



W.A.No. 2949 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

Coram

THE HON'BLE MR JUSTICE D. KRISHNAKUMAR
AND
THE HON'BLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.A.No. 2949 of 2019
and
CMP.Nos. 19167 of 2019 and 9361 of 2021

1.The State of Tamil Nadu Rep.by its
The Principal Secretary to the Government
Tourism, Culture and Religious,
Endowments Department,
Fort St.George, Chennai-600009.

2.The Principal Secretary/Commissioner
Hindu Religious and Charitable Endowments
Department, College Road,
Nungambakkam, Chennai -600034.

..Appellants.

Vs

1.N.Dhanapal

2.Additional Commissioner (Enquiry)
O/o. The Commissioner
Hindu Religious and Charitable Endowment Department,
No. 119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600034.

..Respondents

Prayer : Writ Appeal has been filed under Clause 15 of the Letters Patent to set aside the order dated 26.06.2018 made in W.P.No. 44110 of 2016.

For Appellants : Mr.R.Shanmugasundaram, AG
Assisted by
Mr.N.R.R.Arun Natarajan - Spl.GP



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For respondents : Mr. R.Singaravelan, Senior Counsel
For
Mr.A. Palaniappan - R1
No appearance - R2

JUDGMENT

[Judgement of the Court was made by *D.KRISHNAKUMAR,J.*]

Challenging the order passed by the learned Single Judge in W.P.No. 44110 of 2016, dated 26.06.2018, the instant writ appeal has been preferred by the appellant /department.

Brief facts :

2.1 The 2nd appellant/Commissioner, HR&CE, Chennai framed charges (9 in numbers) under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules against the 1st respondent/writ petitioner and issued charge memo in Na.ka.No. 23785/2013/B1, dated 13.06.2013 for violation of Rules and proceeded with departmental enquiry. Pending aforesaid departmental enquiry, the 1st respondent was placed under suspension vide G.O. No.(D) 71, dated 05.07.2013. Subsequently, additional charge memo , framing additional charges (4 in numbers) against the 1st respondent/writ petitioner came to be issued by the 2nd appellant in Na.Ka.No.23785/2013/B1, dated 07.10.2013. The 1st appellant/Government



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vide G.O.(D) No.140, dated 16.09.2015 has appointed an enquiry officer to enquire into the charges framed against the 1st respondent.

2.2. The 1st respondent/writ petitioner has filed a writ petition in W.P.No. 23023 of 2014 and W.P.No. 28937 of 2014, challenging the charge memo and appointment of the enquiry officer. Those writ petitions came to be disposed of by order dated 16.10.2015 based on the undertaking given by the respondent that they will follow the principles of natural justice and procedure as contemplated under the Rules.

2.3 Pursuant to the aforesaid order of this Court, an enquiry officer has been appointed by the Government in G.O.(D) No. 150, dated 07.10.2015. The enquiry officer has conducted enquiry and based on the statements of the executive officer and other documents, the enquiry officer found that the charges framed against the writ petitioner are proved and the said enquiry report dated 20.02.2016 has been submitted to the 1st appellant therein. On receipt of the said enquiry report, the 1st appellant has issued show cause notice 25.11.2016, which was under challenge in W.P. No. 44110 of 2016. After hearing the submissions made by the parties concerned, the learned Single Judge allowed the said writ petition on the ground that the appellant-department did not follow the procedures and



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not furnished copies of documents to the writ petitioner as per rules.

Challenging the said order of the learned Single Judge, the intra court appeal has been preferred by the appellant-department.

3. The learned Advocate General appearing for the appellants would submit that the learned Single Judge has gone into entire charges and findings of the enquiry officer and came to conclusion that the charges framed against the 1st respondent/writ petitioner are vague and quashed the enquiry officer's report dated 28.04.2016. According to the appellants the writ Court ought not to have allowed the writ petition and quashed the entire charges framed against the writ petitioner/1st respondent. The 1st appellant being the disciplinary authority, provisionally accepted the findings of the enquiry officer/2nd respondent herein.

