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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.11.2022

DELIVERED ON : 16.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No. 22702 of 2017
and
W.M.P.(MD).No.18996 of 2017

N.Gururaja ... Petitioner

Vs

1.The Director of Sugar,
Registrar of Sugar Mills,
No.69, Anna Salai,
EVR Periyar Buildings,
Nandanam, Chennai – 35.
Chennai.

2.Aringnar Anna Sugar Mill,
Represented by its Chief Executive
Kurungulam,
Tanjore – 613 303.

3.National Co-operative Sugar Mill,
Represented by its Managing Director,
B. Mettupatti Village,
Alanganallur,
Madurai – 625 502. ... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent in செ.மு.நு.எண்.பஅ/1017/2016/பி5 dated 18.11.2017 and the consequential order passed by the third respondent in நு.க.எண்.385/2017/சிபஅ dated 27.11.2017 and quash the same and consequently direct the respondents to reinstate the petitioner back into service with all attendant and consequential benefits.

For Petitioner : Mr.N.Balamurali Krishnan

For R-1 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

For R-2 : Mr.S.Saji Bino

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ORDER

This Writ Petition is filed challenging the impugned order dated 18.11.2017 and the consequential order dated 27.11.2017 and consequently direct the respondents to reinstate the petitioner back into service with all attendant and consequential benefits.

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2. The brief facts as stated in the affidavit are that the petitioner joined the service as Assistant Cane Officer on 13.06.1986 in Sengalvarayan Co-operative Sugar Mills and later the post was redesignated as Cane Officer. In the year 1997, he was transferred to Perambalur Sugar Mills. In the year 2012, he was promoted as Cane Development Officer in Group B cadre and posted in Aringar Anna Sugar Mills at Kurungulam, Tanjore and then transferred to Alanganallur, Madurai District. A charge memo dated 16.04.2016 was issued containing 12 articles of charges alleging lack of supervision, lack of devotion to the duties and other serious irregularities. The petitioner submitted a detailed explanation denying the allegations and prayed to drop the proceedings, but an enquiry officer was appointed and the petitioner was directed to appear before the enquiry officer on 03.09.2016 and the petitioner appeared before him. The contention of the petitioner is that except the enquiry officer, the petitioner and another person, no witnesses were present. The enquiry officer directed the petitioner to narrate his version and recorded the same in his own hand writing. Thereafter, nothing happened. Later on, the second respondent issued a second show cause notice on 05.08.2017. On receiving this notice, the petitioner came to know that the enquiry officer submitted the enquiry report. However, the copy of

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the enquiry report was not furnished, hence the petitioner submitted representation dated 29.08.2017 sought for copies of the enquiry report and the respondents furnished the same. On perusal of the enquiry report, the petitioner came to understand that the enquiry officer has relied on various documents but the same was not furnished to the petitioner, then the petitioner submitted another representation dated 06.10.2017 seeking the copies of the documents. However, the second respondent vide reply dated 14.10.2017 stated that the documents are not necessary and directed the petitioner to submit his explanation to the second show cause notice within seven days. The petitioner submitted his explanation on 24.10.2017, but without considering the petitioner's explanation, the respondents passed the impugned proceedings dated 18.11.2017 whereby dismissed the petitioner from service. The action of the respondents is in complete violation of principles of natural justice. Hence, the petitioner has filed this Writ Petition.

3. The respondents have filed a counter stating that the petitioner has alternative remedy under Section 153 of Tamil Nadu Co-operative Societies Act, 1983. Further, Rule 189 of the Tamil Nadu Co-operative Societies Rules, 1988 deals with the powers and function of the Managing Director of Sugar Mills.

