IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.08.2024	Pronounced on : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

<u>W.P.No.24874 of 2004</u>

R.Amudharani ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Represented by the Secretary to Government
   Prohibition and Excise – I (OP) Department,
   Fort St. George, Chennai.

2. The Secretary,
   Tamil Nadu Public Service Commission,
   Chennai – 600 012. ... 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 of the first respondent relating to his order dated 09.07.2004 in office Proceedings No.243 passed against the petitioner and quash the same and direct him to reinstate the petitioner as Typist in the first respondent's office.

For Petitioner : Mr.R.Subramaniyan

For R1 : Mr.R.L.Karthika,
Government Advocate

For R2 : Mr.R.Bharanidharan

ORDER

This writ petition has been filed seeking a writ of certiorarified mandamus, calling for the records relating to the order passed by Respondent No.1 in Proceedings No.243, dated 09.07.2004, imposing the punishment of 'removal from service' on the petitioner, and also sought for a consequential direction to reinstate the petitioner as 'Typist' in the office of Respondent No.1.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. The petitioner was provisionally selected by Respondent No.2 for appoint as a 'Typist' during the year 1985-1986 in the Tamil Nadu Secretariat Service. Thereafter, it was on 31.03.1987, the petitioner was appointed as a 'Typist' under Rule 10(a)(i) of the General Rules in the Tamil Development and Culture Department, and her service was regularized in the said Department with effect from 31.03.1987. Thereafter, she was re-allotted for want of vacancy from the Tamil Development and Culture Department to the Agriculture Department, where she worked from 20.04.1987 to 05.10.1987. She was then re-allotted from the Agriculture Department to the Municipal Administration and Water Supply Department, where she worked from 06.10.1987 to 24.11.1987. It was thereafter, she was again re-allotted to the Prohibition and Excise Department on 25.11.1987, where she worked until 30.12.1987 and it was on 31.12.1987, one Thiru. Padmanabhan, Typist working in the Revenue Department, was re-allotted to the Prohibition and Excise Department in the place of the petitioner.

2.2. According to the petitioner, she was not issued any re-posting orders and was asked to go on leave for want of vacancy. But thereafter, it was only in the month of September 1992, the petitioner approached the Personnel and Administrative Reforms Department requesting for posting orders. But, at that stage, Respondent No.1 decided to initiate disciplinary proceedings against the petitioner. Accordingly, a Charge Memo dated 14.10.1999 was issued, containing a single charge, which reads as under:-

> *“that the said Tmt.Amudha Rani, while working as Typist in Prohibition and Excise Department, was unauthorisedly absent from duty with effect from 01.01.1998 F.N to till date without sending any leave application to the authorities concerned and thus violated rule 23(a)(ii) of the Tamil Nadu Leave Rules, 1933.”*

2.3. In response to the said Charge Memo, the petitioner submitted her response, and thereafter, through proceedings dated 16.02.2001, an Enquiry Officer was appointed to conduct an enquiry into the charge levelled against the petitioner. The Enquiry Officer, after having recorded the statements of the petitioner and her husband, submitted his report dated 27.02.2002, holding the charge as partly proved. A copy of the report of the Enquiry Officer was furnished to the petitioner by the Respondent No.1 on 01.04.2002, and in response to the same, the petitioner submitted her further representation dated 10.04.2002. It was thereafter the Respondent No.1 passed the impugned order dated 09.07.2004, imposing the punishment of ‘removal from service’ on the petitioner.

3. A perusal of the impugned order shows that Respondent No.1/ Disciplinary Authority, having taken note of the fact that the Enquiry Officer

held the charge as partly proved, differed with the views of the Enquiry Officer on the following grounds:

> *" (1) The period of unauthorised absence of the delinquent official for a period of 4 years 9 months which is more than the permissible limit under Rule 23(a)(ii) of Tamil Nadu Leave Rules, 1933 and thus she violated the rule.*
>
> *(2) There is no evidence to show that the delinquent official had attempted to rejoin duty before she made a representation in this regard on 25.09.1992.*
>
> *(3) Even after her representation on 25.09.1992, she has not approached the authorities insisting for orders for rejoining duty. Merely giving a representation expressing her willingness to join duty did not entitle her right to rejoining duty."*

4. In light of the above differing views of the Disciplinary Authority, the Disciplinary Authority chosen to proceed further against the petitioner under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, and imposed the impugned punishment of 'removal from service,' holding that the charge levelled against the petitioner as proved in its entirety. Aggrieved by the said punishment, the petitioner approached this court by filing the present writ petition in the year 2004.

5. Though learned counsel appearing for the petitioner made his submissions in elaborate, this court does not deem it necessary to refer to all such contentions for the simple reason that the impugned order, on the face of it, appears to be the one passed in gross violation of the principles of natural justice as well as the settled legal position.