4. The learned Advocate General appearing for the appellants would further submit that the said show cause notice has been served on the 1st respondent/writ petitioner for submitting explanation on the enquiry officer's report. The list of documents relied upon for framing charges were enclosed as Annexure-III of the charge memo, but there is no oral evidence except the documentary evidence. The enquiry officer proceeded with the enquiry after providing the documents required by the 1st respondent/writ



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petitioner. According to the appellant, sufficient opportunity has been granted to the 1st respondent/writ petitioner during enquiry proceedings. The learned Single Judge without considering the above aspects, quashed the entire proceedings, which is against the various decisions of the Hon'ble Supreme Court as well as this Court.

5. The learned Advocate General appearing for the appellants would further submit that quashing of entire enquiry report by allowing the writ petition is unsustainable in law. This court under judicial review cannot quash the entire disciplinary proceedings on the ground of violation of procedure. In such circumstances, it can be interfered with by this court, giving directions the disciplinary authority to conduct fresh enquiry by appointing a new enquiry officer, therefore, the order of the learned single is liable to be set aside.

6. The learned senior counsel appearing for 1st respondent/writ petitioner strenuously objected the submissions made by the learned Advocate General and submitted that there are no witnesses shown in the list of Annexure enclosed with the charge memo as contended by the learned Advocate General. The learned senior counsel for the 1st respondent also drew the attention of this Court the Rule 17(b) of the Tamil



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Nadu Civil Services (Discipline & Appeal) Rules and submitted that the said procedure was not followed by the appellants while conducting the disciplinary proceedings. Apart from that the appellant department has given under taking before this Court in W.P.No. 23023 & 23024 of 2014, dated.10.06.2016 that they will follow the principles of natural justice during the course of enquiry.

7. The learned senior counsel would further submit that by relying upon the statement given by the executive officer/Joint Commissioner, the enquiry officer, without following the procedure, held the charges proved against the 1st respondent/writ petitioner, but the said copy of statement of executive officer was not furnished to him. The aforesaid executive officer/Joint Commissioner was also not shown as witness in the annexure of the charge memo, therefore there is no occasion for the 1st respondent to sought for said documents for giving reply for the said statement of the officer.

8. The learned senior counsel for the 1st respondent would further submit that since the aforesaid statement is the basis for the enquiry officer to come to a conclusion to prove the charges as against the 1st respondent/writ petitioner, the 1st respondent is entitled to receive the



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said copy of the documents. As per the procedure, after furnishing the relevant documents, and after granting opportunity to the 1st respondent to submit his explanation, the report has to be submitted by the enquiry officer to the Disciplinary Authority. The said procedure was not followed by the 2nd respondent/enquiry officer. Therefore, the enquiry officer has violated the procedures as contemplated under Rules while proving the charges against the 1st respondent/writ petitioner and the consequential show cause notice issued by the 1st appellant by merely approving the said enquiry report is liable to be set aside. The learned Single Judge has gone into the gravity of the charges and found that there is no evidence to establish by the 2nd respondent/enquiry officer to come to such conclusion to prove the charges against the petitioner and rightly quashed both the enquiry report as well as the proceedings of the 1st respondent dated 25.11.2016. Therefore, the impugned order passed by the learned Single Judge does not require any interference by this Court.

9. The point for consideration in the present appeal is that the order of the learned Single Judge in allowing the writ petition on the ground that the enquiry officer's report is vitiated in the absence of evidence is valid or not?



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10. Heard Mr.R.Shanmugasundaram, learned Advocate General appearing for the appellants and Mr.R.Singaravelan, learned senior counsel appearing for the 1st respondent and perused the entire materials available on record.