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Hence Section 153 of the Act read with Rule 189 of the said Rules clearly states that the Managing Director is empowered to adjudicate any order passed by the Subordinate Officers of Sugar Mills. As per the Hon'ble Full Bench judgment rendered in K.Marappan Vs The Deputy Registrar of Co-operative Society, Namakal the writ jurisdiction was ousted. Further as per the judgment in T.K.Ananda Sayanan Vs The Joint Registrar of Co-operative Societies, Vellore reported in 2007 (5) CTC the Writ Petition is not maintainable. Further the respondent Sugar Mills is a Company registered under the Companies Act, 1956 owned by the Tamil Nadu Sugar Corporation, which is a statutory corporation belongs to the Government of Tamil Nadu. The petitioner is receiving the monthly salary of Rs.87,000/-, placed under the Category-B Officer as per G.O.Ms.No.68 who are all governed by the Tamil Nadu Co-operative Societies Act and Rules. There is no rule in existence as far as disciplinary action of the Sugar Mills Employees are concerned and hence the disciplinary action ought to be taken as per Tamil Nadu Civil Services (Discipline and Appeal) Rules. Since, the charges of misappropriation, money was diverted for personal gain by the employees are serious in nature, the impugned disciplinary proceeding was initiated. The employees of the Sugar Mills admitted the misconduct by way of

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negligence. Hence, the petitioner along with 29 other employees were facing disciplinary proceedings. The petitioner who was as Cane Development Officer of the Mills is duty bound to organize, lead and supervise the functions of the Cane Assistant. The petitioner along with other Mill employees such as Cane Assistants, Weigh Bridge Clerks, Cane Yard Supervisors have colluded and created false and bogus records and misappropriated the funds of the sugar mills, thereby committed the offence of cheating, forgery and breach of trust. Also misused his official power and fabricated the various mill records and caused huge monetary loss to the mill with the connivance of the mill employees and also with the cane ryots. The petitioner was also involved in the falsification of accounts, failing in discharging his basic official duties that is verification of records by counter sign and caused huge financial loss. Hence, the detailed charge memo was issued. A criminal case was also lodged by the Sugar Mills in Crime No.39 of 2015 dated 17.12.2015 for offences under Section 406, 409, 465, 467, 471, 477(A), 409, 210 and 420 IPC and the same is pending investigation. Because of the act of the petitioner and other co-delinquents, the Mill sustained a huge loss of Rs.2,09,66,683/-. The petitioner with a malafide intention has connived with other persons have failed to discharge his official duty coupled

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with power and for his personal gains. A complaint was lodged by the Sugar Mills to the District Crime Branch, Thanjavur against 44 employees including the petitioner and also against 86 sugarcane ryots, who had involved in this crime. Further out of 44 persons, 11 persons were retired and against 3 persons, no materials were available for taking disciplinary action. Hence proceedings were dropped and out of remaining 30 persons, 21 persons are enquired and awarded punishment of increment cut with cumulative effect, according to their nature of respective charges in the charge memos and 8 persons were terminated from service based on the proved charges and remaining 1 person namely, Venkatasamy not attended the enquiry in pursuant to the order of this Court. The petitioner was placed in Mill site division from 14.08.2012 to 19.12.2015 that is 3 years 4 months and he is the in-charge as Chief Cane Officer in the Sugar Mills and criminal action has been initiated against erring employees of the Sugar Mills and 86 erring cane growers and FIR was registered. Moreover, normal Rule of enquiry will not applicable in the situation where the accusation is based on the material and when the delinquent officer admitted the facts as stated in the charge memo. Since the petitioner has admitted, hence in such case, it may be permissible under law that based on the admission and considering the other

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materials, the disciplinary authorities concluded the guilt of the delinquent is not a wrong and the enquiry is legally sustainable. Since the misconduct of the delinquent is admitted in the course of disciplinary proceedings by way of explanation to the charge memo, then there is no violation of principles of natural justice. When the charges leveled against the delinquent was admitted, in such circumstances there is no obligation on the Management to lead the evidence on merits. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.N.Balamurali Krishnan, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the first respondent and Mr.S.Saji Bino, learned counsel for the second respondent and perused the records.

