



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.13021 of 2013

S.Manoharan

...Petitioner

-Vs-

1. The Chief Electoral Officer and
Principal Secretary to Government,
Public (Elections III) Department,
Secretariat, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Principal,
Government Arts College,
Thiruvannamalai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the order of the 1st respondent in letter No. 8456/2011-39 dated 24.01.2012, the order of the 3rd respondent in proceeding in Na.Ka.No.1032/Aa/11-1 dated 07.02.2012 insofar as ordering punishment is concerned and proceeding in Na.Ka.No.1032/Aa/11 dated 30.04.2012 and quash the same and consequently direct the respondents to treat the suspension period as duty period and pay all other attendant benefits.

For Petitioner : Mr.Doraisami, Senior Counsel
for Mr.Muthumani Doraisami

For R1 : Mr.Niranjan Rajagopalan

For R2 & R3 : Mr.E.Veda Bagath Singh,
Special Government Pleader



ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, while serving as a Junior Assistant in the Government Arts College, Thiruvannamalai, also served as a Company Commander in the Thiruvannamalai Home Guards. During the May, 2011 Tamil Nadu Legislative Assembly, when the Model Code of Conduct was enforced, he was alleged to have felicitated an Ex-Minister, who was a Member of the Legislative Assembly, with a shawl in violation of the conduct rules. It is on this allegation, charges were framed against the petitioner, through the charge memo dated 02.05.2011. Not being satisfied with the explanation rendered by the petitioner on 16.05.2011, an enquiry was conducted and by an enquiry report dated 02.06.2011, the charge against the petitioner was held to be "not proved". However, the Disciplinary Authority, namely the first respondent herein, through the impugned order dated 24.01.2012, deferred with the findings of the Enquiry Officer and imposed a punishment of stoppage of increment for a period of 1 year without cumulative effect. This punishment is put under challenge in the present writ petition.

3. It is a settled proposition of law that when the Disciplinary Authority intends to defer from the findings of the Enquiry Officer, particularly when the charges are held as 'not proved', there is a duty cast on the authority to issue a notice to the delinquent, calling upon him to render his explanation with regard to the proposal to defer from the Enquiry Officer's findings. In the case of the Lav Nigam Vs. Chairman and Managing Director, ITI Ltd., and another reported in (2006) 9 SCC 440, such a proposition was upheld in the following manner:-

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



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11. In Punjab National Bank v. Kunj Behari Misra, (1998 (7) SCC 84 : 1998 SCC (L&S) 1783) a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held:

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

12. This view has been reiterated in Yoginath D. Bagde v. State of Maharashtra, 1999 (7) SCC 739 : 1999 SCC (L&S) 1385). In this case also R.9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said:

"But the requirement of 'hearing' in consonance with the principles of natural



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

(See also State Bank of India v. K. P. Narayanan Kutty, (2003 (2) SCC 449 : 2003 SCC (L&S) 185).

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

4. In the instant case, admittedly, the first respondent herein had not issued any prior notice with regard to their proposal to defer from the findings of the Enquiry Officer. As such, the consequential punishment itself cannot be sustained.

5. It is now brought to the notice of this Court that the petitioner herein had retired on 30.04.2012 and is now receiving his pension.



6. In the light of the above observations, the impugned order passed by the first respondent dated 24.01.2012 and the consequential impugned orders passed by the third respondent dated 07.02.2012 and 30.04.2012 are quashed. In view of the quashing of the punishment, the petitioner would be entitled for all the monetary benefits that may have affected his pay scale during his service. Consequently, the respondents are called upon to pass appropriate orders to enable the petitioner to get all the monetary benefits that may have been deprived to him owing to the impugned punishment, within a period of 8 weeks from the date of receipt of a copy of this order. The Writ Petition stands thus allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

hvk

To

1. The Chief Electoral Officer and
Principal Secretary to Government,
Public (Elections III) Department,
Secretariat, Chennai - 600 009.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Principal,
Government Arts College,
Thiruvannamalai.

+1 CC to Mr. Muthumani Doraisamy, Advocate sr 23463.

+1 CC to M/s.G.R.Associates sr 24076

+1 CC to The Government Pleader sr 23820.

W.P.No.13021 of 2013

GPL (CO)
SP(21/04/2022)