11. The contention of the learned Advocate General appearing for the appellant is that the writ Court cannot go into the merits of the case when such impugned show cause notice has been issued to the 1st respondent. If he being aggrieved, the delinquent/writ petitioner should have raised all the grounds by way of explanation before the 1st appellant and it is for the 1st appellant to consider the said explanation submitted by him. Without exhausting such remedy, he had approached this Court challenging the impugned show cause notice, which came to be allowed by the learned Single Judge, which is unsustainable and without any justification. The learned Advocate General made submission that if the learned Single Judge felt that the enquiry was not conducted properly by the enquiry officer, the learned Single Judge ought to have remit the matter for fresh enquiry, but the learned Single Judge quashed the entire enquiry report, which according to the learned Advocate General is unsustainable in law and warranting interference by this Court.



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12. The learned senior counsel appearing for the 1st respondent in reply contends that the allegations made against them are unfounded and lacking in specific evidence. The learned senior counsel would further submit that the enquiry officer relied solely on the unsubstantiated statement of the executive officer to conclude that the charges framed against the first respondent are valid. Therefore, the decision taken by the enquiry officer and the disciplinary authority without disclosing any relevant information to the first respondent amounts to a clear violation of the principles of natural justice.

13. The learned Advocate General appearing for the appellants argued that based on the request of the 1st respondent/writ petitioner, the said documents were furnished to him and obtained acknowledgment. The further argument put forth by the learned Advocate General further is that although the first respondent has accused one P. Dhanapal, who was the then Joint Commissioner of the HR & CE Department, of legal malice, he has not been named as a party in the writ petition.

14. We have perused the entire documents and We do not find the copy of the said statement of the executive officer furnished to the 1st respondent/writ petitioner. A perusal of the enquiry report would clearly



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reveals that the enquiry officer only by relying on the statement of the executive officer which is alleged to have been furnished to the 1st respondent/writ petitioner, came to the conclusion that the charges are proved. Even though the learned Additional Advocate General has made an attempt that once a questionnaire is given in response to the charge memo, the 1st respondent/writ petitioner cannot ask for any documents. We are unable to accept the said submission.

15. At this stage, it is relevant to refer a recent decision of the Hon'ble Supreme Court in the case of ***The State of Uttar Pradesh and Others Vs. Rajit Singh (Civil Appeal Nos. 2049 & 2050 of 2022, dated 22.03.2022)***, in which the Hon'ble Supreme Court had considered its earlier decision in the case of ***Chairman, Life Insurance Corporation of India Vs. A. Masilamani*** is required to be referred to. In paragraph 15, it is observed and held as under:-

“15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and



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the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).”

16. Yet another decision of the Hon'ble Supreme Court in the case of **Chairman, State Bank of India & another Vs. M.J. James (Civil Appeal No. 8223 of 2009, dated 16.11.2021) reported in (2022) 2 SCC 301**, has held in detail regarding breach of natural justice. The relevant paragraphs are extracted hereunder;



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29. Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.”

31. In State of U.P. v. Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] referring to the aforesaid cases and several other decisions of this Court, the law was crystallised as under : (SCC para 42)



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“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

17. On the facts of the case, the contention of the learned senior counsel appearing for the 1st respondent/writ petitioner is that the enquiry officer has not furnished any documents to the writ petitioner and the list



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of witnesses was also not furnished to the 1st respondent/writ petitioner before concluding the charges as proved against him. On perusal of documents, it is revealed that the enquiry report was provided to the 1st respondent/writ petitioner at the time of serving show cause notice to him. The writ petitioner/1st respondent was not made aware of the executive officer's statement, which was relied on by the enquiry officer in arriving at his conclusion to prove the charges. Despite the absence of this crucial document, the enquiry officer proceeded to establish the charges against the 1st respondent, and the same was provisionally accepted by the 1st appellant, who subsequently issued the impugned show cause notice. In light of these circumstances, We are of the opinion that the enquiry officer's report violates the principles of natural justice due to his failure to provide the vital document viz., the executive officer's report , to the 1st respondent.

