

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2020
DELIVERED ON : 25.08.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10581 of 2020

S.Nambirajan

.. Petitioner

-vs-

The High Court of Madras
rep. by the Registrar General
Chennai - 600 104.

.. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of a writ of certiorari calling for the records in connection with the impugned charge memo bearing Ref. ROC No.4473/2016/RG/Complaint Cell/B2, dated 29.6.2020 issued by the respondent herein, viz., the Registrar General, High Court, Madras, and quash the same.

For Petitioner : Mr.V.Prakash
Senior Counsel
for M/s.K.Sudalai Kannu

For Respondent : Mr.Karthik Ranganathan

ORDER

THE CHIEF JUSTICE

This writ petition has been preferred by a Judicial Officer of the Subordinate Judiciary of the State of Tamil Nadu in the rank of a District Judge, presently working as Chairman, Permanent Lok Adalat, Dindigul and under suspension. He has assailed the charge memorandum dated 29.6.2020 levelling allegations of serious misconduct while discharging his judicial duties as the Presiding Officer of the First Additional Labour Court, Chennai.

2. The brief resume of facts giving rise to this petition

is that the petitioner rendered an award dated 28.6.2016 in I.D.No.276 of 2012 [M.Palanisamy v. The Management, World Vision India, Chennai], where the dismissal of the workman was set aside on the ground that the findings of the Enquiry Officer were unsustainable in law, and since the Management had failed to produce vital records and justify the findings, reinstatement was ordered with only 25% back wages.

3. The said award came to be assailed by the Management before this Court in W.P.No.36694 of 2016 and a learned Single Judge, while entertaining the writ petition, passed an order of interim stay on 24.10.2016 to the following effect:

"The Management is before this Court challenging the award of the 2nd respondent/I Additional Labour Court, Chennai dated 28.06.2016 passed in I.D.No.276 of 2012, whereby, the 1st respondent was directed to be reinstated with continuity of service and to pay 25% of the backwages from the date of termination viz., 19.03.2012 till the date of reinstatement.

2. The 1st respondent was working as Community Development Coordinator for the petitioner from May 2004. While he was working as such, a show cause notice dated 23.02.2011 was issued to the 1st respondent with certain charges and after obtaining his explanation on 28.02.2011, since the same was not satisfactory, the petitioner Management issued a charge sheet on 12.05.2011, informing him that a domestic enquiry will be conducted on 06.06.2011. The main charge against the 1st respondent is that he collected Rs.5,000/- from 39 beneficiaries without permission from the petitioner and he absented himself without obtaining permission from 08.02.2011 to 11.02.2011. The petitioner Management appointed an Enquiry officer, who conducted the enquiry. The 1st respondent participated in the enquiry. Totally 7 witnesses were examined and 38 documents were marked. After conducting the enquiry, the Enquiry Officer gave a positive enquiry report on 14.12.2011. Thereafter, after issuing the 2nd show cause notice dated 15.02.2012 enclosing a copy of the enquiry officer's report, and after getting the explanation and after providing sufficient opportunity to the 1st respondent, he was terminated from service.

3. Thereafter, the 1st respondent, initiated conciliation proceedings, which ended in failure. On reference, the matter came up before the Labour

Court. After enquiry, the labour Court reinstated the workman with backwages. The said award is being challenged before this Court. After hearing the learned counsel for the petitioner, this court called for the entire records and perused the same.

4. Before the Labour Court, the counsel for the 1st respondent/Workman, has made the endorsement on 25.11.2013 itself as follows:-

"We are accepting the fairness enquiry. Further, this matter to be continued under Section 11-A of the Industrial Disputes Act, 1947".

Therefore, it is evident that the workman has already accepted the enquiry conducted by the petitioner was fair and proper.

5. On 06.01.2014, both the parties have filed their documents before the Labour Court, which has also recorded the said fact in the notes paper.

6. On 09.12.2015, the Labour Court has recorded the following:-

"In this case, the petitioner has challenged the fairness of domestic enquiry. In such an event, this Court ought to have framed the preliminary issue regarding it. But, it did not frame the preliminary issue. Hence the following preliminary issue is framed:-

"1. Whether the domestic enquiry was not conducted in a fair and proper manner. Both parties to state whether the evidence produced by them is sufficient to determine the preliminary issue. Call on 15.12.2015. Further arguments, if any, by them".

7. It is not understandable as to how the learned Judge, contrary to the endorsement of the respondent/workman made on 25.11.2013, recorded on 09.12.2015 that the workman challenged the fairness of domestic enquiry and proceeded to frame preliminary issue as to whether domestic enquiry was conducted in a fair and proper manner.

8. Again, on 18.12.2015, the Labour Court, in the notes paper, has recorded the following:-

"Counsel for the petitioner submits that he made an endorsement on 25.11.2013 accepting the fairness of the enquiry. Call on

06.01.2016 for Orders".

