



W.A.No.2863 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.2863 of 2019
and C.M.P.No.18367 of 2019**

1.The Director
I.R.T.Perundurai Medical College
and Hospital, Perundurai, Erode District.

2.The Dean
I.R.T.Perundurai Medical College and
Hospital, Perundurai, Erode District.

... Appellants

-Vs-

1.N.Boopathi
2.K.Elango
Enquiry Officer
I.R.T.Perundurai Medical College and
Hospital, Perundurai, Erode District.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.2150 of 2013 dated 11.09.2018.

For Appellant : Mr.A.Thayapran
for M/s.Kala Ramesh

For Respondents : Mr.S.Kanniah for Mr.R.Govindaraj - for R1
R2 - Served - No appearance



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J U D G M E N T

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

The first respondent N.Boopathi was an employee of the appellant Medical College viz., I.R.T.Perundurai Medical College and Hospital, Perundurai, Erode District. Against the first respondent, disciplinary proceedings was initiated by the appellant, where a charge memo dated 25.04.2005 has been issued. Thereafter, an enquiry officer was appointed, enquiry was conducted and based on the enquiry officer's report, where the charge against the first respondent since was said to be proved, the disciplinary authority issued a second show cause notice calling for explanation from the first respondent on 22.02.2011. Explanation had been given on 01.03.2011. Having considered the same, the disciplinary authority passed an order on 13.06.2011 imposing the punishment of withholding the increment for two years with cumulative effect and to recover the alleged loss caused to the Medical College.

2. As against the said order dated 13.06.2011, the first respondent preferred an appeal to the appellate authority on 26.07.2011, where, though he had taken a detailed defence seeking interference in the order passed by the disciplinary authority, the appellate authority, who passed the order dated 21.12.2011, had confirmed the order passed by the disciplinary authority by a cryptic order of one paragraph. Therefore, aggrieved over these orders the first respondent filed



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W.P.No.2150 of 2013 which was heard and disposed of by the learned Judge through the impugned order dated 11.09.2018.

3. In the order impugned, though the learned Judge had accepted that the enquiry was properly conducted and proper opportunity was given to the first respondent as a delinquent, had gone into the manner in which the appeal had been disposed of by the appellate authority by a cryptic order. Therefore, the learned Judge set aside the order of punishment as well as the confirming order passed by the appellate authority and directed the appellate authority not to recover any money from the first respondent employee. Aggrieved over the same, the present appeal has been directed by the appellant college.

4. Learned counsel for the appellant Medical College would submit that, once the learned Judge of the writ Court having accepted the findings given by the enquiry officer that the charges framed against the delinquent has been proved, the said order cannot be set aside on the mere ground that the appellate authority has not considered the appeal of the first respondent in proper perspective. He would further submit that, before the appellate authority no new grounds have been raised or no new materials have been brought in. Therefore, the appellate authority had no other option except to come to the conclusion that the enquiry officer's report as well as the conclusion reached by the disciplinary authority to impose the punishment is proper, and that in fact has been done in the order passed by the



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appellate authority. Therefore, merely because the order passed by the appellate authority is short, it cannot be presumed that the order passed by the appellate authority as well as the disciplinary authority are liable to be interfered with. Therefore, the learned counsel for the appellants seeks the indulgence of this Court.

5. However, the learned counsel for the first respondent would contend that the learned Judge had given the findings only in favour of the enquiry officer's report in the context of principles of natural justice. The learned judge found that the enquiry officer has given opportunity to the delinquent where there has been no violation of principles of natural justice. Therefore, the said finding given by the learned Judge cannot cure the subsequent defect ie., the order passed by the disciplinary authority as well as appellate authority for which a separate finding has been given by the learned Judge. Therefore, there is every justification on the part of the learned Judge to come to a conclusion to set aside the order passed by the disciplinary authority as well as appellate authority.

6. Heard the learned counsel for the appellants and the learned counsel for the first respondent.

7. As has been pointed out by the learned counsel for the appellants, the learned Judge has given the following findings with regard to the enquiry officer's report.



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" 16. On a perusal of the enquiry report and the order of original authority, I find that in the enquiry, the petitioner had duly participated and in fact, he had also examined one Kolanchiappan as his witness. The Enquiry Officer, in his report, recorded that what has been stated in his explanation has been stated by the petitioner in the enquiry also. From the above, it is seen that the Enquiry Officer had conducted the enquiry without any bias and the petitioner was given adequate opportunity to put forth his case during enquiry. Therefore, the contention of the petitioner that he was not afforded sufficient and reasonable opportunity to defend his case and that the disciplinary proceedings are conducted violating the principles of natural justice cannot be countenanced. "

8. However, the learned Judge has found fault with the manner in which the appeal was disposed of by the appellate authority, where the learned Judge has given the following findings.

