BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14623 of 2020 AND
W.M.P.(MD)No.12279 of 2020

K.Veluchamy ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by Additional Chief Secretary to Government,
   Tourism, Culture and Religious Endowments Department,
   Secretariat, Chennai – 5.

2. The Commissioner,
   Hindu Religious & Charitable Endowments Department,
   Nungambakkam,
   Chennai – 34. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent in G.O.(Pa).No.64, Tourism, Culture and Religious Endowments Department dated 06.06.2020 confirming the impugned proceedings of the 2nd respondent in Se.Mu.Na.Ka.No.63980/2015/L2 dated 20.07.2017 and quash the same and further direct the respondents to restore the all monetary benefits including the backwages on par with his seniority within a stipulated time.

For Petitioner : Mr.G.Prabhu Rajadurai,
for Mr.N.Karthik Kanna.

For Respondents : Mr.C.Baskaran,
Government Advocate.

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ORDER

The petitioner is employed in HR&CE Department. He was holding the rank of Executive Officer Grade II. Disciplinary action was initiated against him. By the order impugned in the writ petition, the petitioner had been imposed with major penalty of stoppage of increment with cumulative effect for two years as and when it falls due. Questioning the same, the petitioner filed an appeal before the first respondent. The first respondent confirmed the order of the disciplinary authority and dismissed the appeal. Challenging the same, the present writ petition has been filed.

2. While imposing major penalty, the disciplinary authority had not adopted the procedure prescribed for major penalty. A mere look at the enquiry officer's report would show that after issuing show cause notice and obtaining the petitioner's explanation, findings were arrived at.

3. There is a fundamental distinction between major penalty and minor penalty proceedings. In the latter case, after issuing show cause notice and after obtaining explanation from the delinquent, straightaway the order is passed. Whereas in the case of major penalty, charge memo is issued and explanation obtained. Thereafter, enquiry is conducted. The burden is on the department to make good the charges. The delinquent is given opportunity to cross examine the witnesses. He can also adduce evidence. In this case, such a procedure was not obtained. A look at the enquiry officer's report would show that the documents have been taken into account. But the documents can be marked only through witnesses. The witness will have to be either author of the document or some way connected with the document and competent to speak about its contents. The delinquent can cross examine such witnesses. In this case, no such approach was adopted. The Hon'ble Apex Court in the decision reported in ***Roop Singh Negi Vs. Punjab National Bank and others reported in (2009) 2 SCC 570*** held as follows:-

> "14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to

have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

4. Since the statutory procedure was not adopted before levying major penalty, the order impugned in the writ petition is quashed. The matter is remitted to the file of the second respondent. It is open to the second respondent to take recourse the major penalty procedure imposed against the petitioner. If the second respondent decides to resume disciplinary action, its pendency will not come in the way of the petitioner from being considered for promotion.

5. With this liberty to the second respondent and observation in favour of the petitioner, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Additional Chief Secretary to Government,
   Tourism, Culture and Religious Endowments Department,
   Secretariat, Chennai – 5.

2. The Commissioner,
   Hindu Religious & Charitable Endowments Department,
   Nungambakkam,
   Chennai – 34.

G.R.SWAMINATHAN,J.

PMU

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