9. Again, on 08.02.2016, when the matter was called for orders, the following notes were recorded by the Labour Court:-

"Though the petitioner has given up challenge to the fairness of the domestic enquiry, the issue whether the evidence produced in the enquiry proved the alleged misconduct is yet to be decided. In order to examine this issue production of all the documents concerning the domestic enquiry is very much necessary.

Registry is directed to produce all documents deposition and minutes of domestic enquiry proceedings. Call on 16.02.2016".

10. At this juncture, it is relevant to extract hereunder Paragraph No.8 of the proof affidavit filed by the petitioner herein before the I Additional Labour Court:-

"Copy of Service rules is marked as Ex.M-1; Charge Sheet dated 12.05.2011 is marked as Ex.M2; Report of the Enquiry Officer is marked as Ex.M3, Second Show Cause Notice dated 15.02.2012 is marked as Ex.M-4; Replies of the petitioner dated 27.02.2012 and 29.02.2012 to the second show cause notice are marked as Ex.M-5 and Ex.M-6; Termination Order dated 15.03.2012 is marked as Ex.M-7 and the order of the appellate authority is marked as Ex.M-8".

11. From the above, it is clear that the report of the Enquiry Officer is marked as Ex.M.3. Further, the enquiry proceedings conducted by the Enquiry Officer with all notices and evidences of all the witnesses have been marked as Ex.XW39, containing about 105 pages (in the lower Court Bundle Page Nos.434 to 539)

12. When such is the position with regard to the fairness of the enquiry conducted by the petitioner and when the enquiry proceedings were marked as Ex.XW39 before the Labour Court, the Labour Court in paragraph No.6 has held as follows:-

".....Therefore, the respondent ought to have preserved all the documents relating to

the domestic enquiry. But the respondent has conveniently stated that it does not have the domestic enquiry proceedings. The evidence produced before the enquiry officer has not been produced before me in order to reappraise it. I can only draw adverse inference against the respondent.....".

13. From a perusal of the above extracted portions of the order of the Labour Court, it is clear that the learned Judge deliberately over looked 105 pages enquiry report, has given a finding, that too detrimental to the interest of the petitioner, inspite of the availability of abundant evidence. The labour Court would have no occasion to loose sight of voluminous enquiry report. Therefore, this Court has got every reason to believe that the learned Judge, for some other unknown reason has given such a finding. Therefore, the order of the Labour Court directing reinstatement is liable to be stayed and accordingly, the same is stayed.

The matter is directed to be placed before the Administrative side of this Court to take departmental action as against the said Officer.

Notice returnable in six weeks. Private notice is also permitted. Post the matter after six weeks."

4. On passing of the said order, the matter was placed on the administrative side of the High Court and a show cause notice was issued to the petitioner, to which he submitted an explanation. The petitioner filed a miscellaneous petition, being W.M.P.No.2551 of 2017, before the learned Single Judge with a request to expunge the remarks made against him and to recommend the administrative side of this Court to give up proceedings initiated against him. The petitioner gave his explanation and after considering the same, it was observed by the Court that the remarks made by the Court were only prima facie, and was not to cause any prejudice to the petitioner and, therefore, it was open to the petitioner to put forth his case on the administrative side before the High Court. A copy of the petition to expunge the remarks was also directed to be placed before the High Court on the administrative side. The Miscellaneous Petition was, accordingly, dismissed vide order dated 23.1.2019, which is extracted herein under:

"The present Miscellaneous Petition has been filed by the Presiding Officer of I Additional Labour Court who passed the award in I.D.No.276/2012 on the file of the I Additional Labour Court dated

28.06.2016 by which the termination order passed by the Management against the workman was set aside and the management was directed to reinstate the workman with continuity of service and to pay 25% of the back wages from the date of termination viz., 19.03.2012 till the date of reinstatement.

2.The brief facts of the case are as follows:-

(a).The workman was employed as Community Development Co-ordinator under the petitioner/management from May 2004 onwards. For certain charges, a show cause notice dated 23.02.2011 was issued to the workman and after obtaining his explanation on 28.02.2011, the management issued charge sheet on 12.05.2011 as the explanation was not satisfactory. A domestic enquiry was also conducted. The main charge against the workman was that he collected Rs.5,000/- from 39 beneficiaries without permission from the management and he absented himself without obtaining permission from the management from 08.02.2011 to 11.02.2011.

(b).The enquiry officer appointed by the Management conducted an enquiry in which the workman also participated. Totally 7 witnesses were examined and 38 documents were marked. After conducting enquiry, a positive report was given on 14.12.2011. Thereafter, a second show cause notice dated 15.02.2011, enclosing a copy of the enquiry officer's report, was sent and after getting explanation and affording opportunity to the workman, an order of termination from service was passed by the Management/original writ petitioner.

