that the petitioner misused and misappropriated the funds. Based on the enquiry report, the suspension order was issued on 29.12.2000. However, the charge memo was issued only after six months i.e. on 24.05.2001. Thereafter, the enquiry was commenced on 08.12.2001. In spite of repeated request made by the petitioner, the material documents were not furnished for three hearings and the petitioner was made to participate in the enquiry without those documents. However, only in the fourth hearing, the copies of some material and incomplete documents that too, in respect of four charges were furnished to the petitioner. Further, the petitioner made a request to furnish 12 relevant documents, but, the same was rejected by the enquiry officer. The last enquiry was held on 27.05.2002. Thereafter, no enquiry was conducted for about 9 months and only the finding of the enquiry officer was sent to the petitioner on 26.02.2003. The enquiry officer made incorrect and unwarranted observations in the beginning of the findings to the charges 1, 2, 4 and 6 to the effect that the petitioner had not co-operated in finalising the enquiry and he prolonged the enquiry proceedings. The said conduct of the enquiry officer itself is sufficient to show that he was highly prejudiced and motivated and the enquiry report filed by him is unfair, biased and partial. Further, the enquiry officer submitted the report before the Chairperson of the respondent Board and he passed the order of removal from service. Against the said order, the petitioner filed an appeal before the Board. However, the Appellate Authority without considering the grounds raised by the petitioner simply rejected the claim of the petitioner and modified the sentence as compulsory retirement.

3.3 It is further stated that the Disciplinary Authority as well the Appellate Authority without considering the nature of the charges levelled against the petitioner and the materials placed to prove the charges and also in the manner in which, the enquiry officer conducted enquiry, simply awarded the punishment of compulsory retirement, which is disproportionate to the charges proved against the petitioner.

4.The learned Senior Counsel by placing reliance on the judgments of the Hon'ble Supreme Court in Sher Bahadur Vs. Union of India and Others reported in (2002) 7 SCC 142 ; Kumaon Mandal Vikas Nigam Ltd., Vs. Girja Shankarpant and Others reported in (2001) 1 SCC 182 and Moni Shankar Vs. Union of India and Another reported in 2008(3) SCC 484 would contend that the factum of petitioner's inability to inspect the documents by reason of non-availability had been made known to the Managing Director, by a letter, duly received at the office of the Managing Director, but no effective consequence, since only a copy of the profit and loss account for few centres and for only 2-3 years was made available, which was not at all sufficient to submit a comprehensive and effective reply to the show-cause notice. Therefore, in this case the petitioner also repeatedly made a request to furnish certain documents with relevant to the charges. Except some documents, other documents have not been produced. More so, the presenting officer was not appointed and documents were not marked through the department witness in order to give opportunity to the petitioner to cross examine the witnesses regarding the documents. Therefore, it is clear violation of principles of natural justice and denial of opportunity to the petitioner.

5. In 2001 (1) SCC 182, the Hon'ble Supreme Court observed in paragraph No.22 as follows :

> "22.The sixty-five page Report has been sent to the Managing Director of the Nigam against the Petitioner recording therein that the charges against him stand proved - what is the basis? Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative: If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records - unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. But if one does not have

it - Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the Kings Bench Division in the case of Denby (William) and Sons Limited v. Minister of Health may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

> ''I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Ministers discretion, and I think what was said by Lord Halsbury in Sharp v. Wakefield and others is important to consider with reference to the exercise of such discretion. He there said:
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> > ''Discretion means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : Rookes case; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.''

6.The learned Senior Counsel categorically contended that without appointing any presenting officer, without giving an opportunity to cross examine the witnesses and without producing the relevant documents, the enquiry officer himself played dual role and completed the enquiry. Further, the enquiry officer put irrelevant questions, which were not connected to the charges levelled against him. Therefore, the finding of the enquiry officer is not proper in nature, and it violates the principles of natural justice. The enquiry officer submitted a report before the then Chairperson of the Board and thereafter, he called for explanation from the petitioner. The petitioner also submitted his explanation and not being satisfied with the same, the Chairperson of the Board, imposed a punishment of removal from service. Thereafter, the petitioner preferred appeal before the Board and the Appellate Authority also not considered the grounds raised by the petitioner and they also went beyond the scope of the charges levelled against the petitioner awarded punishment of compulsory retirement.

