



W.P.No.32137 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.06.2023
Pronounced on	14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32137 of 2022
and W.M.P.No.6472 of 2023
&
W.M.P.Nos.31559 & 31561 of 2022

S.Bala Thiripurasundari

...Petitioner

Vs.

1.The Secretary to Government,
Tamil Nadu Development & Information
(S & P 1-1) Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Commissionerate of Stationery & Printing,
110, Anna Salai,
Chennai - 600 002.

3.The Special Secretary to Government,
Public Department,
Fort St. George,
Chennai - 600 009.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records pertaining to the impugned second enquiry report of the third respondent in Proceedings No. Nil dated 28.06.2022 and quash the same and consequently, direct the respondents herein to pass final



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orders on the original enquiry report dated 25.04.2019 which was communicated to the petitioner on 03.05.2021 and consequently promote the petitioner as General Manager, Stationery and Printing Department from the date of promotion of her immediate junior with all consequential service and monetary benefits, if she is otherwise eligible, within a time frame as fixed by this Court.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
for M/s.G.Bala and Daisy
For Respondent : Mr.V.Arun,
Nos.1 to 3 Additional Advocate General-V
Assisted by Mr.S.Rajesh,
Government Advocate

ORDER

Heard Mr. K.Venkataramani, learned Senior Counsel for the petitioner and Mr. V.Arun, learned Additional Advocate General-V appearing on behalf of the respondents.

2. The brief facts of the case is as follows:-

2.1. The petitioner while working as a Works Manager-II, Government Central Press, Chennai was levelled with 10 charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules [hereinafter referred to as "Rules"] through a charge memo dated 01.02.2018. Not being satisfied with the petitioner's explanation dated 01.12.2018 to the levelled charges, an Enquiry Officer was appointed on 21.03.2019, who after full fledged inquiry, had submitted a detailed



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inquiry report dated 25.04.2019, holding that all the ten charges as "not proved".

2.2. After a period of 10 months, the respondents had appointed another Enquiry Officer to conduct a fresh inquiry in connection with the Original Charge Memo dated 01.02.2018. When the petitioner had challenged the action before this Court in W.P.No.4343 of 2021, the Writ Petition came to be dismissed with a direction to the Disciplinary Authority to complete the inquiry within a period of 45 days. Consequently, the second inquiry report came to be passed on 28.06.2022, holding that all the ten charges as "proved", which is challenged in the present Writ Petition.

3. The learned Senior Counsel for the petitioner submitted that Rule 17(b) of the Rules does not provide for conducting of a second inquiry and therefore, the entire inquiry proceedings after the Original Enquiry Report dated 25.04.2019 passed, is vitiated.

4. Per contra, Mr.V.Arun, learned Additional Advocate General-V appearing for the respondents submitted that the present inquiry is only a continuation of the earlier inquiry and would amount to a further



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inquiry, which is permissible under the Rules. He also submitted that the charges are very serious in nature, causing a huge loss. He further submitted that the petitioner herein had been participating and co-operating in the inquiry for the past nine months and in view of the orders passed by this Court in W.P.No.4343 of 2021 dated 26.02.2021, their conduct of inquiry has been ratified by this Court, which had permitted them to conclude the inquiry, if necessary on a day-to-day basis. The learned Additional Advocate General also submitted that since the petitioner had voluntarily participated in the further inquiry, she is estopped from raising the ground that the second inquiry is impermissible. The learned Additional Advocate General sought time limit for concluding the proceedings.

5. Two issues that requires to be predominantly addressed in the present Writ Petition are as follows:-

a) Whether conduct of a second inquiry under Rule 17(b), after the first Enquiry Officer has filed his report, is permissible?

b) When a learned Single Judge of this Court had passed orders for completing the second inquiry within a stipulated time, whether the petitioner can question such proceedings?



6. Rule 17(b) of the Rules prescribes the procedure to be followed by the Disciplinary Authority for imposing major penalties. While prescribing the detailed procedure to be adopted in every case where it is proposed to impose major penalty on a Government Servant, the provision requires the Inquiring Authority to submit a report of the inquiry or personal hearing, which report shall contain sufficient records of the evidence, if any, together with a statement of the findings and the grounds thereof. The Rule also states that whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another Inquiring Authority, the latter may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself.

7. The first proviso to Rule 17(b) of the Rules states as follows:

"If the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided:"



8. Apart from the procedure prescribed under Rule 17(b), there is no other enabling provision to facilitate the Disciplinary Authority to disregard the first enquiry report and proceed to conduct a second inquiry or fresh inquiry. What has been provided under Rule 17(b) is that when the Original Inquiring Authority is unable to conclude the inquiry for whatever reason, the succeeding Inquiring Officer can continue such inquiry proceedings or file his report based on the evidence recorded by the first Enquiry Officer. Likewise, the proviso enables the succeeding Inquiring Authority to record further evidence from any of the witnesses, who have already been examined, by recalling them.