5. The learned counsel for the petitioner submitted that the impugned order of second respondent is bald and non-speaking order and it is mere verbatim of the charges, explanation of the petitioner and the enquiry officer findings. There is no independent application of mind and the respondents have not considered the detailed explanation submitted by the petitioner. Hence, there

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is clear violation of principles of natural justice and the order is liable to be quashed.

The learned counsel appearing for the petitioner relied on the following judgments to substantiate his arguments:

(i) in the case of ***Roop Singh Negi vs Punjab National Bank & Others*** reported in ***2009(2)SCC 570*** (para 23), is extracted hereunder:

> *"Furthermore, the order of the disciplinary authority as also the appellate authority* ***are not supported by any reason****. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence.*
> *Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof".*

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(ii) In the Writ Petition in ***W.P.No.21948 of 2015 (P.Vasunathan Vs Secretary, Tamil Nadu Tourism, Cultural and Religious Endowments (A-NI2-2) Department)*** reported in ***2016 (6) MLJ 340 (para 19),*** is extracted hereunder:

> *"19. The impugned order of punishment passed by the first respondent/Disciplinary Authority* ***does not give any reason****. As per the decision of the Honourable Supreme Court in [2008] 16 VST 181 (SC), Steel Authority of India Limited vs. Sales Tax Officer, Rourkela-I Circle and others, reasons are the heart beat of any conclusion. As mentioned above, in the impugned order of punishment, no reason much less valid reason has been assigned by the first respondent. Therefore, the impugned order of punishment is liable to be set aside and is accordingly set aside. Consequently, the writ petition is allowed. No costs".*

(iii) In the case of ***Secretary to Government, Corporation, Food and Consumer Protection Department Vs. G.Nagendran*** (DB) reported in ***2016(6) MLJ 420*** (para 21) is extracted as here under:

> *"21… Except narrating the orders of various authorities and recommendations of second respondent and the Tamil Nadu Public Service Commission, there is no independent discussion or independent consideration of the case at least with regard to the quantum of punishment. Hence we are of the view that impugned order suffers from material irregularities in the sense that it does not indicate any independent application of mind nor disclose any independent reason by referring to the facts admitted and the facts established.*"

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(iv) In the case of ***G. Vallikumari v. Andhra Education Society*** reported in ***2010 (2) SCC 497*** (para 19), is extracted hereunder:

> *"In his order, the Chairman of the Managing Committee did refer to the allegations leveled against the appellant and representation submitted by her in the light of the findings recorded by the inquiry officer but without even adverting to the contents of her representation and* ***giving a semblance of indication of application of mind*** *in the context of Rule 120(1)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized* ***facets of the rules of natural justice*** *and violation thereof has the effect of vitiating the order passed by the concerned authority".*

On perusing the impugned order dated 18.11.2017 which runs to 20 pages, it is mere extraction of the charges, delinquent explanation and the enquiry officer findings. The only para that was dealt with by the disciplinary authority is extracted hereunder:

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“பார்வை – 2 ல் கண்ட குற்றச்சாட்டுகளில் மேற்சொன்ன குற்றச்சாட்டுகள் நிரூபணமான நிலையில் அவரது செயல்களுக்காக ஏன் தண்டனை வழங்கக் கூடாது என்பதற்கான விளக்கத்தினை சமர்ப்பிக்குமாறு பார்வை – 6 ல் கண்டுள்ளவாறு இரண்டாம் காரணம் கோரும் தாக்கீது வழங்கப்பட்டு அவரிடம் விளக்கம் கேட்கப்பட்டது. அவர் தனது விளக்கத்தை பார்வை – 7 ல் கண்டுள்ளவாறு சமர்ப்பித்துள்ளார். அவரது விளக்கம் நிர்வாகத்தால் நன்கு பரிசீலிக்கப்பட்டது. அவரது விளக்கம் ஏற்றுக் கொள்ளக்கூடியதாக இல்லை.

