



W.A.No.60 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

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C.Masilamani

... Appellant

-Vs-

1.The Commissioner
Social Welfare & Nutritious Meal Programme
Department, Guindy, Chennai 600 032.

2.The District Collector
Villupuram District, Villupuram.

3.The Commissioner
Gingee Panchayat, Gingee,
Villupuram District.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.3243 of 2017 dated 30.07.2019.

For Appellant	:	Mr.R.S.Anandan and Mr.A.Baskaran
For Respondents	:	Mr.K.V.Sajeev Kumar Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This appeal has been directed against the order passed by the writ court dated 30.07.2019 made in W.P.No.3243 of 2017.



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2. The short facts leading to filing of this writ appeal is that the appellant was working as Noon Meal Organizer under the respondent Department. While so, a charge memo has been issued against him based on the audit inspection on 25.03.2015 levelling eight charges against him. Pursuant to the charges, an explanation / reply had been given. Not satisfied with the same, an enquiry officer was appointed and according to the respondents, enquiry officer conducted an enquiry and gave a report ie., enquiry report on 30.10.2015, based on which since no acceptable defence by way of second opportunity had been given by the appellant, the second respondent being the disciplinary authority, having accepted the enquiry officer's report, who had given a report stating that 7 out of the 8 charges have been proved, the disciplinary authority had come to the conclusion that major punishment of dismissal from service can be inflicted against the appellant.

3. Accordingly, by order dated 23.11.2015, the second respondent had passed an order inflicting the maximum punishment of dismissal from service against the appellant. Aggrieved over the same, appeal to the first respondent had been preferred, which was also dismissed, confirming the punishment by order dated 04.01.2017. Therefore, aggrieved over the same the appellant / delinquent filed the aforesaid writ petition in W.P.No.3243 of 2017 which was heard and dismissed by the learned Judge by order dated 30.07.2019.



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4. Heard Mr.R.S.Anandan, learned counsel appearing for the appellant and Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents.

5. Learned counsel for the appellant submits that, charges had been framed against the appellant, explanation had been called for, which had been given and each of the charges framed against the appellant had been specifically denied. Thereafter, no enquiry was conducted even though it was claimed by the respondents that enquiry officer was appointed and enquiry was conducted, but without conducting an enquiry, merely based on the charges framed against the delinquent and his reply, a conclusion had been arrived at by the enquiry officer in respect of each of the charges which had been stated in the enquiry officer's report and the same since has been accepted by the disciplinary authority and based on which the punishment has been imposed against the appellant, dismissing him from service, the entire disciplinary proceedings got vitiated as it was not conducted properly. Since it is a major penalty proceedings under the Rules, a full fledged enquiry should have been conducted as desired by the delinquent and which opportunity since has been denied and no enquiry to that effect has been conducted, the proceedings culminated in the order of dismissal is vitiated and therefore on that ground when a writ petition was filed, the same was not considered in proper perspective by the learned Judge, who dismissed the writ petition. Therefore, the learned counsel seeks the indulgence of this Court against the impugned order.



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6. Heard the learned Special Government Pleader appearing for the respondents, who relied upon certain passages of the counter affidavit filed by the respondents before the writ court. Relying upon those statements made in the counter affidavit, the learned Special Government Pleader would contend that, by a communication dated 28.08.2015, the enquiry officer had sent a communication stating that he was appointed as enquiry officer and had enclosed a copy of the charge memo with an instruction to offer his explanation if any on the charges framed against him which was received by him on 04.09.2015.

7. Thereafter, explanation had been given and based on the explanation, the charges framed against the delinquent / appellant had been enquired and ultimately, in respect of each of the charges, findings of the enquiry officer had been given, which is part of the enquiry officer's report, based on which the disciplinary authority has decided to accept the enquiry officer's report and accordingly inflicted the maximum punishment of dismissal from service, as 7 out of 8 charges against the appellant have been proved.

8. Therefore, the learned Special Government Pleader would contend that it is not a case of no enquiry and no enquiry officer was appointed. Therefore, it cannot be stated that the entire disciplinary proceedings is vitiated on the alleged ground that the enquiry was not properly conducted. This aspect, though had been raised



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by the appellant before the writ court by the appellant, was considered in proper perspective and was decided in favour of the respondents and against the writ petitioner. Therefore, the impugned order of the learned Judge does not warrant any interference, he contended.

9. We have considered the said rival contentions of the learned counsel appearing for both sides and have perused the materials placed on record.

10. It is a definite case on the part of the appellant / delinquent that, though charges had been framed against him and explanation was called for, despite the explanation having been given, thereafter even though it was claimed that the enquiry officer was appointed, he was not given any intimation about the date of enquiry. No enquiry was conducted, no witness had been produced, no evidence was recorded by the enquiry officer and not even for a single date, the enquiry was conducted.