(c).Thereafter, the workman initiated conciliation proceedings which ended in failure and on reference, the matter came up before the Labour Court. After enquiry, the labour Court reinstated the workman with backwages. The said award is being challenged before this Court by way of writ petition No.36694/2016.

3.This Court called for the labour Court records as the Presiding Officer inspite of the endorsement made by the learned counsel for the workman accepting the fairness of enquiry conducted by the Management, again framed a preliminary issue as to whether the domestic enquiry was conducted in a fair and proper manner. After perusing the records and the notes in the Court proceedings, this Court found

that as many as 8 exhibits were marked on the side of the Management, including Ex.M.3/Report of the Enquiry officer. The above fact has been stated in paragraph 8 of the proof affidavit filed by the original writ petitioner/Management before the labour Court. In spite of production of Ex.M.3, the labour Court, in paragraph 6 of the award, held that the evidence produced before the Enquiry Officer has not been produced before him in order to reappraise it and he could only draw adverse inference against the respondent/Management and set aside the termination and reinstated the workman.

4. After perusal of the entire records received from the labour Court, this Court was of the prima facie opinion that the learned Labour Judge had deliberately overlooked Ex.M.3/Report of the Enquiry officer which consists of 105 pages and drawn adverse inference against the Management, in spite of availability of abundant evidence. This Court in paragraph 13 of the order dated 24.10.2016 had given prima facie opinion that the Labour Court would have no occasion to lose sight of the voluminous enquiry report and this Court has got every reason to believe that the learned Labour Judge for some other unknown reason, had given such finding against the Management. Therefore, the matter was directed to be placed before the Administrative side of this Court to take departmental action against the said officer.

5. Pursuant to the same, the Registry has issued show cause notice to the Judicial Officer and the officer is said to have submitted his explanation. Thereafter, the Judicial officer has approached this Court by way of the present Miscellaneous Petition seeking to expunge the remarks made against the petitioner in paragraph 13 of the order dated 24.10.2016 and to direct the administrative side of this Court to give up the proceedings bearing REF No.4473/2016/RG-B2 initiated against the petitioner.

6. Heard Mr.V.Prakash, learned Senior Counsel appearing on behalf of the petitioner/Judicial Officer. The learned Senior Counsel would submit that this Court should not have passed such adverse remarks against the miscellaneous petitioner/Judicial Officer without giving him an opportunity as the same would violate his right. He would further submit that the petitioner should have

been given an opportunity by impleading him as party to the proceedings. The learned Senior Counsel would rely upon the judgment of the Hon'ble Apex Court in the case of Zunjarrao Bhikaji Nagarkar v. Union of India and Others reported in (1999) 7 Supreme Court Cases 409, to contend that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers. The learned Senior Counsel also relied on the judgment of the Hon'ble Apex Court in the case of Ramesh Chander Singh v. High Court of Allahabad and Another reported in (2007) 4 Supreme Court Cases 247, wherein it was held that practice of initiation of disciplinary proceedings against officers of subordinate judiciary merely because judgments/orders passed by them are wrong, has been disapproved by the Hon'ble Apex Court on several occasions. Therefore, the learned Senior Counsel seeks to set aside/expunge the observations made in paragraph 13 of the order dated 24.10.2016 passed by this Court, wherein adverse remarks have been made against the miscellaneous petitioner/Presiding Officer.

7. After hearing the parties, this Court perused the entire records. A perusal of the order dated 24.10.2016 passed by this Court would reveal that this Court extracted the proceedings of the labour Court and also the details of the exhibits marked. This Court only opined that the availability of Ex.M.3/Enquiry Report which is a voluminous document consisting of 105 pages would not have missed the attention of the learned Judicial Officer.

8. Moreover, this Court extracted the proceedings of the Labour Court which would exhibit that the learned counsel for the workman had already made an endorsement on 25.11.2013 accepting the fairness of the enquiry and to continue the matter under Section 11-A of the Industrial Disputes Act, 1947. On 06.01.2014, the parties had filed documents before the Labour Court which was also recorded. However, the miscellaneous petitioner/Judicial Officer for the reasons best known to him, inspite of the endorsement made by the learned counsel for the workman, had again framed the preliminary issue regarding the fairness of the domestic enquiry.

9. Further, a new explanation is sought to be given in the Miscellaneous Petition before this Court

stating that it is not known as to how the exhibits had been marked by his predecessor. When the documents had already been marked as exhibits and it is also found in the list, it is not open to the Miscellaneous petitioner/Judicial Officer to give a new explanation stating that it is not known as to how those documents were marked. If it is so, the learned Judge should have given his finding/remarks regarding the marked documents in the proceedings itself and he could have rejected those documents by way of a judicial order. Having not done so, it is surprising that the Judicial officer has come up with a strange explanation.

10. This Court had directed the administrative side to look into the issue based on which a show cause notice has been issued to the learned Judicial Officer and a reply is also said to have been given by the miscellaneous petitioner/Judicial Officer. Therefore, enough opportunity would be available to the petitioner on the administrative side of this Court and the finding given by this Court is only prima facie and not a conclusive one. It is always open to the miscellaneous petitioner/Judicial Officer to prove his case.