It only says that the petitioner's explanation is not acceptable, the respondents have not explained why it is not acceptable, no reasons were stated for coming to such conclusion. Therefore, this Court is of the considered opinion that the impugned order is a non-speaking order giving a semblance of indication of application of mind. The respondent being an administrative authority entrusted with the task of passing an order adversely affecting an individual is expected to pass a speaking order which is facets of the rules of natural justice. Since the respondents have passed a non-speaking order, violation thereof has the effect of vitiating the order passed by the concerned authority. On this ground the petitioner is entitled to gain.

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6. The next ground that was raised by the petitioner is that the respondents have not conducted full-fledged enquiry. The contention of the petitioner is that the enquiry which was conducted is for half a day on 03.09.2016. The Enquiry Officer, the petitioner and another person were present. No witnesses were examined, rather no witnesses were present, no documents were marked and there was no Presenting Officer. The enquiry officer directed the petitioner to submit an explanation and based on the explanation, enquiry was concluded. Such a procedure is illegal and is clear violation of principles of natural justice for which the petitioner relied on the following judgments:

(i) In the case of ***State of Uttaranchal vs Kharak Singh*** reported in ***2008 (8) SCC 236*** (para 15 and 17), is extracted hereunder:

> *"10) In regard to the question whether an enquiry officer can indicate the proposed punishment in his report, this Court, in a series of decisions has pointed out that it is for the punishing/disciplinary authority to impose appropriate punishment and enquiry officer has no role in awarding punishment. It is useful to refer to the decision of this Court in A.N.D'Silva vs. Union of India, (1962) Supp 1 SCR 968 wherein it was held:*
>
> *"In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise*

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after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring authority."

11) From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nadhor acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16.11.1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry

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officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court"

(ii) In the case of ***K.Govindaswamy v. Tamil Nadu Civil Supplies Corporation Limited*** reported in ***1998 (3) LLN 326 = 1998 (2) MLJ 323*** (paras 9 and 13) is extracted hereunder:

"9. The Service Rules of the Tamil Nadu Civil Supplies Corporation Limited are applicable to all the employees of the Tamil Nadu Civil Supplies Corporation, other than those covered by standing Orders. There is no dispute that the said Rules are applicable to the petitioner also. Rule 16 of the said Rules deals with penalties and procedure which reads thus:

Rule 16. Penalties: An employee for good and sufficient reason, including any breach of any of the regulation and Rules of the Corporation, or negligence, inefficiency, insubordination, or failure to show due diligence and attention in the discharge of his duties or failure to conform to the instructions of his superiors or any irregularities in the discharge of his duties or any criminal act shall be liable to any of the following penalties.

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1. Minor punishment: (a) Censure.

(b) Stoppage of increment.

(c) Fine in the case of employees of Classes IV and V.

2. Major Punishment: (a) Suspension.

(b) Reversion to a lower stage in the category or to a lower category.

(c) Discharge, removal or dismissal from service. Note: Suspension by itself is not a major punishment.

Recovery of the loss, if any, caused to the Corporation by any act or omission of any employees may be Order ed in addition to any of these punishments.

Before considering the fact whether the petitioner was given sufficient opportunity and whether the procedure adopted was in accordance with the Service Rules, even though it is stated in the counter affidavit that the writ petitioner himself has admitted that there was excess stock of Rice in the lorry during verification of the Vigilance Cell and also admitted that the stock was released from the godown on 100% weighment and that there was no excess/shortage as it was released as per records of the godown, the same have been emphatically denied by the petitioner. In this regard the learned Counsel for the petitioner has brought to my notice the explanation offered by the petitioner. The said explanation dated 5.4.1988 addressed to the Senior Regional Manager of the Corporation is included in the additional typed-set of papers wherein he has denied both the charges and explained his position in detail. In the light of the explanation offered by the petitioner on 5.4.1988 and after

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going through the same, I am unable to accept the argument of the learned Counsel for the respondents, namely, in view of the admission, the question of examination or cross-examination of any witness does not arise. Inasmuch as both the charges have been specifically denied by furnishing facts and particulars and of the fact that the petitioner has made a specific request for full opportunity to defend himself and also cross-examine the witnesses to be examined on the side of the Corporation coupled with the fact that he has indicated in the Questionnaire form itself that witnesses have to be examined on his side, 1 am of the view that the respondents ought to have examined witnesses to prove the charges. It is not possible to arrive at a conclusion merely on the basis of the explanation offered by the petitioner.