9. The procedure now adopted by the Disciplinary Authority in disregarding the Original Enquiry Report dated 25.04.2019 and of having proceeded to conduct a fresh inquiry, by appointing another Inquiring Authority, is an abuse of the procedure and would also unlawfully enable the Disciplinary Authority to fill in the lacunae and other omissions or discard certain evidences that may favour the delinquent.



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10. Moreover, when Rule 17(b) does not provide for a second inquiry, but rather enables the second succeeding Enquiry Officer in the original inquiry to deal with the evidences before it, deviating from such a procedure and inventing a method which is conspicuously absent in the provision, would be illegal.

11. In the case of ***State of Jharkhand & Others Vs. Ambay Cements & Another*** reported in ***2005 (1) CTC 223***, the Hon'ble Supreme Court had held that it is the cardinal rule of the interpretation where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.

12. In another case viz., ***T. Ramamoorthy Vs. Secretary, Sri Rama Krishna Vidyalaya High School*** reported in ***1998 Writ LR 141***, the Hon'ble Division Bench of this Court had held that when the principle where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that other measures are strictly precluded.

13. The Hon'ble Supreme Court in the case of ***K.R. Deb Vs. The Collector of Central Excise, Shillong*** reported in ***AIR 1971 SC 1447***



had held that when there is some defect in the inquiry conducted by the Enquiry Officer, Disciplinary Authority can direct the Enquiry Officer to conduct further inquiries in it, but cannot direct fresh inquiry to be conducted by some other Officer. Following the decision in K.R. Deb's case (supra), the Hon'ble Supreme Court in **Vijay Shankar Pandey Vs. Union of India and Another** reported in **2014 (10) SCC 589** had held that normal rule is that there can only be one enquiry and the second enquiry, is impermissible. The relevant portion of the order reads as follows:-

"26. It can be seen from the above that the normal rule is that there can be only one Enquiry. This Court has also recognized the possibility of a further Enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the Report submitted by the Enquiring Authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second Enquiry."

14. Thus, in the absence of any enabling provision under the Rules for conducting a fresh inquiry, when the original enquiry report has already been filed, the entire second inquiry proceedings, from its initiation, is illegal and would stand vitiated.



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15. The second issue that requires consideration in the present case is that when a learned Single Judge of this Court had directed the Disciplinary Authority to complete the inquiry within a time frame, can the second inquiry proceedings be found fault with?

16. In order to appreciate this aspect, it would be necessary to look into the order passed by the learned Single Judge in W.P.No.4343 of 2021 dated 20.06.2021. The order reads as follows:

"Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 01.02.2018 passed by the 2nd Respondent herein vide proceedings in Dir.No.R126638/2017-1, and for a consequential direction to the Respondents herein to promote her as General Manager, Stationery and Printing Department from the date of promotion of her immediate junior with all consequential service and monetary benefits.

2. Learned counsel for the Petitioner submitted that, on the ground of pendency of Charge Memo, the Petitioner's promotion has not been considered.

3. Heard the learned counsel on either side and perused the material documents available on record.



4. *It is seen that, the Petitioner has not at all taken a plea that, the Charge Memo was issued by the incompetent Authority or it is in violation of the statutory provisions. Hence, this Court is not inclined to grant the relief sought for by the Petitioner.*

5. *It is needless to mention that, enquiry proceedings shall go on, on a day-to-day basis without adjourning the matter beyond seven working days at any point of time. If the enquiry proceedings are already completed, a decision shall be taken by the Disciplinary Authority within a period of 45 days from the date of receipt of a copy of this order, after calling for comments of the Enquiry Officer, if not done earlier.*

6. *It is further made clear that, in case, the Petitioner is not imposed with any punishment or any punishment that may be imposed is not going to affect her promotion, the case of the Petitioner may be considered in accordance with the Rules, if there are no legal impediments. In fine, the Writ Petition stands dismissed with the above direction and observation. No costs. Consequently, connected W.M.P.Nos.4941 and 4943 of 2021 are closed."*



17. The original charge memo dated 01.02.2018 was put under challenge in that Writ Petition. The learned Single Judge had declined to interfere with the charge memo, only on the ground that the petitioner had not taken a plea that the charge memo was issued by an incompetent authority or that, it was in violation of the statutory provisions. Apparently, the petitioner has failed to appraise the learned Single Judge about the final report filed by the first Enquiry Officer and the appointment of a second Enquiry Officer thereafter, who had once again commenced the enquiry. Apart from this, the petitioner had also not brought to the notice of the learned Single Judge of this Court about the illegality with regard to the legal bar in conducting a second inquiry, after conclusion of the first enquiry. Having failed to place these facts before the learned Single Judge, on the legal impediments and infirmities in the procedural law, the order itself may be rendered "*per incuriam*".