11. There is no quarrel with regard to the judgments relied upon by the learned Senior Counsel appearing for the petitioner. The Hon'ble Apex Court in paragraph 43 of the decision reported in (1999) 7 Supreme Court Cases 409, *Zunjarrao Bhikaji Nagarkar v. Union of India and Others* has held as follows:

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus

impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

From the above, it is clear that something more has to be said about the officer than a mistake of law. Therefore, from the facts of this case, this Court has made such observation in paragraph 13 of the order dated 24.10.2016. Hence, this Court has passed the order dated 24.10.2016 only as per the judgment of the Hon'ble Apex Court.

12.As far as the decision reported in (2007) 4 Supreme Court Cases 247, Ramesh Chander Singh v. High Court of Allahabad and Another, it has been held in paragraph 11 as follows:-

"11.We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant-officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently."

In the above decision, it has been held that if the

disciplinary proceedings have to be initiated based on the judicial order, there should have been a strong ground to suspect the officers bonafides and the order itself should have been actuated by malice, bias or illegality. In the instant case, this Court suspected the bonafide of the officer and therefore, gave a prima facie finding and directed the registry to place the matter before the administrative side of this Court for appropriate action. Therefore, the order passed by this Court is as per the dictum laid down by the Hon'ble Apex Court.

13. At the risk of repetition, it is reiterated that the miscellaneous petitioner/Judicial officer is being given an opportunity by way of show cause notice and he is said to have given his reply. The remarks made by this Court is only prima facie and it is not a conclusive one and therefore, no prejudice is caused to the petitioner. Therefore, it is open to the petitioner to put forth his case before the administrative side of this Court. A copy of the petition to expunge the remarks filed by the Judicial Officer is also directed to be placed before the administrative side of this Court conducting enquiry against the petitioner along with this order.

In fine, the miscellaneous petition is dismissed. No costs."

5. A writ appeal, being W.A.No.3196 of 2010, came to be filed questioning the correctness of the above quoted order rejecting the miscellaneous petition for expunging the remarks, and following the judgment in the case of Surendra Kumar Mishra v. Smt. Ramawati and others, 2019 (11) SCALE 692, it was held that before passing any adverse remarks or strictures, the Judicial Officer had to be put to notice. The appeal was allowed on the short ground that no notice was issued by the Court before passing the remarks on 24-10-2016 and the application moved was also rejected to be placed on the administrative side, and therefore action not being justified, the appeal was allowed on 19.2.2020, observing that the remarks made in the order dated 24.10.2016 will not bind the High Court on the administrative side for taking any independent action in case there was material to that effect. The judgment of the Division Bench dated 19.2.2020 is extracted herein under:

"Heard learned counsel for the appellant and learned counsel for the first respondent.

2. The appeal has been filed for a limited purpose viz., for deleting the observations made by the learned Single Judge while passing an interim order on 24.10.2016. The contention raised is that the observations were made to the effect that the Court has got every reason to believe that the learned Judge, for some other unknown reason, has given such a finding by deliberately over looking the 105 pages enquiry report relating to the subject matter in dispute.

3. The appellant moved an application contending that the observations made amount to strictures passed against him and that would adversely affect his career and therefore, a prayer was made to expunge the remarks made in paragraph 13 of the said order.

3. On a consideration of the said application, the learned Single Judge has passed a detailed order on 23.01.2019 rejecting the same and holding that in the instant case, the Court had suspected the bonafides of the officer and therefore, gave a prima facie finding, directing the Registry to place the matter before the High Court on the administrative side for its consideration to take appropriate disciplinary action.

4. It was held by the learned Single Judge that the same was in conformity with the law laid down by the Apex Court as indicated in the order.

5. Learned counsel for the appellant has cited the latest decision of Surendra Prasad Mishra vs Smt. Ramawati and Others reported in 2019 (11) Scale 692 to urge that inspite of repeated directions of the Apex Court, the procedure to be followed in such matters was not undertaken by the learned Single Judge and therefore, the impugned order dated 23.01.2019 be set aside and the remarks made against the appellant in the order dated 24.10.2016 be expunged.

6. We have considered the submissions.

7. The legal position is no longer res integra. The Apex Court has held that before passing any adverse remarks or strictures against any Judicial Officer, he has to be put to notice. In the instant case, admittedly, before passing of remarks on 24.10.2016,

no notice was issued by the Court. The appellant, on his own, after passing of the order, has moved an application for expunging the remarks, which application has been rejected on the ground that the Court had already suspected the bonafides of the officer and was therefore justified in passing of the remarks, which the Court has described as a prima facie finding for issuing a direction to the High Court to take appropriate action.