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13. Further, it is settled law that it is for the Management to prove the charges beyond any doubt. Merely because the petitioner did not seek opportunity that would not mean that charges were established. As observed by Shivaraj Patil, J., in a decision reported in N. Radhakrishnan v. T.N.C.S. Corporation Ltd. (1995) 2 L.L.N. 1081, it was for the management to establish the charges by the materials on record. As a matter of fact, in our case, it is seen that the petitioner not only denied the charges but also sought permission to examine witnesses on his side even in the Questionnaire form. The said procedure has not been followed. Kanakaraj, J., in W.P.No. 11145 of 1987 dated 19.2.1991 has taken the same view that failure to follow the said principle vitiates the enquiry and ultimate Order

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passed by the respondents. Abdul Wahab, J., in a decision reported in K. Mohan Doss v. Tamil Nadu Civil Supplies Corporation (1997) 2 L.L.N. 892. has held that without examining any witness and marking documents, submission of a report by the Enquiry Officer and basing on that report, imposition of punishment cannot be sustained and the procedure adopted for enquiry is not proper. In Writ Appeal No. 782 of 1992 dated 18.3.1997 the Division Bench of this Court, in a similar circumstance has held as follows:

...We are of the view and it is by now well settled that in a domestic enquiry, as in a regular trial the burden of proof of establishing the guilt on a charge is always on the accuser and not on the accused and this burden must be discharged fully in conformity with the principles of natural justice. The employer should take steps first to lead evidence against the workmen charged, give him an opportunity to cross-examine the said evidence and then should ask the concerned workman whether he wants to give any explanation about the evidence led against him. Before asking the workman to produce his evidence, it was also held in catena of cases, that it is not fair at the very outset to closely cross-examine even at the commencement of the domestic enquiry the delinquent officer concerned and act upon the answers given or materials gathered during the preliminary enquiry, without making it part of the regular enquiry during the course of the domestic enquiry held by the Enquiry Officer appointed for the purpose. The procedure adopted by the domestic Enquiry Officer in this case as also the materials relied upon could not be said to be a legal one and enquiry is vitiated seriously. The Order of punishment passed on the basis of such enquiry and the enquiry report cannot also be sustained by us."

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(iii) In the case of ***Chief Engineer, M.S.E.B. & Anr. vs. Suresh Raghunath Bhokare*** reported in ***2005 (10) SCC 465*** (para 5), is extracted hereunder:

> *"5. The entire basis of the dismissal of the appellant depends upon the factum of the alleged misrepresentation attributed to the respondent. The Industrial Court in its impugned order has noticed the fact that the respondent was appointed in April, 1994 pursuant to the selection procedure followed by the competent authority and that he was selected by the panel of Selection Committee consisting of 6 members which included the very same Social Welfare Officer who had sent the proposal including the name of the respondent for appointment. It also noticed the fact that the selection in question was made after an oral interview and the required test as also the medical examination. The Industrial Court also noticed the fact that the appointment of the respondent was confirmed after 1 year period and thereafter the respondent has been working without any complaint. Said Industrial Court also noticed the fact that the termination of the respondent was based on a show-cause notice issued on 5.7.1999 which was replied to by the respondent on 17.7.1999 and the termination was made in a summary procedure permissible under Rule 90(b) of the Service Regulations. The Industrial Court after perusing the pleadings and the notice issued to the respondent came to the conclusion that the alleged misrepresentation which is now said to be a fraud was not specifically pleaded or proved. In the show cause notice no basis was laid to show what is the nature of fraud that was being attributed to the appellant. No particulars of the alleged fraud were given and the said pleadings did not even contain any allegation as to how the appellant was responsible for sending the so called fraudulent proposal or what role he had to play in*