18. The principle of "*per incuriam*" was developed by the English Courts in relaxation of the rule of "*stare decisis*". The principle has been accepted, approved and adopted by the Hon'ble Supreme Court of India in several of its decisions. By making a reference to such of these English Court decisions in the ***State of Madhya Pradesh Vs.***



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Narmada Bachao Andolan & Another* reported in 2011 SCC 639**, it was held that "*per incuriam*" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at, without application of mind or proceeded without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong. Similar interpretations have also been given by the Hon'ble Supreme Court by reference to the decisions of the English Courts in the ***State of Punjab Vs. Devans, Modern Breweries Ltd., [2004 (11) SCC 26]; ***Punjab Land Development and Reclamation Corporation Ltd., Vs. Presiding Officer, Labour Court [1990 (3) SCC 682]***; ***The Commissioner for Hindu Religious and Endowments Vs. C. Lakshmi Narasinhaiah [1990 (Supp.) SCC 164 (SC)]*** ; and ***Union of India Vs. Indian Railways SAS Staff Association [1995 (Supp.) SCC 600]***.

19. Likewise, in the State through Superintendent of Police, New Delhi Vs. Ratanlal Arora reported in 2004 (4) SCC 590, the Hon'ble Supreme Court had held that where in case the decision has been rendered,



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without reference to statutory bars, the same cannot have precedent value and shall have to be treated as having been rendered "*per incuriam*". Reliance was also placed on *N.Bhargavan Pillai's case (supra)* here. This principle would squarely apply to the present case in hand and thus, merely because the second inquiry was commenced and proceeded with, cannot sanctify the illegality in the procedure.

20. In view of the well established law on the principles of "*per incuriam*", the decision in W.P.No.4343 of 2021, cannot be treated as "binding precedent" and at the most, it should be considered of having been rendered "*per incuriam*" as held in ***N.Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala*** reported in **2004 (13) SCC 217** and ***Retanial Arora's case*** (*supra*).

21. The learned Additional Advocate General had also taken a plea that since the petitioner had already participated in the second disciplinary proceedings, she is estopped from challenging the same. I am not in agreement with such a submission. In the preceding portions of my order, I have detailed the illegality committed by the Disciplinary Authority in adopting the procedure which is not provided under any statute or regulations and therefore, held that the entire proceedings is



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deemed to be illegal. The second respondent herein, who is the Head of the Department of the Government, had chosen to adopt this illegal procedure. Having committed to the Rule of Law and valued the same, cannot now claim immunity by invoking the principles of estoppel.

22. The Rule of estoppel is a doctrine based on 'fairness'. When an illegality is committed by the Head of the Government, no advantage can be taken from and out of such illegality in order to deprive the affected person, who was always required to be exonerated from such illegal proceedings. The principle of estoppel will not apply to an act of illegality and these ratios have been substantiated in several decisions of the Hon'ble Supreme Court including the case of **Pratima Chowdhury Vs. Kalpana Mukherjee** reported in **2014 (2) SCR 656** and **Motilal Padampat Sugar Mills Vs. State of U.P.** reported in **1979 SCR (2) 641**.

23. For all the foregoing reasons, I am of the affirmed view that the entire proceedings that emanated after the original enquiry report dated 25.04.2019 is "illegal". Accordingly, all proceedings after filing of the enquiry report dated 25.04.2019, stands quashed. The second respondent herein shall pass appropriate orders based on the original



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enquiry report dated 25.04.2019 in Charge Memo Dir

No.R1/26638/2017-1 dated 01.02.2018, within a period of four weeks from the date of receipt of a copy of this order. Based on such final orders to be passed, the petitioner is at liberty to seek for service benefits, including promotions by way of a representation, which shall be considered by the second respondent, within a period of four weeks from the date of such representation. The Writ Petition stands partly allowed. Consequently, the connected Miscellaneous Petitions are also closed. There shall be no order as to costs.

14.07.2023

Index:Yes
Neutral Citation:Yes
Order : Speaking
DP

To

- 1.The Secretary to Government,
Tamil Nadu Development & Information
(S & P 1-1) Department,
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- 2.The Commissioner,
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110, Anna Salai, Chennai - 600 002.
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M.S.RAMESH,J.

DP

ORDER MADE IN

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and

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