8. This procedure, in our opinion, is not justified in view of the decision that has been cited by the learned counsel for the appellant in the case of Surendra Prasad Mishra vs Smt. Ramawati and Others reported in 2019 (11) Scale 692 and it is admitted on facts that the learned Single Judge had not issued any notice to the appellant prior to passing of the adverse observations against him as contained in the order dated 24.10.2016.

9. In that view of the matter, the rejection of the application for expunging the remarks by the impugned order dated 23.01.2019 in WMP No.2551 of 2017 in W.P.No.36694 of 2016 is not justified. We, therefore, allow this appeal and set aside the order dated 23.01.2019 but so far as the observations made in the order dated 24.10.2016 are concerned, the same shall not bind the High Court on the administrative side for taking any action, leaving it open to the High Court to take appropriate action on the administrative side, in case, there is material to that effect. No costs."

6. The High Court resolved to proceed against the petitioner on the administrative side and, accordingly, suspended him on 11.3.2020, followed by a charge memo dated 29.6.2020, which is impugned in the writ petition. The charge memo impugned is reproduced herein under:

"CHARGE MEMORANDUM

Sub: Courts and Judges - Observation made by the Hon'ble High Court in order dated 24.10.2016 in WMP No. 31539/2016 in W.P. No. 36694/2016 on Thiru.S.Nambirajan, formerly Presiding Officer, I Additional Labour Court, Chennai, then Chairman, Permanent Lok Adalat, Dindigul, now under suspension - Considered - Charge framed - Issued.

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ORDER : R.O.C.No. 4473/2016/RG/Complaint Cell/B2,
DATED :29.06.2020

The High Court proposes to hold an enquiry against Thiru.S.Nambirajan, District Judge of Tamil Nadu State Judicial Service, formerly I Additional Labour Court, Chennai then Chairman, Permanent Lok Adalat, Dindigul, now under suspension, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The substance of the allegations in respect of which the enquiry proposed to be held is set out in the enclosed statement of charge in Annexure -I. A statement of imputations in support of the charge is enclosed in Annexure-II. A list of documents by which, and a list of witnesses by whom, the charge is proposed to be sustained are enclosed in Annexure-III and Annexure-IV respectively. Any other witnesses and documents, which are found necessary, will be examined during the course of the enquiry.

2. Thiru. S.Nambirajan, is directed to submit within 21 days from the date of the receipt of this Memorandum, a written statement of his defence and also to state whether he desires oral enquiry or to be heard in person or both. If the written statement of defence is not received within the stipulated time, it will be presumed that he has nothing to offer in his defence and further action will be pursued.

3. He is informed that an oral enquiry will be held and oral evidence shall be heard only in respect of such charge as is not admitted by him. He should, therefore, specifically admit or deny the charge.

4. Thiru. S.Nambirajan is further informed that if he does not submit his written statement of defence on or before the time limit specified in paragraph 2 above, or does not appear in person before the enquiring authority or otherwise fails or refuses to comply with the provisions of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or the orders or directions issued in pursuance of the said Rule, the enquiring authority may hold the enquiry against him ex-parte.

5. Attention of Thiru. S.Nambirajan is invited to Rule 18 of the Tamil Nadu Government Servants

Conduct Rules, 1973, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government.

6. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that the said Thiru. S.Nambirajan is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 18 of the Tamil Nadu Government Servants Conduct Rules, 1973.
The receipt of this Memorandum shall be acknowledged forthwith."

7.1. Mr.V.Prakash, learned Senior Counsel for the petitioner, advanced his submissions contending that the charge memo suffers from several infirmities of procedural as well as substantive nature. His first contention is that while proceeding to issue the charge memo, the High Court on the administrative side does not appear to have taken into consideration a vital legal aspect, namely, that the award rendered by the petitioner in an adjudicatory proceeding is an action taken in good faith after having weighed the entire material on record and after giving full opportunity to the parties concerned. The adjudication by the petitioner was absolutely impartial; in consonance with the principles of natural justice, and in accordance with the canons of the procedural and substantive law relating to industrial disputes arising out of a termination order after a domestic enquiry in respect of a workman.

7.2. To substantiate his submissions, he says that the entire process culminating in the passing of the award dated 28.6.2016 was in exercise of the powers which are vested in a Presiding Officer, where an Officer is entitled to enter into the issues raised and also call for any material that may be required for consideration before a final order is passed, for which he has relied on Rule 39 of the Tamil Nadu Industrial Disputes Rules.