7. The learned Senior Counsel further contended that the facts remains that the respondent had declared the Potheri Housing Scheme as a Staff Welfare Scheme. As per the directions of the Management, the petitioner issued pay certificates to the employee of the respondent Board for obtaining loan from the Punjab National Bank for purchasing plots in the said Scheme. While issuing pay certificates dated 26.04.1999 in respect of 32 officers working in the respondent office, the petitioner has correctly furnished the gross pay and net pay of each of them. However, in respect of nine employees, marked 'X' in the said pay certificate and also mentioned at the end of the list as 'with family income, the individual will be in a position to pay back the money'. It is further stated that for the purpose of sanctioning loan to the employees, the Bank would take only the net pay of the applicant and any other reference in the pay certificate has no relevance and the same would be ignored. Any information regarding the other sources of income of the applicant without supporting documents would remain only as an information and not be taken as a basis for sanctioning and disbursing the loan. The Bank had considered 142 applications and sanctioned and disbursed the loan to all of them. Further, net pay of one of the employee K.Tamilselvan was 'nil' and the petitioner had not made any mention in the pay certificate, however the Bank sanctioned loan to him. Therefore, it is obvious that the consideration of the Bank for sanctioning loan was not even any particulars of net pay received by each of the applicants and mentioned in the pay certificate dated 26.4.1999. Hence, the petitioner had not violated any Rules. However, the enquiry officer without considering the said facts held that the charges 1 to 6 were proved against the petitioner

and the Disciplinary Authority awarded punishment of removal from service, which was modified as compulsory retirement by the Appellate Authority.

8. The learned Standing Counsel appearing for the respondent Board would submit that the petitioner has falsely given the pay certificates to the ineligible employees of the respondent Board for obtaining loan from the Bank and even for the employees whose salary were much below the applicable net carry home salary. As the employees could not repay the loan, they filed writ petition before this Court and this Court also stayed the recovery of the money by the Bank. He would further submit that the petitioner had actually issued pay certificates in the name of the employees only for borrowing money for his own business carried on in the name of his wife. Hence, complaints were received from some of the employee. Thereafter, preliminary enquiry was conducted and it was found that the petitioner was committed grave in nature of allegations and he was placed under suspension. Subsequently, charge memo was issued, since the Department was not satisfied with the explanation given by the petitioner, enquiry officer was appointed. Further, the required documents sought for by the petitioner were furnished and the enquiry officer found that in order to protract the proceedings, the petitioner sought for some irrelevant documents. He would further submit that based on the documentary evidence, the enquiry officer found that the charges levelled against the petitioner were proved, except charge No.7. Therefore, he submitted the report before the then Chairperson of the Board and awarded punishment of removal from service. Against which, the petitioner preferred an appeal before the Board. The Appellate Authority considered the entire materials and nature of the allegations levelled against the petitioner and found that the petitioner is solely responsible for improper sanctioning of loan and passed an order imposing punishment of compulsory retirement. Hence, there is no violation of principle of natural justice. He would further submit that the enquiry officer based on the documentary evidence held that charges 1 to 6 were proved and charge no.7 was not proved, however, the petitioner failed to utilise the opportunity and tried to escape from the charges, had made false allegations against the enquiry officer, the Disciplinary Authority and the Appellate Authority. Hence, the writ petition is liable to be dismissed.

9. Heard the learned Senior Counsel appearing for the petitioner, the learned Standing Counsel appearing for the respondent and perused the materials available on record.

