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W.P. No.26248 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

and

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.P. No.26248 of 2023 & W.M.P. No.25650 of 2023

P. Dhanareka

Petitioner

v

1 The Principal District Judge/
Disciplinary Authority (FAC)
Vellore District
Vellore

2 The Subordinate Judge
Subordinate Court
Arakkonam

3 The Enquiry Officer
Presiding Officer
Principal Labour Court
Vellore

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records connected with the order in Dis. No.8721/2023/SHR(G)/dated 17.08.2023 passed by the first respondent / Disciplinary Authority and quash the same.

For petitioner Mr. S. Sathia Chandran
For respondents Mr. P. Kannan Kumar
Standing Counsel



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ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition impugns the proceedings dated 17.08.2023 of the Disciplinary Authority, the first respondent herein, in and by which, a second Inquiry Officer, *viz.*, the third respondent herein, was appointed to inquire into the charges framed against the petitioner, on the ground that the first Inquiry Officer, *viz.*, the Additional District Judge, (Fast Track Court) Vellore, did not conduct a full-fledged and proper inquiry.

2 A vignette of the facts leading to the filing of this writ petition is as under:

2.1 The petitioner is working as a Bench Clerk, Grade I, at the Principal District Court, Vellore. She was issued with a memo dated 09.06.2022 by the Subordinate Judge, Arakkonam, the second respondent herein, for the alleged lapse *qua* bringing forward of certain amounts in the respective ledger, while she was working as Sherishtadar at the Subordinate Court, Arakkonam.



12.07.2022, she was issued with another memo dated 05.08.2022 reiterating the same allegations. Once again not satisfied with her further explanation dated 16.08.2022, she was issued with a charge memo dated 09.09.2022 by the second respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules containing three charges. The gist of the three charges is regarding not bringing forward certain entries in the ledger and the consequential nontallying of ledger. In response, she addressed two explanations dated 03.10.2022 and 10.10.2022 denying the charges.

2.3 However, by proceedings dated 31.10.2022, the first respondent appointed the Additional District Judge (Fast Track Court), Vellore, as the Inquiry Officer, who, by inquiry report dated 03.03.2023, held that the charges were not proved, a copy of which was not given to the petitioner.

2.4 Thus, when the petitioner was awaiting a copy of the inquiry report dated 03.03.2023 the first respondent, on the ground that the first Inquiry Officer had not conducted a full fledged and proper inquiry, inasmuch as the required records were not scrutinised while rendering findings for charges pertaining to money transactions, *vide* proceedings dated 17.08.2023, appointed the Presiding Officer, Principal Labour Court, Vellore, as the second



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petition has been filed, as stated in the opening paragraph.

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3 The main bone of contention of the learned counsel for the petitioner is that when inquiry has already been completed and the Inquiry Officer also has held the charges as not proved *vide* report dated 03.03.2023, appointment of a second Inquiry Officer for further inquiry, that too, without furnishing a copy of the Inquiry Report of the first Inquiry Officer to the petitioner, is illegal,.

4 The first respondent has filed a counter affidavit dated 21.09.2023, from which, the learned Standing Counsel for the respondents drew the attention of this Court to the judgment of the Supreme Court in **K.R. Deb v The Collector of Central Excise, Shillong, 1971 (2) SCC 102**, and garnering strength therefrom, contended that proceedings of the first respondent appointing the third respondent as the second Inquiry Officer is perfectly valid and does not warrant interference.

5 Heard the learned counsel on either side and perused the records.



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6 At the outset, it is worth pointing that the judgment of the Supreme Court in **K.R. Deb**, *supra*, relied on by the first respondent and the learned counsel for the petitioner is distinguishable on facts for the reasons to be set out *infra*.

7 Even as per the said judgment, only when there had been no proper inquiry owing to some serious defects creeping into the inquiry or some witnesses had not been examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence, which is not the case here. As already observed, in the case on hand, the first Inquiry Officer had already completed the inquiry and also submitted his report holding that the charges levelled against the petitioner are not proved, a copy of which, has, admittedly, not been furnished to the petitioner. Further, this is not a case where the first respondent had ordered for mere taking further evidence, as has been the case in **K.R. Deb**, *supra*. Rather, by the proceedings impugned, the first respondent has gone to the extent of appointing a second Inquiry Officer, that too, bypassing the step of furnishing of inquiry report to the petitioner. In such perspective of the matter, the judgment in **K.R. Deb**, *supra*, is not of any avail to the petitioner.



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8 Be it noted, there cannot be any fresh or further enquiry without furnishing a copy of the inquiry report to the delinquent. In case, the Disciplinary Authority finds that there are defects in the inquiry report, it is open to him to disagree with the findings of the Inquiry Officer and order a *de novo* enquiry or an inquiry from the stage the defect crept into, in the light of the judgment of the Supreme Court in **Managing Director, ECIL, Hyderabad v Karunakar & others¹** and **Union of India & others v Mohd. Ramzan Khan²**. But, without disagreeing with the findings of the first Inquiry Officer and calling for an explanation from the petitioner after furnishing a copy of the inquiry report dated 03.03.2023 to her, the first respondent cannot order *de novo* enquiry or further enquiry.

9 In view of the foregoing discussion, the impugned proceedings of the first respondent is interfered with and it is open to the first respondent to forward a copy of the inquiry report dated 03.03.2023 to the petitioner, call for an explanation from her and take further decision in the matter, depending upon the explanation to be submitted by the petitioner.



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Connected W.M.P. stands closed.

**(S.V.N., J.) (K.R.S., J.)
20.10.2023**

cad

To

- 1 The Principal District Judge/
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Vellore
- 2 The Subordiante Judge
Subordinate Court
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- 3 The Enquiry Officer
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