



W.A.No.1101 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.1101 of 2018

and CMP.Nos.9007 and 9008 of 2018

T.Justin

...appellant

Vs.

The Secretary,
Bar Council of Tamilnadu and Puducherry,
High Court Buildings,
Chennai 600104.

...respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.02.2018 in WP.No.4327 of 2018 passed by the Single Judge of this Court.

For appellant : Ms.N.R.Jasmine Padma

For respondent : Mr.C.K.Chandrasekhar



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JUDGMENT

(The Judgment of the Court was delivered by R.SUBRAMANIAN, J)

Challenge in this appeal is to the order of the Writ Court dismissing the Writ Petition filed by the petitioner challenging the order of the Bar Council of Tamil Nadu and Puducherry dismissing him from service.

2. The Writ Court has dismissed the Writ Petition essentially on the ground that the petitioner had not disclosed his date of appointment and he has not shown that he is a permanent employee. The fact that the petitioner was a permanent employee is conceded by the Bar Council of Tamil Nadu and Puducherry. As the petitioner was a permanent employee of the Bar Council of Tamil Nadu and Pondicherry, the Rules relating to service conditions of the staff members of the Bar Council should be followed. Rule 14 of the Rules Relating to Service Conditions to the Members of the Staff of the Bar Council, which deals with the Disciplinary proceedings, reads as follows:

“14. (a) No member of the staff of the Council shall be removed, dismissed, reduced in rank or compulsorily retired unless he had been given a reasonable opportunity of showing

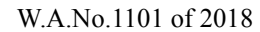


cause against the action proposed to be taken in regard to him provided that this rule shall not apply when he is removed, dismissed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge.

(b) whenever an action is proposed to be taken against any member of the staff under sub-rule (a) above, the Council shall frame charges, enquiry into the same after giving sufficient opportunity of the member as provided above and the decision of the Council shall be final. Notice of the decision of the Council and the proposed punishment to be awarded shall be asked and to show cause why the proposed punishment should not be given. After giving opportunity to him to do so, the Council shall give its decision as regards the punishment to be given and it shall be enforced accordingly. It shall be lawful for the Council to award a punishment less severe than that indicated in the notice.(emphasis supplied)

(c) whenever the member of the staff refuses notice or after receipt of the notice does not offer an Explanation within the time allowed or within such extended time as the Council may permit, it shall be deemed that he has not explanation to offer.

(d) pending action proposed to be taken and enquiry into charges provided for in sub-rules (a) and (b) above the Council may suspend a member of the staff. During the period of suspension he shall be paid half of the basic salary. In case the charges are not proved, or are withdrawn, he shall be entitled



(e) for the purpose of the enquiry, the Council may delegate its powers to a sub-Committee and the report of the sub-committee shall be duly placed before the Council for necessary action and Chairman shall give effect to the decision of the Council."

4. Mr.C.K.Chandrasekhar, learned counsel appearing for the Bar Council has produced the records. We find that the petitioner has avoided the notice issued and the suspension orders. However, unfortunately for the Bar Council, we find total non-compliance with Rule 14(b) of the Rules, which requires the Bar Council to frame charges and provide sufficient opportunity to the member of the service to answer the charges and thereafter impose a punishment.



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5. Mr.C.K.Chandrasekhar, learned counsel would submit that as per Rule 14(c) of the Rules, if the person remains absent, the Council can proceed in the absence of the delinquent official under Rule 14(c). Rule 14(c) will come into operation only when if Rule 14(b) is complied with.

6. We find that no charges have been framed, no charge memo has been issued to the petitioner, which vitiates the entire proceedings. Therefore, the Writ Appeal is allowed and the order in the Writ Petition is set aside. The Writ Petition will stand allowed. The impugned order imposing the punishment of dismissal from service on the petitioner will stand set aside. The petitioner is entitled to reinstatement with all service benefits and all attendant benefits. Liberty is given to the Bar Council to proceed in accordance with the service rules and initiate a fresh enquiry if it is so advised. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M.J.,) (S.S.K.J.,)
02.02.2023

Index : Yes / No

Speaking order: Yes/No

Note: I.T. on 10.02.2023

pvs



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To
The Commissioner,
Khadhi Village Industries Commission, KVIC,
No.126, Avai Shanmugam Salai,
Gopalapuram,
Chennai 600 086.



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