7.3. To demonstrate the above said plea, Mr.Prakash contends that opportunity was given to the workman to produce evidence. The note made by his predecessor in respect of filing of documents by the workman was incomplete. It is in order to meet any such deficit either on behalf of the workman or the

Management, and to satisfy himself, the petitioner directed the Management to produce the original documents pertaining to the domestic enquiry, but in spite of a clear direction issued on 8.2.2016 to that effect, no original documents were produced and rather the Management on 18.3.2016 stated in writing that such original documents were not traceable. He, therefore, submits that the petitioner while exercising his judicial duty was well within his authority under Rule 39, referred to above, to have acted in accordance with the procedure prescribed in law and it was the Management that failed to adduce the original evidence, whereafter the award was rendered. Learned counsel, therefore, submits that by no stretch of imagination can the petitioner be said to have been negligent or reckless in the performance of his duties, nor was there any lack of bona fides so as to assume partiality or bias on the part of the petitioner in performing his judicial duties. It was after full application of mind and after following the due procedure that the petitioner proceeded to deliver the award. These aspects have been totally overlooked while issuing the charge memo and a totally incorrect assumption has been made of judicial misconduct and mala fides on the part of the petitioner, and such charges imputed not being borne out from the material on record, there was no occasion to have issued the charge memo at all.

7.4. Mr. Prakash then has invited the attention of the Court to the judgment of the Division Bench dated 19.2.2020 to contend that while allowing the writ appeal filed by the appellant, the Division Bench had made it clear that the High Court on the administrative side can proceed independently, if there was some material, without being influenced by the interim order of the learned Single Judge dated 24.10.2016. He submits that it appears from the charge memo itself that it has been issued entirely relying on the observations made by the learned Single Judge dated 24.10.2016 that was not to be considered at all, and even otherwise the impugned charge memo nowhere reflects any consideration of the Division Bench judgment dated 19.2.2020 and its impact, and hence the charge memo is vitiated. He, therefore, contends that non consideration of the impact of the judgment dated 19.2.2020, that has completely effaced the effect of the order dated 24.10.2016, vitiates the issuance of the charge memo.

7.5. He then submits that the application moved before the learned Single Judge to expunge the remarks having been allowed finally by the Division Bench in its order dated 19.2.2020, clearly reflects that the order of the learned Single Judge dated 24.10.2016 or the rejection by the learned Single Judge on 23.1.2019, could not have influenced any further proceedings, yet the same issues are reflected in the charge memo and, therefore, any further action on the basis of such charge memo

would be unjustified.

7.6. He has relied on the decisions in Union of India v. P.Parameswaran, 2008 SCC Online Mad 1174; Ramesh Chander Singh v. High Court of Allahabad and another, (2007) 4 SCC 247, and the judgment in the case of Krishna Prasad Verma v. State of Bihar and others, (2019) 10 SCC 640 to substantiate his submissions.

7.7. He has also invited the attention of the Court to the judgment in the case of Union of India v. K.K.Dhawan, (1993) 2 SCC 56, to advance his submission that in matters pertaining to disciplinary proceedings against Judicial Officers, the High Court cannot initiate disciplinary proceedings merely on the passing of judicial orders, which may be erroneous, unless there was further material to substantiate that the order was passed for some extraneous considerations, illegal gratifications, reckless and extreme negligence, or otherwise influences actuated by complete malice.

7.8. Mr.Prakash contends that there was failure on the part of the High Court to assess any available material before issuing the charge memo, and the passing of the award which is still sub judice before the learned Single Judge in a pending writ petition could not have been made a ground for disciplinary action at all.

7.9. He has also invited the attention of the Court to the facts narrated by the petitioner in his explanations to demonstrate that the procedure in rendering the award was nowhere at fault and it was on a complete assessment of the evidence and failure on the part of the Management to have adduced the original documents that the award had been rendered. The petitioner gave opportunity to the Management to establish the evidence adduced during enquiry the originals whereof were not produced, as such the probative value of the photostat copies of W-39, which was not a proper exhibit, was not proved. Therefore an adverse inference was drawn that cannot be faulted with.

7.10. In the said background, he has urged that there is no charge, much less a grievous charge, to be substantiated by any material in existence and, hence, the charge memo should be quashed and the disciplinary proceedings should be dropped.

8.1. Mr.Karthik Ranganathan, learned counsel appearing for the High Court has urged that while rendering the award, the petitioner appears to have mala fidely, in a cryptic way, brushed aside the voluminous evidence relating to the enquiry proceedings, which was a 105 page photocopy compilation of the

narration of the entire evidence during the domestic enquiry, and such deliberate attempt on the part of the petitioner appears to have been clearly tainted with a clear intention to favour the workman, who had also given up the stand on fairness of enquiry. He further submits that this 105 page document compilation had been filed by the workman himself and was exhibited as Ex.W39, that came to be substantiated by the report of the Enquiry Officer filed by the Management as Ex.M3. There was no occasion to draw an adverse inference against the Management when the workman himself had exhibited the enquiry proceedings recording the evidence as W-39. His contention is that it is in order to avoid this voluminous evidence on record, that the Officer under the umbrella of non production of the originals refused to take into account the entire material of enquiry and, therefore, his action lacks bona fides. He submits that the insistence of production of original, if resulted in the originals not being brought forward, then too even the Presiding Officer had not to apply the strict rules of evidence or the Code of Civil Procedure, which do not apply to Labour Court proceedings. For this, he has cited three decisions in the case of Union of India v. R.Gandhi, (2010) 11 SCC 1; Workmen of Balmadies Estates v. Management Balmadies Estate and others, (2008) 4 SCC 517, and Cosmo Ferrites Ltd. v. State of H.P. And others, ILR 2016 6 HP 98.