6. From the perusal of the impugned order and the report of the Enquiry Officer, it is evident that, the Enquiry Officer, except recording the statements of the petitioner and her husband, has not conducted any other enquiry, nor any material placed before him in support of the charge. On relieving the petitioner from service on 31.12.1987, consequent upon re-allotment of Thiru.Padmanabhan to the Prohibition and Excise Department from the Revenue Department, whether any posting orders were issued to the petitioner or any further instructions issued to the petitioner, the question of the petitioner being unauthorizedly absent may not arise. Unless it is established that the petitioner was issued appropriate instructions as to what she should do and to whom she should report after 31.12.1987, it is not understandable, as to how the absence of the petitioner can be treated as

'unauthorized absence' or 'as on leave.' But no such material has been brought on record in support of the charge.

7. The Enquiry Officer concluded that the charge was proved only to the extent of the petitioner being unauthorizedly absent from 01.01.1988 to 24.09.1992 only. If that is only the period of unauthorized absence, whether the punishment of 'removal from service' is proportionate to the alleged misconduct or not, is also a matter of concern.

8. Further, the Disciplinary Authority, after having received the report of the Enquiry Officer, has forwarded the same to the petitioner, requiring her to submit her further representation. Admittedly, the Disciplinary Authority has not expressed any view differing with the findings of the Enquiry Officer at that point in time. However, as seen from the impugned order, it is only after receiving the further representation from the petitioner, the Disciplinary Authority differed with the findings of the Enquiry Officer and recorded the reasons for such deviation in the impugned order for the first time. No opportunity was afforded to the petitioner after the Disciplinary Authority expressed its views differing with the findings of the Enquiry Officer. Thus,

no opportunity was afforded to the petitioner to make a representation on the differing views of the Disciplinary Authority before passing the impugned order.

9. In this regard, it would be relevant to refer to the case of "***Punjab National Bank and others -vs- Kunj Behari Misra"*** reported in **(1998) 7 SCC 84,** wherein the Hon'ble Apex Court held as under:-

> ***"19.*** *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."*

10. The Hon'ble Apex Court in the case of "***S.P.Malhotra -vs- Punjab National Bank and others"*** reported in **(2013) 7 SCC 251,** having taken note of the decision in "***Punjab National Bank and others -vs- Kunj Behari Misra"*** reported in **(1998) 7 SCC 84,** case held as under:-

> ***"16.*** *The view taken by this Court in the aforesaid Kunj Behari Misra case [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] has consistently been approved and followed as is evident from the judgments in Yoginath D. Bagde v. State of Maharashtra [(1999) 7 SCC 739 : 1999 SCC (L&S) 1385 : AIR 1999 SC 3734] , SBI v. K.P. Narayanan Kutty [(2003) 2 SCC 449 : 2003 SCC (L&S) 185 : AIR 2003 SC 1100] , J.A. Naiksatam v. High Court of Bombay [(2004) 8 SCC 653 : 2004 SCC (L&S) 1190 : AIR 2005 SC 1218] , P.D. Agrawal v. SBI [(2006) 8 SCC 776 : (2007) 1 SCC (L&S) 43 : AIR 2006 SC 2064] and Ranjit Singh v. Union of India [(2006) 4 SCC 153 : 2006 SCC (L&S) 631 : AIR 2006 SC 3685] .*
>
> ***17.*** *In Canara Bank v. Debasis Das [(2003) 4 SCC 557 : 2003 SCC (L&S) 507 : AIR 2003 SC 2041] this Court explained the ratio of the judgment in Kunj Behari Misra [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] , observing that it was a case where the disciplinary authority differed from the view of the inquiry officer.*

"26. … In that context it was held that denial of opportunity of hearing was per se violative of the principles of natural justice." (Debasis Das case [(2003) 4 SCC 557 : 2003 SCC (L&S) 507 : AIR 2003 SC 2041] , SCC p. 578, para 26)".

11. The Hon'ble Apex Court, under similar circumstances, in the case of "***Punjab National Bank and others -vs- Kunj Behari Misra***" reported in **(1998) 7 SCC 84,** held as under:-

"21. *Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs."*

12. In light of the above settled legal position, the impugned order cannot be sustained under law on the simple ground of not affording an opportunity to the petitioner to express her views and to make further representation on the deviating view expressed by the Disciplinary Authority. Accordingly, the impugned order bearing Office Proceedings No.243, dated 09.07.2004 is quashed, and the matter is remanded back to Respondent No.1 for conducting a denovo enquiry strictly in accordance with the law. Admittedly, the petitioner has not worked since 01.01.1988 till the date of passing of the impugned order. Therefore, the entitlement or dis-entitlement of the petitioner for back wages, etc., would be subject to the further orders to be passed by Respondent No.1 pursuant to this order.

13. Accordingly, the writ petition is allowed to the extent indicated above. No costs. Connected miscellaneous petitions, if any, shall stand closed.

29.11.2024

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

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   Represented by the Secretary to Government
   Prohibition and Excise – I (OP) Department,
   Fort St. George, Chennai.

2. The Secretary, Tamil Nadu Public Service Commission,
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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
W.P.No.24874 of 2004

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