18. A perusal of the findings of the enquiry officer's report and discussion made in respect of charges framed against the 1st respondent/writ petitioner also clearly reveals that the said charges are vague and as rightly contended by the learned senior counsel for the 1st respondent, the list of documents and witnesses relied on by the enquiry officer to come to such a conclusion to prove the charges was not mentioned in the annexure of the charge memo.



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19. As per Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 “even if a person charged has waived an oral inquiry, such enquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing final orders.”

20. In the present case on hand, as discussed in detail above, no such opportunity has been granted to the 1st respondent/writ petitioner as per the procedure contemplated under above Rules 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 which clearly describes that the person charged has the right to be heard in person at any stage before passing final orders. Therefore, it is a clear case of abuse of law and violation of principles of natural justice.



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21. In such circumstances, this court, however accepts the contention of the learned Advocate General appearing for the appellants that the writ Court has gone into the entirety of charges and quashed the enquiry officer's report as well as the consequential show cause notice issued by the 1st appellant, in view of the aforesaid discussions, it is clearly proved that the enquiry report was concluded against the 1st respondent without furnishing the required documents, which claimed to have been furnished. This is a clear violation of principles of natural justice. To that extent, the order of the learned Single Judge requires interference by this Court.

22. Therefore, by relying upon the aforesaid provisions of Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 and the decisions of the Hon'ble Supreme Court cited supra, without any hesitation, We have come to the conclusion that the enquiry proceedings concluded as against the 1st respondent/writ petitioner violates the principles of natural justice and without following the procedure as contemplated under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. Therefore, as observed by the Hon'ble Supreme Court in the decision cited supra, in a case where it is found that the enquiry is not conducted properly and/or the



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same in violation of the principles of natural justice, this Court cannot judicially set aside the punishment order. It must remit the case to the authority concerned to conduct enquiry afresh and conclude the same.

23. Taking into account the facts and circumstances of the case, as well as the established principles laid down by the Hon'ble Supreme Court in various decisions, ordinarily a Court does not interfere against the issuance of a show cause notice unless the same, ex facie or on the basis of the facts, does not disclose the offence, alleged to have been committed; show cause notice is otherwise without jurisdiction; suffers from incurable infirmity; is contrary to the judicial decisions or decisions of the Tribunal and lack of material justifying issuance of the show cause notice. On the aforesaid grounds, the writ court can interfere at the stage of issuance of show cause notice.

24. In light of this, and as discussed earlier, in the interest of justice, a fresh enquiry must be conducted from the point that it stood vitiated, and conclude the same. In view of the same, the order passed by the learned Single Judge in W.P. No. 44110 of 2016, dated 26.06.2018, is liable be to set aside.



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24. Accordingly, the impugned order of the learned Single Judge in

W.P. No.44110 of 2016, dated.26.06.2018 is set aside. Consequently, the

Writ Appeal is partly allowed with the following directions;

- i. The 1st appellant is directed to appoint an enquiry officer immediately to enquire into allegation made against the 1st respondent/writ petitioner, within a period of two (2) weeks from the date of receipt of a copy of this order.
- ii. The newly appointed enquiry officer is directed to proceed with the enquiry afresh after furnishing all the documents as required by the 1st respondent/writ petitioner and take final decision based on the explanation submitted by the 1st respondent and pass appropriate orders, in accordance with law, within a period of eight (8) weeks thereafter.
- iii. It is needless to say that the 1st respondent/writ petitioner shall make necessary application to the newly appointed enquiry officer seeking copy of documents required by him, if any, within a period of two weeks from the date of receipt of a copy of this order.
- iv. No costs. Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.J.] [K.G.T.J.]

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Speaking/Non Speaking Judgment

Index: Yes/No

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- 2.The Principal Secretary/Commissioner
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