11. Though this position has been denied by the respondents, if we peruse the documents, especially the stand taken by the respondents in the counter affidavit, which has already been pointed out by the learned Special Government Pleader, this Court finds that there was an enquiry officer appointed, but whether he has conducted the enquiry and dealt with the major penalty proceedings is a question to be answered. In this context, the stand of the respondents has been



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made explicitly in paragraphs 6 and 7 of the counter affidavit filed before the writ court, which reads thus:

" 6. Further, it is submitted that the averments made by the petitioner in para 9, 10 and 11 of the affidavit are completely denied. In compliance with the order of the Hon'ble High Court on 08.06.2015 in W.P.No.7976 of 2015 the 2nd respondent appointed the Assistant Commissioner (Excise), Villupuram as Inquiry Officer on 19.08.2015 and which was sent to the petitioner through the 3rd respondent. Moreover, the Inquiry Officer in his summons notice intimated to the petitioner. The Enquiry Officer in his letter dated 28.08.2015 intimated the fact of appointment of Inquiry Officer to the petitioner by enclosing a copy of charge memo with an instruction to him to offer his explanation if any on the charges framed against him which was received by him on 04.09.2015 (copy enclosed). Therefore, proper intimation was given to him prior to conduct of enquiry by the enquiry officer.

7. While denying the explanation offered by the petitioner for all the charges leveled against him, the 2nd respondent carefully and independently perused all connected records with reference to the explanation offered by him. There was utter denial on his part. He was caught red handed and so he is trying to seek excuse for the irregularity he committed. All the charges levelled against him were proved except charges no.6. The enquiry was conducted in a fair manner. Also a reasonable opportunity was given to him to defend. But, he failed to substantiate his statement. The copy of the stock register which he maintained at the time of inspection would reveal the fact. For instance, it is stated by him that there was shortage of egg because the egg supplier unloaded the eggs at his instead of Noon Meal Centre. The petitioner indeed indulged in misappropriation and mishandling of stock and thereby gained pecuniary advantage."



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12. If we look at the stand taken by the respondents, it has been specifically stated in the counter affidavit that all the charges leveled against the delinquent were proved and the second respondent had denied the explanation offered by the delinquent after carefully and independently perusing all the connected records.

13. Except this, nothing had been stated about the enquiry claimed to have been conducted in this regard. The enquiry officer seems to have taken only the defence statement given or explanation given by the delinquent, based on which the veracity of each of the charges, whether have been proved or not has been considered by the enquiry officer and ultimately he has given his opinion, wherein he has stated that 7 out of the 8 charges have been proved.

14. Therefore, it has been made clear that no specific enquiry has been conducted. It is to be noted that, under the Rules if at all any major penalty proceedings has to be conducted by way of disciplinary proceedings, the enquiry officer must give an opportunity to the delinquent for conducting oral enquiry before whom, whatever the evidence produced on behalf of the prosecution shall be placed and the delinquent must also have been given an opportunity to cross examine the witnesses, if any, that had been produced on behalf of the prosecution. This basic facet of major penalty proceedings has been completely given a go-by in the present case, as no enquiry has been conducted except the verification of the documents filed on behalf of the prosecution as well as the explanation that defence statement



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filed on behalf of the prosecution as well as the explanation that defence statement has been given by the delinquent. Based on those documents if the enquiry officer has come to a conclusion that the charges made against the delinquent has been proved, that cannot be stated as an enquiry officer's report after a full fledged enquiry to deal with major penalty proceedings. Therefore we can safely conclude that there has been no enquiry conducted in the manner known to law. Hence, the enquiry officer's report cannot be taken as a basis for inflicting any punishment as has been made in this case by the second respondent / disciplinary authority.

15. Therefore, the resultant situation would be that the impugned order of penalty of dismissal from service imposed against the appellant / delinquent has to be interfered with. In the result, the following orders are passed in this writ appeal.

- (a) That the impugned order of the learned Judge dated 30.07.2019 made in W.P.No.3243 of 2017 is set aside.
- (b) Consequently, the impugned order before the writ court which is the order of punishment made against the appellant / delinquent is also set aside.
- (c) As a sequel, the matter is remitted back to the disciplinary authority to appoint a fresh enquiry officer to conduct a de novo enquiry and in that process, the enquiry officer shall give necessary opportunity to the appellant / delinquent.



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superannuated on 31.05.2020, the disciplinary proceedings / enquiry as indicated above shall be completed within three months period, for which full co-operation must be given by the appellant / delinquent, without taking any adjournment. Such an exercise shall be completed within the time frame as indicated above.

(e) It is also made clear that, depending upon the outcome of the enquiry and on the basis of the enquiry officer's report in the disciplinary proceedings / enquiry, further course of action on merits can be decided by the disciplinary authority.

16. With the above directions, this writ appeal is allowed. No costs.

(R.S.K.,J.) (G.A.M.,J.)
16.11.2023

Index : Yes/No
Internet : Yes/No
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