8.2. He, therefore, contends that this appears to have been a deliberate act on the part of the petitioner and this material is reflected from the award passed by the petitioner himself, on the basis whereof the charge memo has been issued without being influenced by the observations made by the order of the learned Single Judge dated 24-10-2016. The High Court on the administrative side had independently gone into the entire material and applied its mind to the judgment dated 19.2.2020 passed in W.A.No.3196 of 2019, in as much as while issuing the charge memo, one of the documents on which reliance has been placed by the High Court in the proceedings is the Division Bench judgment, referred to above. He, therefore, submits that the contention on behalf of the petitioner that the High Court has not addressed itself to the said issue before issuing the charge memo is not correct.

8.3. He has, however, mounted his principal argument on the ground that no such writ is maintainable against a charge memo, for which he has relied on two decisions of this Court in the case of V.Tamilalagan v. The Registrar General, High Court of Madras and another [Order dated 5.12.2019 in W.P.No.11588 of 2019] and the judgment in the case of P.Nirmala Devi v. The Director, Directorate of Government Examinations and others [Order dated 6.6.2019 in W.P.(MD) No.12797 of 2019 and batch cases].

8.4. He submits that in the wake of the material already on record, it is evident that the petitioner appears to have deliberately favoured the workman by ignoring the evidence on record, which is a clear judicial misconduct and, therefore, no error can be found with the disciplinary proceedings initiated against the petitioner with the issuance of a charge memo.

8.5. On the admissibility of documents, the judgment in the case of R.V.E. VENKATACHALA GOUNDER v. ARULMUGU VISWESARASWAMI & V.P. TEMPLE AND ANOTHER (2003), reported in 8 SCC 752, has been cited.

9. During the course of arguments, we had enquired about the status of the proceedings relating to the challenge raised to the award in the writ petition, where interim orders were passed by the learned Single Judge on 24.10.2016. It is evident from the records of the case that the same is still pending consideration before a learned single Judge of this Court, but the order dated 24.10.2016 was passed after calling for the entire records of the industrial dispute on 20.10.2016.

10. Since arguments have been advanced extensively on the basis of the material placed before the Court, it is necessary for us to indicate that since the learned Single Judge had made the observations regarding undertaking of appropriate action against the petitioner on the administrative side vide order dated 24.10.2016, and had reaffirmed it while passing the order on 23.1.2019 while rejecting the request for expunging the remarks, the matter was taken up in the writ appeal and the Division Bench only set aside the order dated 23.1.2019. It, however, clarified that the observations made by the learned Single Judge in the order dated 24.10.2016 shall not influence the High Court while proceeding to take any action independently on the administrative side, if there was any material on record.

11. We find from the recital of the charge memo itself that the allegations against the petitioner are not based on the order dated 24.10.2016, but are based on the alleged lapse pointed out in the award dated 28.6.2016. The statement of charge contained in Annexure I to the charge memo is extracted herein under:

ANNEXURE -I

Statement of Charge framed against Thiru. S.Nambirajan, District Judge, formerly Presiding officer, I Additional Labour Court, Chennai, then Chairman, Permanent Lok Adalat, Dindigul, now under suspension.

CHARGE :

That you, Thiru.S.Nambirajan, while functioning as Presiding officer, I Additional Labour Court, Chennai and passing award in I.D.No.276/2012 on 28.06.2016 in favour of the petitioner/workman, inspite of the availability of abundant evidence such as the report of the enquiry officer and the enquiry proceedings conducted by the Enquiry Officer with all notices and evidences of all witnesses containing about 105 pages having been marked as Ex.M3 and Ex.W39 respectively, you have observed as "The respondent produced only the charge memo and the findings of enquiry officer, but it has not produced the minutes of the proceedings and the evidence produced by both parties in the domestic enquiry. It reported that it did not have the records". "The evidence produced before the enquiry officer has not been produced before me in order to reappraise it", and thereby you have failed to apply your judicial mind by deliberately overlooking 105 pages enquiry report in order to give a favorable finding to the petitioner for the reasons best known to you.

Thus, you have committed the acts of serious misconduct, favoritism and dereliction of duty, which is unbecoming of a Judicial Officer, and thereby violated Rule 20 of Tamil Nadu Government Servants conduct Rules, 1973 Hence, you rendered yourself liable to be proceeded with under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

12. Mr.Prakash has urged that a perusal of the award dated 28.6.2016 would leave no room for doubt that the Management had been given opportunity to produce the originals, but they gave it in writing that it was not traceable. For this he has relied on Rule 39 of the Tamil Nadu Industrial Dispute Rules, which is extracted herein under:

"Rule 39. Evidence

A (Conciliation Officer), Board, Court, Labour Court or Tribunal or an Arbitrator may call for, admit or accept any evidence at any stage and in any manner, which in equity and good conscience he thinks fit."