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such proposal being sent. It also noticed from the evidence of Mr. Waghmare, Social Welfare Officer who sent the proposal before the Labour Court that he did not utter a single word as to whether the said supplementary list was ever called for by the Department concerned or not. Thus applying the basic principle of rule of evidence which requires a party alleging fraud to give particulars of the fraud and having found no such particulars the Industrial Court came to the conclusion that the respondent could not be held guilty of fraud. Said finding of the Industrial Court has been accepted by the High Court. Mr. Bhasme though contended that the fraud in question was played in collusion with the Social Welfare Officer and 2 other employees of the Board and action against said 2 employees of the Board has been taken, but by that itself we are unable to accept the argument of Mr. Bhasme that there is material to support the contention of the Board that the appellant had also contributed to making the misrepresentation at the time of applying for the job with the Board. In the absence of any such particulars being mentioned in the show cause notice or at the trial, attributing some overt act to the respondent, we do not think the Board can infer that the respondent had a role to play in sending a fraudulent list solely on the basis of the presumption that since respondent got a job by the said proposal, said list is a fraudulent one. It was the duty of the Board to have specifically produced the material to prove that the respondent himself had the knowledge of such a fraud and he knowingly or in collusion with other officials indulged in this fraud. Since there is no such material on record, on the facts of the instant case, the Industrial Court and the High Court have come to the right conclusion that the alleged fraud has not been established by the appellants, hence, this is not a fit case in which interference is called for. This appeal, therefore, fails and the same is dismissed".

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However, the respondents submitted since the petitioner had admitted the guilt, then there is no necessary to conduct by leading evidence, subsequent procedure of the departmental enquiry need not be followed. When the delinquent admitted all the relevant facts, on which the decision could be given against him, it could not be said that the enquiry was in any breach of principles of natural justice and the respondents relied on the explanation submitted by the petitioner, wherein, the petitioner had stated that the records could not be maintained properly due to work load, hence there was delay in making entries in the register. For this submission the respondents relied on the judgment rendered in AIR 1972 SC 32. Also relied on constitutional bench judgment rendered in AIR 1963 SC 375, wherein it is held that,

> *"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross examining the witnesses examined by that party and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for takin evidence was not strictly followed. Vide the recent decision of this Court in New Prakash Transport Co. Vs. New Suwarna Transport Co. where this question is discussed."*

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This Court is unable to accept such plea of the respondents. On perusal of the petitioner's explanation, the petitioner had submitted that during the relevant season there were agitations of farmers, workers demanded increase in wages and due to other various demands, the petitioner was engrossed in other works and due to this work load of tackling the agitations, the records could not be maintained properly. But the respondents are taking the truncated portion of the explanation and are making a submission that the petitioner has accepted the guilt. This can never be accepted. On the premises of erroneous assumption that the petitioner had accepted the guilt, the respondents have proceeded the enquiry as if evidence need not be furnished, since it will be futile and empty formality. In fact, the judgment relied on by the respondents is favouring the petitioner rather than supporting the case of the respondents, since in the above judgment it has been held "***that no materials should be relied on against him without his being given an opportunity of explaining them***". In the present case, no documents were shown to the petitioner which were relied on, no witnesses produced and hence, the entire enquiry is violative of Principles of Natural Justice. Simply because, the petitioner had accepted hence it is not necessary to show the

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evidence or to cross examine the witness cannot be accepted. At the cost of repetition, the petitioner has never admitted misappropriation, false and bogus records, thereby, committed the offence of cheating, forgery and breach of trust. The petitioner has said due to work load, he had made entries belatedly, which can never be accepted that the petitioner had accepted the guilt. The very basis of the respondents case is vitiated and non-application of mind. For this reason, the other judgments relied on by the respondents would not support the case of the respondents since the facts in those cases are different.

7. Since this Court has held that the enquiry is violative of principles of Natural Justice, consequently the plea of writ petition is not maintainable is also rejected. The writ petitions are maintainable whenever there is violation of principles of natural justice.

