



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.840 of 2012

in

W.P(MD)No.110 of 2006

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1.M.S.Ramalingasami (died) ... Appellant/writ appellant

2.Krishnaveni

3.Rajkumar

4.Sumathy

5.Senthil Kumar

... Lrs of the Appellant

Vs.

(Appellants 2 to 5 are impleaded as Lrs of the deceased-sole appellant vide order dated 22.03.2021 made in C.M.P(MD)No.8 of 2021)

1.The Additional Inspector General of Police,
(Law and Order),
Chennai - 600 004.

2.The Deputy Inspector General of Police,
Tiruchirapalli Range,
Tiruchirapalli.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 10.08.2012 made in W.P(MD)No.110 of 2006 on the file of this Court.

Prayer in WP(MD). 110/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to proceedings pursuant to the order dated 03/12/2004 in RC No. 220241/PR1/2004 of the first respondent herein confirming the order of the second respondent dated 02/09/2004 in C.No. 31/PR.3/2004 and quash the same and consequently direct the respondent herein to reinstate the petitioner in service as Sub Inspector of police with effect from 02/09/2004 with all attendant benefits

For AA 2 to 5
For Respondents

: Ms.AL.Ganthimathi
: Mr.K.P.Narayana Kumar
Special Government Pleader



JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

Challenging the correctness of the order passed by the learned Single Judge in W.P(MD)No.110 of 2006, dated 10.08.2012, the above Writ Appeal has been preferred by the appellant/writ appellant.

2.The appellant was working as a Sub-Inspector of Police in Thiruverambur Police Station from 21.05.2000. He died on 17.06.2020 pending the above Writ Appeal and his legal heirs, who are the appellants 2 to 5, are now prosecuting the same on his behalf.

3.The case of the writ appellant was that on 14.08.2000, he registered two cases, namely Crime Nos.576 and 577 of 2000 and investigated the same. It is stated that on 15.08.2000, the Chief Inspector Mr.Sankaralingam ordered the writ appellant to destroy the CD file in Crime No.576 of 2000 and further instructed him to alter the FIR in Crime No.577 of 2000 to Crime No.576 of 2000. As the writ appellant did not heed to his request, he was transferred on 31.08.2000 to the Economic Offences Wing-II, alleging disobedience. Challenging the said transfer, O.A.No.6782 of 2000 was filed by the writ appellant, in which, the transfer order was stayed and he was retained in Thiruverambur Police Station on 22.10.2000. He had further stated that he was put to sufferings due to the illegal and atrocious activities of the said Chief Inspector Mr.Sankaralingam, which constrained him to make a representation to the Deputy Inspector General of Police, Trichy on 08.11.2000. Pursuant to his complaint, the Additional Deputy Superintendant of Police enquired into the matter and submitted a report to the Deputy Inspector General of Police, Trichy.

4.While so, the writ appellant was issued with a memo of charges, dated 26.06.2001 stating that the second respondent herein had proposed to hold an enquiry on him under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The writ appellant was given 15 days time to file his written statement to submit his defence. As many as seven charges were framed against the writ appellant. On receipt of the memorandum of charges, the writ appellant requested the second respondent to supply the documents as the same were not furnished to him and sought permission to examine the witnesses. The said request was rejected on 29.08.2002 stating that the documents were not necessary for the said enquiry and proceeded with the enquiry.

5.It was further stated that since the writ appellant did not come forward to inspect the documents within the time granted by the second respondent, he was not furnished with the copies of the documents. The further request of the writ appellant to produce the



CD file in Crime Nos.576 and 577 of 2000 was also rejected. Therefore, on 09.09.2002, the writ appellant gave a representation to the first respondent stating that the enquiry was not conducted properly and it was not in accordance with Article 311 of the Constitution of India and requested for examining all the witnesses and permit him to get the copies of all the documents before the enquiry could end. On 03.04.2004, the report of the Enquiry Officer was furnished to the writ appellant and he was also called upon to give his explanation within 15 days. As per the report, all the charges framed against the writ appellant was proved. It is alleged that the report of the Enquiry Officer was absolutely baseless and that he was not guilty of any of the charges as alleged. While so, without considering any of the submissions made by the writ appellant, the second respondent found him guilty of the charges and mechanically agreed with the findings of the Enquiry Officer and awarded the punishment of dismissal from service on 02.09.2004. An appeal was preferred before the first respondent on 04.10.2004, which was dismissed on 03.12.2004. Challenging the said order of dismissal, the said Writ Petition was filed.

6.In the said Writ Petition, the following grounds were raised:-

(i) The evidences of P.Ws.1 to 4 and D.W.1 were not considered by the second respondent as their evidence was clear that the writ appellant was not guilty.

(ii) The enquiry was not properly conducted and the writ appellant was not allowed to examine the witnesses.

(iii) The Enquiry Officer had not considered all the relevant facts.

