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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. NO.18403 OF 2010

K.S.Padmanaban

... Petitioner

Vs.

1. The Government of Tamil Nadu rep. by
The Principal Secretary to the Government,
Handlooms, Handicrafts, Textiles and Khadi Department,
Fort St.George, Chennai-600009.
2. The Director of Sericulture,
Salem-I, Salem District.

... Respondents

PRAYER:

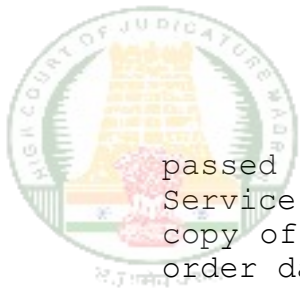
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.85, Handlooms, Handicrafts, Textiles and Khadi(G-1) Department, dated 09.06.2010 confirming the order passed by the second respondent in Na.Ka.No.3074/3/Pa.a.6/2004 dated 22.07.2005 and quash the said orders and direct the respondents to grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Mohanraj

For Respondents : Mr.P.Anand Kumar
Government Advocate

ORDER

The present Writ Petition is filed challenging the order of the 2nd respondent dated 22.07.2005 which stands confirmed by the 1st respondent on 09.06.2010 on the limited ground that the impugned order dated 09.06.2010 is passed in gross violation of principles of natural justice inasmuch as the impugned order is



passed placing reliance upon the report of Tamil Nadu Public Service Commission (herein after referred to as "TNPSC"), but a copy of the same was given to the petitioner only along with the order dated 09.06.2010.

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2. It is the submission of the petitioner that natural justice requires that the petitioner ought to have been put on notice of the report and a copy of the same ought to have been furnished to him prior to the passing of the impugned order and failure to do so would vitiate the proceedings. In this regard, reliance was sought to be placed on the decision of the Division bench of this Court reported in 2005 2 MLJ 154; 2005 0 Supreme (Mad) 426; wherein the submission that natural justice would be complied if advice/ report of the UPSC was furnished along with the order imposing punishment, was rejected by the Division Bench, following the Judgment of the Supreme Court in the case of State Bank of India v. D.C. Aggarwal reported in A.I.R.1993 S.C.1997. The Division Bench recorded the submission of the petitioner as under:

....From the above Rule, it is clear, if the disciplinary authority communicates the advices of the commission along with the order made by him that would be sufficient. However, the learned counsel appearing for the second respondent would submit that inasmuch as the disciplinary authority imposed punishment relying on the advice of UPSC. in order to satisfy the principles of natural justice, it is but proper to supply copy of the materials, including the advice of the UPSC, which was considered before imposition of penalty.

Reference was made by the Division Bench to the above decision of the Supreme Court and the following observations were extracted:

"6. In this regard, the reliance was placed on the judgment of the Supreme Court in the case of State Bank of India v.D.C.Aggarwal A.I.R.1993 S.C.1997. This judgment was rendered after the 42nd amendment to constitution, which came into force on 03.01.1997. The question posed before the Supreme Court is, whether the disciplinary authority while imposing punishment major or minor, can act on material which is neither supplied nor shown to the delinquent. In that case, the report of the Chief Vigilance Commissioner has not been supplied to the delinquent. After considering the same, the Supreme Court has held,

"4. ...Law on natural justice is so well settled from series of decisions of this Court that it leaves on bewildered, at times, that such bodies like State Bank



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of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only supplied but not disclosed to him has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself."

After referring to the above observation the Hon'ble Supreme, the Division Bench proceeded to hold as under:

In the light of the principle laid down in the above case, irrespective of Rule 17 of the CCS (conduct) Rules, inasmuch as the disciplinary authority relied on the advice of the UPSC before imposition of punishment, it is but proper to supply copy of the said report to the delinquent before passing an order of punishment. Accordingly, we hold that the applicant was entitled to a copy of UPSC advice before imposition of punishment. This has been rightly found by the Tribunal.

3. Applying the decision to the facts of the present case the order of the appellate authority insofar as it has passed the order on the basis of TNPSC report and the same having been furnished only with the order copy of the appellate authority, results in denying the petitioner any opportunity to respond to the report. The impugned proceedings thus suffers from violation of principles of natural justice.

4. In view of the same the order of the appellate authority is set aside, inasmuch as the petitioner has already been furnished with the copy of the TNPSC report, the appellate authority is directed to give reasonable opportunity to the petitioner to make his submissions and to put forth his explanations and thereafter, the appeal may be decided. The above exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Psa

Sub Assistant Registrar



To

1. The Principal Secretary to the Government,
Handlooms, Handicrafts, Textiles and Khadi Department,
Fort St.George, Chennai-600009.

2. The Director of Sericulture,
Salem-I, Salem District.

+lcc to Mr.P.Rajendran, Advocate, S.R.No.25996
+lcc to the Government Pleader, S.R.No.25496

W.P. No.18403 of 2010

AKII (CO)
PM/26/05/2022