" 18. Aggrieved by the order of imposition of punishment by the second respondent, the petitioner had filed appeal petition before the first respondent on 26.07.2011. By an order dated 21.12.2011, the first respondent dismissed the appeal petition by observing as under:

"பார்வை இரண்டில் கண்டுள்ள மேல் முறையீட்டு மனுவில் பார்வை ஒன்றில் வழங்கப்பட்டுள்ள தண்டனையை தள்ளுபடி செய்யுமாறு வேண்டியுள்ளீர். உள்துறை விசாரணை இ விசாரணை நியதிப்படி நடத்தப்பட்டு உம்மீது சுமத்தப்பட்டுள்ள குற்றச்சாட்டுகள் நிரூபிக்கப்பட்டதாக விசாரணை அலுவலர் அறிக்கை சமர்ப்பித்துள்ளார். அதனடிப்படையில் பார்வை ஒன்றில்



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கண்டுள்ள செயல்முறை ஆணை வாயிலாக குறைந்தபட்ச தண்டனை வழங்கப்பட்டுள்ளது. உம்முடைய மேல் முறையீட்டு மனுவில் உம்மீது சுமத்தப்பட்ட குற்றச்சாட்டுக்களை தள்ளுபடி செய்யும் முகாந்திரத்திற்கான ஆதாரம் ஏதும் நீவிர் சமர்ப்பிக்கவில்லை. விசாரணையின் போது கூறிய விபரத்தையே மேல் முறையீட்டு மனுவில் மீண்டும் தெரிவித்துள்ளீர். எனவே தங்களுடைய மேல் முறையீட்டு மனு தள்ளுபடி செய்யப்படுகிறது."

19. According to the petitioner, the first respondent being the appellate authority ought to have considered the various objections of the petitioner raised against the order of the second respondent and ought to have passed a reasoned order.

20. On a perusal of the impugned order of the appellate authority/first respondent, it is seen that the first respondent has recorded that the petitioner has failed to produce any material to disprove the charges and what has been narrated during disciplinary enquiry, the same has been stated in the memorandum of appeal and, hence, the appeal is dismissed. From the above, it is clear that the appellate authority while passing the order, has not heard the petitioner and that there is no whisper in the order of the appellate authority that it had heard the petitioner. From the order of the appellate authority, it is also seen that it has not elaborated upon the order of the original authority."

9. He has further stated at Paragraph 23 about the appellate authority's order, which reads thus,



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" 23. In the case on hand, though the order of the appellate authority is not in one-line order, the reasoning given by the appellate authority for affirmation of the order of the original authority is not sufficient. In fact, in the appellate order, the appellate authority stated that the petitioner was imposed simple punishment. How the appellate authority could arrive such a conclusion that the punishment imposed on the petitioner is simple has not been elaborated. As stated supra, the appellate authority has not stated anything about the opportunity given to the petitioner at appellate stage. "

10. On a perusal of the said findings given by the learned judge, we are of the view that, insofar as the findings of the learned Judge by giving clean chit with regard to the manner in which the enquiry was conducted by the enquiry officer is to be accepted, when the enquiry officer's report is accepted, based on which while giving punishment, the disciplinary authority has given the proportionate punishment and thereafter when appeal was preferred before the appellate authority if any grounds have been urged, whether those grounds have been considered by the appellate authority in proper perspective, is the only issue that ought to have been gone into.

11. Assuming the appellate authority has not gone into such grounds and has passed an one paragraph order as to why the defence taken by the appellant as well as the grounds taken by the first respondent cannot be accepted and has to be rejected, the reasons for such rejection has to be given, which, if the appellate



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authority has not given, based on which if the learned Judge wants to interfere with the order passed by the appellate authority, only to that extent the matter could have been remitted back to the appellate authority.

12. Therefore, for that reason the disciplinary proceedings cannot be set aside in entirety, as has been done by the learned single Judge in the order impugned. In the result, we dispose of the writ appeal with the following orders.

- The impugned order of the learned single Judge is modified to the extent that the order passed by the appellate authority dated 21.12.2011 is set aside.
- Therefore, the appeal filed by the first respondent along with further input if any to be supplied by the first respondent can be reconsidered by the appellate authority ie., the present appellate authority, in view of the change over of the management of the appellant college, to whom the first respondent can present a fresh appeal along with a copy of the earlier appeal submitted to the erstwhile appellate authority and based on which, a fresh decision shall be taken and a reasoned order shall be passed by the appellate authority.
- For the aforesaid reasons, within two weeks from the date of receipt of a copy of this order, the first respondent shall submit a fresh appeal against the order passed by the disciplinary authority imposing the punishment against him



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with a copy of the earlier appeal submitted to the erstwhile appellate authority and the present appellate authority, Secretary to the Government, Health and Family Welfare Department, or Director of Medical Education, either of whom since may be the appellate authority, shall consider the fresh appeal to be submitted by the first respondent and after giving reasons for accepting the order rejecting the grounds raised by the first respondent, a reasoned order shall be passed in the said appeal within a period of eight weeks thereafter.

13. With this modification of the order passed by the learned single Judge, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J..) (K.B.,J.)

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Index : Yes/No

Internet : Yes/No

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To

Enquiry Officer
I.R.T.Perundurai Medical College and
Hospital, Perundurai, Erode District.



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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