(iv) The writ appellant was not furnished with all the documents relied on by the prosecution.

(v) The first respondent also had mechanically followed the findings of the second respondent.

(vi) The first respondent had not passed a speaking order and mechanically rejected the appeal of the writ appellant.

7.On the above said grounds, the learned Single Judge considered in detail and found as follows:-

"7.Materials on record further disclose that when the petitioner has preferred an appeal dated 04.10.2004, to the Additional Inspector of Police (Law and Order), Chennai, the said authority has considered the appeal petition and also considered the entire bundle of facts, which lead to the initiation of disciplinary proceedings. After considering the material on record, he has agreed with the findings of the disciplinary authority and accordingly, rejected the appeal.



8. It is well settled that when the appellate authority agrees with the findings, there need not be any detailed order and it is suffice to examine as to whether the appellate authority has considered the case in entirety. Insofar as the violation of principles of natural justice that the petitioner was not furnished with certain documents, material record does not disclose that the petitioner had established any specific case of prejudice, on account of non furnishing of any documents. It is well settled that prejudice has to be pleaded and proved before the disciplinary authority."

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. From the above and perusal of the records would go to show that the Enquiry Officer had relied upon all those documents to arrive at his conclusion.

10. The main allegation of the writ appellant is that he was not furnished with the copy of the documents, however, the writ appellant has not established that the non-supply of the documents had resulted in the enquiry going against him. Unless the writ appellant establishes that the non-supply of the documents had caused serious prejudice, the said ground cannot be entertained.

11. The learned Single Judge also had found that the finding arrived at by the Enquiry Officer was accepted by the Disciplinary Authority, who had dealt in detail the case of the writ appellant and the same was accepted by the Appellate Authority on the principles of preponderance of probabilities.

12. It is a well settled principle that a disciplinary proceeding is not a criminal trial. The standard of proof required is only the preponderance of probability and not proof beyond reasonable doubt, as required in a criminal case. The relevant materials which the Disciplinary Authority, had accepted and those materials support the conclusion and also concurred by the Appellate Authority cannot be interfered with while exercising its jurisdiction under Article 226 of the Constitution of India to arrive at a independent finding on the materials. If the enquiry has been properly held, the question of adequacy of reliability of the evidence cannot be canvassed in a Writ Petition. When the enquiry has been conducted consistent with the Rules and in accordance with the principles of natural justice, imposing punishment is a matter exclusive within the jurisdiction of the competent authority.

13. The only other point canvassed was that the violation of principles of natural justice. In this regard, it would be



appropriate to advert to the decision in **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and Others** reported in **2015 (8) SCC 519** and the relevant portion of the said decision is extracted hereunder:

"28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

.....

35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak's case (supra) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In Maneka Gandhi v. Union of India also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills, this aspect was explained in the following manner: (SCC p.568, para 3)

"3. It has been contended before us by the learned counsel for the appellant that



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principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of the case."

.....

39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason - perhaps because the evidence against the individual is thought to be utterly compelling - it is felt that a fair hearing 'would make no difference' - meaning that a hearing would not change the ultimate conclusion reached by the decision-maker-then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corporation*, who said that: (WLR p.1595:All ER p.1294)

"....A 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'.

Relying on these comments, Brandon LJ opined in *Cinamond v. British Airports Authority* that: (W.L.R p. 593:All ER p.377)

"...no one can complain of not being given an opportunity to make representations if such an opportunity would have availed



him nothing".

In such situations, fair procedures appear to serve no purpose since the 'right' result can be secured without according such treatment to the individual."

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14.Excepting that the writ petitioner was not able to examine the witnesses on his side, his representation was considered by the Disciplinary Authority as well as the Appellate Authority and imposed the punishment. In a departmental proceeding, the High Court cannot have powers under Article 226 of the Constitution of India and sit as an Appellate Authority over the factual finding and substitute its own conclusion.

15.As the learned Single Judge has elaborately considered the factual and legal position, we are also in agreement with the same and no interference is warranted in the Writ Appeal. As stated supra, the writ appellant himself is dead and it is only the legal heirs, who are prosecuting the appeal which relates to disciplinary proceedings, it is only the procedure of the decision making process that can be reviewed and not the decision itself. It is not the case of the writ appellant that the procedure prescribed in this behalf was not followed. With the available findings, the authorities had conducted the enquiry, accepted the same and come to a right conclusion based on the available records holding that the writ appellant is guilty of the charges, in which, we find no illegality or irregularity warranting interference by this Court.

16.In fine, the Writ Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional Inspector General of Police,
(Law and Order),
Chennai - 600 004.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Deputy Inspector General of Police,
Tiruchirapalli Range,
Tiruchirapalli.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-13517[F] dated 25/03/2021)

+1 CC to M/s.SPL GP (SR-13866[F] dated 26/03/2021)

W.A(MD)No.840 of 2012
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ES(CO)

KB(10.05.2021) 8P 5C