8. In the written arguments, the respondents submitted that the petitioner was allowed to cross examine the witnesses but the petitioner did not avail the opportunity. But this was refuted by filing additional written arguments by the petitioner by stating that the respondents have not stated whom the witnesses are

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and when they were examined by the Presenting Officer. On considering the rival submissions, this Court is of the considered opinion that the respondents had made a feeble attempt to improve their case, but unfortunately the respondents had submitted in the counter that since the petitioner had accepted the guilt, it is not necessary to produce the witness, even if it is produced it will be an empty formality. Now, diagonally opposite plea is submitted in the written arguments and therefore, this Court is rejecting the case of the respondents.

9. The next contention that was raised by the petitioner is that the petitioner sought evidence and documents that would be relied on by the respondents through his letter dated 29.08.2017 and 06.10.2017 for which the respondents replied that the documents need not be served to the petitioner. The learned counsel appearing for the petitioner further relied on the enquiry report, where it has been stated that as far as charges are concerned, the documents relied on was also stated in the enquiry report. The case of the petitioner is that documents relied on and the documents stated in the charge memo was not furnished to the petitioner. On perusal of the enquiry report, this Court is of the considered opinion admittedly, the respondents and the Enquiry Officer have

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relied on certain documents which was never furnished to the petitioner. Hence on this ground also this Court is of the considered opinion that the petitioner is entitled to relief.

10. The next ground that was raised by the petitioner is that other co-delinquents, minor punishment like stoppage of increment was inflicted but the respondents have imposed the punishment of dismissal from service which is against Article 14 of the Constitution of India and it is clear disparity while imposing the punishment. However, the learned counsel appearing for the respondents submitted that since the gravity of misconduct committed by the petitioner is grave than the other co-delinquents, hence the same cannot be compared. On perusal of the charge, this Court is of the considered opinion that the allegations against the petitioner is that the petitioner has not carried on his supervisory power. Even though the charge memo mentions misappropriation, false entries in book, deliberately indulged in illegal activities so as to bring loss to the Sugar Mills etc., from the explanation of the petitioner that due to work load to tackle the workers agitation to increase in wages and other pressing issues to attend, the entries were made belatedly, will show that there is no intention to

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the petitioner to defraud the mill. To constitute misconduct, there should be ingredients to defraud the employer and no such evidence was furnished by the respondents. Therefore, this Court is of the considered opinion that the allegation that the petitioner has failed in his supervisory power and has not controlled other subordinates may be proved. But there is no evidence to prove that the petitioner had committed misappropriation and other grave allegations. In such circumstances, the punishment of dismissal from service is on the higher side and hence, the impugned order is set aside.

11. This Court having held that the punishment is on the higher side, normally the case ought to be remitted back to the respondents for reconsidering to impose minor punishment. Since the petitioner had attained the age of superannuation, there will not be any employer-employee relationship, hence this Court is proceeding further to modify the punishment. The Leaned Counsel appearing for the petitioner submitted that for co-delinquents the respondents had imposed a punishment of stoppage of increment, hence this Court is imposing the punishment of stoppage of increment for the period of two years without cumulative effect. The respondents shall implement this order of minor

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punishment and consequently disburse the monetary, service and terminal benefits that is applicable to the petitioner within a period of eight weeks (8) from the date of receipt of a copy of the order.

12. For the reasons stated above, this writ petition is allowed with the above direction. No costs. Connected miscellaneous petition is closed.

16.12.2022

Index : Yes / No
Internet : Yes

Nsr

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To

1.The Director of Sugar,
Registrar of Sugar Mills,
No.69, Anna Salai,
EVR Periyar Buildings,
Nandanam, Chennai – 35.
Chennai.

2.The Chief Executive
Aringnar Anna Sugar Mill,
Kurungulam,
Thanjore – 613 303.

3.National Co-operative Sugar Mill,
Represented by its Managing Director,
B.Mettupatti Village,
Alanganallur,
Madurai – 625 502.

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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
W.P.(MD).No. 22702 of 2017

16.12.2022

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