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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

Coram:

The Honourable Mr.Justice V.PARTHIBAN

W.P.No.19149 of 2016

R.Radha

..Petitioner

Vs

1. The Deputy Commissioner,
Arulmigu Vadapalani Andavar Thirukkoil,
Vadapalani,
Chennai - 600 026.

2. The Fit Person,
Arulmigu Vadapalani Andavar Thirukkoil,
Vadapalani,
Chennai - 600 026.

..Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorified Mandamus to call for the records of the first respondent culminated in the order dated 06.04.2016 made in Se/mu/Na.Ka.No.Nil/fasli 1423/A-4, consequently the enquiry report dated 30.11.2015 made in se/mu/ Na.Ka.No.Nil/fasli 1423/A.4 and quash the same and direct the first respondent to reinstate the petitioner to the service of the second respondent with continuity of service and with all attendant benefits thereto.

For Petitioner .. Mr.R.Rajarajan

For Respondents .. Mr.Yashwanth,
Additional Government Pleader
for R1 and R2

O R D E R

The petitioner was appointed as a last grade servant in the 1st respondent Temple. The 1st respondent issued charge memo



dated 11.10.2013 containing as many as 20 charges against the petitioner. The charges related to dereliction of duty, insubordination and several other acts of misconduct in discharge of her duties as a last grade servant.

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2. The petitioner appeared to have submitted her explanation to the charge memorandum on 23.03.2014. The petitioner was also placed under suspension pending enquiry into the charges with effect from 01.03.2015. An enquiry was conducted into the charges. On a particular day, the petitioner's statement had been obtained by the Enquiry Officer to each of the charges and ultimately, on conclusion of the enquiry, a report was submitted on 30.11.2015, holding the charges proved against the petitioner.

3. According to the petitioner, very strangely, the enquiry report dated 30.11.2015 was enclosed along with the order of termination dated 06.04.2016. The termination letter is impugned in the present writ petition. The enquiry report was not furnished to the petitioner but she had come to know about the conclusion of the enquiry officer only when the impugned order of termination was served on her. The Board appeared to have passed the resolution on 26.02.2016 resolving to terminate the service of the petitioner without providing any opportunity to her. In the said circumstances, the petitioner is before this Court.

4. Mr.R.Rajarajan, the learned counsel appeared for the petitioner and would submit that the charges are without basis and cannot be substantiated at all. According to the learned counsel the entire disciplinary action is vitiated on the simple ground that no proper enquiry has been conducted while imposing the penalty of termination (dismissal) of service in terms of Section 56 of the H.R. & CE Act. The learned counsel would draw the attention of this Court to the enquiry report wherein it could be seen that for every charge written statement has been referred to and the oral statement has been relied upon by the petitioner. No documents were marked nor any witnesses were examined. Therefore, the enquiry proceedings are completely vitiated on account of improper procedure adopted by the inquiry officer.

5. The disciplinary authority order, terminating the service of the petitioner on the basis of such defective enquiry, is liable to be interfered with. As a matter of fact, the disciplinary authority has not appreciated that no semblance of procedure was followed by the enquiry officer as



contemplated in the rules for conduct of such enquiry, which entails imposition of major penalty of termination of service.

6. In this regard, the learned counsel would refer to G.O. issued with reference to Section 56 of the H.R. & C.E Act, the basis on which, the impugned termination order was issued. G.O.Ms.No.4524, Revenue, dated 05.11.1960 is extracted hereunder.

1. These rules may be called the Punishment of Office-holders and Servants of Religious Institutions (other than Maths and Specific Endowments Attached thereto) Rules.

2. (a) No order imposing any punishment other than a fine under sub section (1) of section 56 (other than an order based on facts which have led to his conviction by a criminal court) shall be made against any officeholder or servant unless he has been informed, in writing, of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged, together with statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. An oral enquiry shall be held if such an enquiry is desired by the person charged or is decided upon by the trustee. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person concerned shall be entitled to cross examine witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the trustee may, for special and sufficient reason to be recorded in writing, refuse to call witness or require the delinquent to bear the expenses of such witnesses. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no oral enquiry is held and if he had desired to be heard in person, a personal hearing



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shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. Every order of suspension, removal or dismissal shall state charges, the explanation and the finding on each charge with the reasons therefor. (6) In every case, where it proposed impose fine on office-holder or servant, he shall be given reasonable opportunity showing cause against the action proposed to taken against him.

3. The requirements of rule shall not apply where the person concerned has absconded, or where it is other reasons impracticable to communicate with him. All any of provisions rule may, exceptional cases for special and sufficient reasons to be recorded writing, be waived by the trustee, where there difficulty observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged.

4. Pending the disposal of the grave charges against the officeholder or servant, the trustee may place him under suspension when such suspension is necessary in the interest public service.

5. Every order of punishment under sub-section (1) section 56 shall be communicated in writing to the person against whom it is passed.