10. Admittedly, the petitioner was working in the respondent Board as Deputy Director (F&A) and he was placed under

suspension on 29.12.2000. Subsequently, the following charges were framed against the petitioner :

> "Charge No.1. Issued pay certificate to ineligible employees even for the employees whose salary were much below the applicable net carry home salary. Further he had also given an undertaking to the effect that the employees would repay the loan amount with their family income. This undertaking had been given by him on his own accord without any basis. On the basis of this the Bank granted loan also to the employees who are actually not eligible to get loans. The employees filed writ petition in the Madras High Court against the Board for not deducting the loan amount and causing unnecessary trouble to the Board dragging it to the Court spoiling the image of the Board.
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> Charge No. 2. Failed to inform the fact of the financial institution running in his wife's name.
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> Charge No.3.Prematurely closed the fixed deposit of Rs.1.0 crore on 9.6.2000 which was deposited for three years on 23.3.2000 in the Punjab National Bank, Washermenpet Branch and transferred the amount to the current account of at Punjab National Bank, K.K.Nagar Branch causing loss of Rs.34.0 lakhs to the Board. He did not obtain any approval for his above acts.
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> Charge No.4. Did not maintain the accounts properly relating to the staff welfare fund though he was treasurer for the said fund and did not submit the accounts to the Board.
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> Charge No.5. Did not take action to realize the amount of Rs.14,505/- deposited as Fixed Deposit on 27.10.98 at Canara Bank for one year.
>
> Charge No.6. Deposited Board's funds at various branches without proper orders. For example two deposits of Rs.50.00 lakhs each which were matured on 25.2.2000 at Indian Bank were transferred to Punjab National Bank without proper orders.
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> Charge No.7. Did not inform the fact that a lorry transport Company was owned by him."

Thereafter, explanation was called for from the petitioner. The petitioner also submitted his explanation and not being satisfied with the explanation, enquiry officer was appointed. After due enquiry, the enquiry officer submitted his report and given a finding that the charges levelled against the petitioner were proved, except charge no.7. Based on which, the then Chairperson of the Board awarded punishment of removal from service. Aggrieved over the same, the petitioner preferred appeal before the Board. The Appellate Authority after considering the entire facts awarded the punishment of compulsory retirement. Challenging the said order, the petitioner is before this Court.

11. On a careful perusal of the entire materials as pointed out by the learned Senior Counsel it would reveal that without a presenting officer, examining any witnesses and marking of any documentary evidence from the witnesses, the enquiry officer proceeded with the enquiry. Though the respondent has stated that the petitioner had issued improper salary certificates to the employees for obtaining loan from the Bank, but, names of those employees have not been mentioned as witnesses and they were not examined. Further without examination of the witnesses and marking of the documents through witnesses, the enquiry officer proceeded with enquiry and hence, the petitioner missed the opportunity to cross examine the witnesses. Further, in this case, the enquiry officer played dual role, as an enquiry Officer as well as the presenting officer. Therefore, the denial of opportunity to the petitioner is against the principles of natural justice. Further as pointed out by the learned Senior Counsel, all the documents sought for by the petitioner were not furnished. According to the petitioner, the documents furnished by the respondent were not sufficient to disprove the charges levelled against him. Moreover, no witnesses were examined and no statement of witnesses were furnished to the petitioner. The petitioner worked under the supervision and control of the Financial Advisor, who was the head of Finance and Accounts Branch of the Board as a Deputy Director and without knowledge of the Financial Advisor, the petitioner cannot act. However, without even citing the Financial Advisor and the Manager of the Bank as witnesses and without marking the documents through the said witnesses, the enquiry officer proceeded with the enquiry and completed the enquiry. However, the petitioner was not given fair opportunity to defend the charges levelled against him and the enquiry was not conducted in a fair manner and hence, the finding given by the enquiry officer is not sustainable. Further, on a careful reading of the entire materials as pointed out by the learned Senior Counsel, it is seen that the enquiry was not properly conducted and in view of the decisions rendered by the Hon'ble Supreme Court cited supra, the enquiry is vitiated. Hence, based on the enquiry report, the decisions taken by the disciplinary authority and the appellate authority are liable to be set aside.

12. Accordingly, the order passed by the respondent dated 14.09.2004 is quashed and the writ petition is allowed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Chairman,
The Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy, Chennai - 600 032.

+1 CC to M/s.CPG.Yoganand and Associates, sr 37825.

W.P.No.50236 of 2006

RSV(CO)
SP(31/12/2020)