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W.P.No.12317 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.12317 of 2016

and

W.M.P.Nos.10644 & 10645 of 2016

S.Radhakrishnan

...Petitioner

-Vs-

1.The District Collector,
Dharmapuri District (Development Wing),
Dharmapuri - 5.

2.The Personal Assistant to the
District Collector (Panchayat Development),
Dharmapuri - 5.

...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 second respondent in proceedings No.4562/04/K4, dated 21.05.2007 and the consequential order of the first respondent in Na.Ka.No.24225/2015/K3 dated 29.02.2016 and quash the same and consequently direct the respondents to reinstate the petitioner with all consequential service and monetary benefits.

For Petitioner : Ms.A.Pramila



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For Respondents : Mr.M.Shahjahan,
Special Government Pleader

ORDER

Heard Ms.A.Pramila, learned counsel appearing for the petitioner and Mr.M.Shahjahan, learned Special Government Pleader for the respondents.

2. The petitioner herein was appointed as an Office Assistant in the office of the District Collector, Dharmapuri, on 12.11.1991 on compassionate ground, owing to the death of his father K.Sundaram. The petitioner had joined the services on 15.11.1991. Thereafter, he was promoted as Junior Assistant on 21.01.1994. Since the minimum qualification prescribed for the post of Junior Assistant is S.S.L.C., a proposal was sent to the Government for the purpose of regularizing the petitioner's service in the cadre of Junior Assistant. In turn, the Government had forwarded the petitioner's S.S.L.C. certificate to the State Schools Examination Board, Chennai, for verification. Consequently, the Secretary of the State Schools Examination Board, in his report dated 17.07.2003, had stated that the S.S.L.C. certificate produced by the petitioner was bogus and the Registration No.551966/April 1991 in the certificate was



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actually allotted to another candidate. In accordance with the letter of the Secretary of the State Schools Examination Board, dated 17.07.2003, the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules') came to be framed against the petitioner in charge memo dated 23.03.2004. Not being satisfied with the explanation submitted by the petitioner, an enquiry was conducted, in which the charges against the petitioner were held as proved. The further explanation submitted by the petitioner on 05.01.2006 came to be rejected, through the impugned order of punishment dated 21.05.2007, whereby, the petitioner was dismissed from service. The appeal preferred by the petitioner on 08.06.2007 was also rejected on 29.02.2016. Challenging the original order of punishment, as well as the order-in-appeal, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that when the petitioner had sought for information under the provisions of the Right to Information Act, seeking for details about his S.S.L.C. certificate Registration No.551966/April 1991, the Information Officer attached to the State Schools Examination Board, in his reply dated 22.09.2015, has stated that the said



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registration number belongs to the petitioner herein. The learned counsel further submitted that the enquiry was not properly conducted and the documents produced before the Enquiry Officer were not substantiated through oral witnesses.

4. Per contra, the learned Special Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that since the minimum educational qualification prescribed for the post of Junior Assistant is S.S.L.C. and since the Secretary of the State Schools Examination Board, in his report dated 17.07.2003, has clearly stated that the certificate itself was bogus, the petitioner is disentitled from holding the post of Junior Assistant and therefore, he was subjected to an enquiry. It is also his submission that the enquiry was conducted in a proper manner by following the principles of natural justice and both his explanation to the charges, as well as his further explanation, were duly considered before the order of punishment was issued. Since the charges against the petitioner are serious in nature, the resultant punishment is also proportionate to the charges.



5. I have given careful consideration to the submissions made by the respective counsels.

6. The Hon'ble Supreme Court, in the case of **Roop Singh Negi Vs. Punjab National Bank and others** reported in **2009 (2) SCC 570**, has held that the contents of the documents produced before an Enquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the enquiry proceedings itself will stand vitiated. The relevant portion of the judgement reads as follows:-

"10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was



placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

7. This apart, Rule 17(b) of the Rules provides that, when the charges imputed on a delinquent officer are not admitted by the person charged and which can be proved only through the evidence of witnesses, the Enquiry Officer shall conduct such an enquiry by examining the witnesses after giving due opportunity to the delinquent to cross examine the witnesses. However,



contrary to the aforesaid Rule, the Disciplinary Authority, even at the stage of framing of the charges, has shown the list of witnesses to be examined in the enquiry as Nil. Apparently, the petitioner would also not be in a position to give an effective explanation to the framed charges in the absence of any witnesses.

8. The Hon'ble Supreme Court, in the case of ***Bilaspur Raipur Kshetriya Gramin Bank and another Vs. Madanlal Tandon*** reported in **2015 (2) CWC 317**, had dealt with a similar situation and held that when no list of witnesses is supplied to the delinquent, it would amount to depriving him an opportunity to put forward his case in response to the show cause notice along with the charge sheet.

9. In the instant case, it is not in dispute that though four documents were produced before the Enquiry Officer, which includes the letter of the Secretary of State Schools Examination Board, dated 17.07.2003, no independent witness was examined to substantiate the contents of these documents. As a matter of fact, in Annexure-III of the charge memo, the



details of the four documents have been mentioned, whereas in Annexure-IV, the list of witness is shown as Nil.

10. The very charge is based on the letter of the Secretary of State Schools Examination Board, dated 17.07.2003. A Perusal of the document shows that though the Secretary had opined that the document is bogus, he had not returned the bogus mark statement and had retained the same in their office itself. As such, the original mark statement bearing Registration No.551966/April 1991 was also not produced before the Enquiry Officer.

11. When the entire case revolves around the letter of the Secretary dated 17.07.2003, there was a duty cast on the respondents to substantiate that letter by proving its content thereon through a proper witness. In the absence of the same, the procedure adopted by the respondents would be opposed to the principle underlying Rule 17(b), as well as the ratio laid down by the Hon'ble Supreme Court in *Roop Singh Negi's case (supra)*. As such, the consequential punishment and the order-in-appeal, cannot be sustained, since the enquiry itself has stands vitiated.



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12. There is yet another aspect of the matter. Though the charge memo relies upon the letter of the Secretary dated 17.07.2003, which claims the petitioner's certificate, bearing Registration No.551966/April 1991, as bogus, the petitioner had obtained information from the same Board and the Information Officer, through his letter dated 22.09.2015, has stated that the mark statement bearing Registration No.551966/April 1991 belongs to S.Radhakrishnan, who is the petitioner herein. Thus, when there are two contradictory stand taken by the same State Schools Examination Board, the examination of witnesses during the course of enquiry gains more significance. Had the Enquiry Officer examined any witness in connection with their document dated 17.07.2003, the petitioner would have had an opportunity to put forth his objections, based on the information received by him through the provisions of the Right to Information Act. On this ground also, it can be stated that the enquiry proceedings itself stand vitiated.

13. For all the foregoing reasons, the impugned orders dated 21.05.2007 and 29.02.2016 are quashed. Consequently, there shall be a direction to the



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first respondent herein to forthwith reinstate the petitioner back into service, together with continuity of service. Since this Court has not passed orders on the merit of the imputations in the charge memo, the petitioner will not be entitled for the arrears of salary during the period of his non-employment. The first respondent shall pass the reinstatement order, together with continuity of service, within a period of four (4) weeks from the date of receipt of a copy of this order.

14. The writ petition stands thus allowed. No costs. Consequently, connected miscellaneous petitions are closed.

09.01.2023

Index:Yes
Internet:Yes
Neutral Citation:Yes
Speaking order
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To
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- 2.The Personal Assistant to the
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M.S.RAMESH,J.

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