7. As per the above G.O. issued under the relevant section, elaborate procedure is mandated to be followed before imposing any major penalty of removal or dismissal from service. In the absence of any such procedure being followed, the impugned order is liable to be set aside.

8. Mr.Yashwanth, the learned Additional Government Pleader has entered appearance on behalf of the respondents and reiterated the averments contained in the counter affidavit.

9. In the counter affidavit, it is repeatedly stated that all opportunities were provided and afforded to the petitioner and therefore, there is nothing wrong in the ultimate imposition of penalty of termination of service of the petitioner. According to the counter affidavit, all steps were taken without



deviating any rules, personal enquiry was conducted, deposition was recorded and the charges were proved. The substance of the counter case of the respondents is stated in paragraph No.15 which is extracted hereunder.

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15. All the averments made in paragraph 9, 10 and 11 are denied as false. As explained supra in paragraph 8 of the counter affidavit all steps were taken without deviating any rules. An Personal enquiry was conducted, depositions recorded and all reasonable, satisfactory opportunities were given to the petitioner to challenge the charges framed against her. Moreover, the petitioner was not willing to produce any witnesses on her side or to cross examine anyone on behalf of her to disprove the charges framed against her. The petitioner never asked any documents from the respondent.

10. The learned Additional Government Pleader would therefore submit that since the petitioner herein is a habitual offender and was charged with several acts of misconduct, her retention in service was against public interest and therefore, the authority has rightly taken a decision to dismiss her from service. He would therefore, request this Court to dismiss the writ petition as devoid of merits.

11. This Court considered the submissions of Mr.R.Rajarajan, the learned counsel for the petitioner and Mr.Yashwanth, the learned Additional Government Pleader for the respondents and perused the materials and pleadings placed on record.

12. From perusing the enquiry proceedings and the findings, this Court has to come to an inevitable conclusion that the enquiry was not conducted in terms of G.O.Ms.No.4524, Revenue dated 05.11.1960. Even otherwise, when an employee of the Government is to be imposed with an extreme penalty of dismissal or removal from service, the employee concerned must be provided with all opportunities to defend himself or herself in respect of the allegations made against him/her. From the enquiry proceedings, it could be seen as rightly contended by the learned counsel for the petitioner, mere statements of the petitioner alone were taken into consideration by the Enquiry Officer and the findings were rendered entirely on that basis.



13. Moreover, it appears that the findings of the Enquiry Officer was enclosed along with the impugned termination letter. Such procedure adopted by the disciplinary authority is completely in contravention of the rule position and would vitiate the disciplinary action in toto. First, the enquiry itself has not been conducted in terms of the rule position as no witnesses were examined nor any documents were marked. Such enquiry is to be held as ex facie illegal which under no circumstances can be countenanced in law. Over and above that, the disciplinary authority overlooking such defective enquiry and imposing the penalty of termination (dismissal) of service on the petitioner would also suffer from grave illegality, which action too cannot be countenanced in law.

14. On the whole, this Court finds that there has been a wholesale violation of the established principles of natural justice and the governing rules/regulations. On behalf of the respondents, it was contended that the petitioner, being a troublesome Government servant, was involved in as many as 20 charges, and therefore, she had to be visited with severe penalty. But, unless the charges are properly established by proper conduct of enquiry, following the well defined rules/regulations and the principles of natural justice, the petitioner cannot be stated to have been found guilty at all, in the eye of law.

15. In the above circumstances, this Court has no hesitation in allowing the Writ Petition on the ground that the disciplinary proceedings from the conduct of the enquiry, culminating into the imposition of penalty is vitiated for the above stated grounds.

16. The impugned order in No.Se/mu/Na.Ka.No.Nil/fasli 1423/A-4 dated 06.04.2016 as well as the enquiry report in No.Se/mu/ Na.Ka.No.Nil/fasli 1423/A.4 dated 30.11.2015 are hereby set aside.

17. The respondents are at liberty to proceed against the petitioner afresh if they find that there are still grounds/reasons available and it is worthwhile to proceed against the petitioner after a lapse of several years now.

18. If the authority is still of the opinion to pursue the disciplinary action against the petitioner, notwithstanding the passage of considerable time, they are directed to adhere to the established principles of natural justice and also the aforementioned G.O. and the rule position, strictly.



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19. The Writ Petition is allowed in the above terms. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi
To

1. The Deputy Commissioner,
Arulmigu Vadapalani Andavar Thirukkoil,
Vadapalani,
Chennai - 600 026.

2. The Fit Person,
Arulmigu Vadapalani Andavar Thirukkoil,
Vadapalani,
Chennai - 600 026.

+1 CC to Mr.R.Rajarajan, Advocate sr 23149

+1 CC to The Special Government Pleader (HR & CE) sr24084 & 24091

W.P.No.19149 of 2016

NMI (CO)
SP(19/04/2022)