The aforesaid Rule empowers the Presiding Officer to call for, admit or accept any evidence at any stage and in any manner, which in equity and good conscience he thinks fit.

13. It is here that we may like to point out that the learned counsel for the High Court is correct in his submission that strict rules of evidence are not applicable to the proceedings before a Labour Court and the decisions cited by him are a testimony to the aforesaid position of law. We would say nothing further as that might have a bearing in any explanation to be afforded by the petitioner during the disciplinary proceedings, but the fact remains that Ex.M3, which is the report of the Enquiry Officer, was filed by the Management but they could not produce the originals of the enquiry proceedings, the photostat copy whereof that runs into 105 pages was produced by the workman himself and was marked as Ex.W39. The petitioner in his pleadings has indicated that his predecessor had committed some mistake in the marking of exhibits and the said exhibit was not an admitted document. This issue is a matter of adjudication in the writ petition filed by the Management, but the fact remains for the limited purpose of these proceedings that such an evidence relating to the enquiry proceedings, not in the original form, but in the shape of a photostat copy, which may or may not be treated as secondary evidence, was on record that has been totally discarded from consideration by the petitioner even though it was produced by the workman as Ex. W-39 and the existence whereof was not disputed nor the officer has recorded any finding to that effect except reciting an adverse inference.

14. Shri Prakash has relying on the judgments cited by him vehemently urged that the Supreme Court time and again has held that a mere error of judgment by an officer should not be construed as an act of misconduct for the purpose of a disciplinary enquiry. We have pondered over the submission and we find that an action of a Presiding Officer does have a statutory protection of action taken in good faith, the recital whereof is traceable to Sec.37 of the Industrial Disputes Act, 1947. The issue is as to whether in the given circumstances, and on the facts of the present case was it a mere error of judgment on the part of the petitioner or it can amount to a gross failure of justice actuated by some extraneous consideration. It has yet to be seen as to whether the manner in which the officer has discarded 105 page exhibit produced by the workman himself so as to display that the Management had utterly failed to adduce evidence amounts to an act performed in good faith or an error of judgment or a misconduct of judicial dispensation. The calibration of such conduct, in our opinion, should be left to the enquiry to be held for finding out the truth of the allegations.

15. The question is whether such conduct does amount to such a lapse that may tend to establish a motivation on the part of the petitioner actuated by some undue favour to the workman,

so as to constitute judicial misconduct. This issue, therefore, in our opinion, being the foundation of the charge is yet to be enquired into and is a subject matter of enquiry, which cannot be a ground of challenge to the charge memo at this stage. It's gravity is a matter of assessment in the investigative process of enquiry. Suffice it to say that the principles laid down in the judgments cited at the bar do indicate that if a party has been unduly favoured, or there has been reckless or negligent deliberate act on the part of a judicial officer, a disciplinary proceeding can be initiated.

16. In the present case, if the aforesaid approach of the Officer, which is an alleged misconduct, is ultimately found to be proved during the enquiry, then it may entail serious and grave consequences, and also in a major punishment, and hence it cannot be said at this stage that the charge memo is bereft of any material so as to totally disable the High Court from proceeding with the proposed disciplinary action against the petitioner.

17. We may also incidentally point out that the petitioner has not challenged the suspension order and therefore, keeping in view the entire facts and circumstances of the case, we find this to be a premature stage for the petitioner to raise any plea with regard to any infirmity in the initiation of the Disciplinary Proceedings or the issuance of the charge-memo to which a reply can be given by him for explaining his stand. We do not find any procedural error substantial enough so as to warrant interference at this stage without prejudice to the rights of the petitioner to defend himself during the enquiry proceedings.

18. We also find that it would be appropriate that the Writ Petition filed by the Management being W.P. No.36694 of 2016 deserves to be decided at the earliest and we accordingly direct the Registrar (Judicial) to obtain necessary orders from the Hon'ble Chief Justice on the Administrative Side for listing the same.

19. For all the reasons herein above, we find no merit in the Writ Petition. It is accordingly dismissed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

sasi

To:

- 1.The Registrar General
Madras High Court
Chennai - 600 104.
- 2.The Registrar (Judicial),
Madras High Court,
Madras 104.

Copy To

- 1.The Section Officer,
Writ Section, High Court,
Madras.
- 2.The Section Officer,
Legal Cell,
High Court, Madras.
3. The Section Officer,
B Section, High Court,
Madras.

+1cc to Mr.K.Sudalai Kannu, Advocate, S.R.No. 27634

W.P.No.10581 of 2020

PP(CO)
GN(26/08/2020)



WEB COPY