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W.P. No. 21013 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

**CORAM
THE HONOURABLE MR. JUSTICE C. KUMARAPPAN**

W.P. No. 21013 of 2013

N. Janardhanan

... Petitioner

Vs.

**1.The Chairman and Managing Director,
Tamil Nadu Industrial Investment Corporation Limited,
Nandanam, Chennai – 600 035.**

**2.The Board of Directors,
Tamil Nadu Industrial Investment Corporation Limited,
Nandanam, Chennai – 600 035.**

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders passed by the first respondent in his proceedings No. DD/13565/02 dated 17.04.2012 dismissing him from service and the orders of the second respondent in their proceedings, communicated to him by the first respondent confirming his earlier order vide DD/13569/D2 dated 14.03.2013 and quash the same with a direction, directing the respondents to reinstate the petitioner with all attendant benefits.

For Petitioner : Mr. R. Chittibabu

For Respondents : Mr. K. Magesh



ORDER

The instant Writ Petition has been filed by the petitioner challenging the termination order passed by the respondents on 14.03.20213.

2. The short facts which are necessary for the disposal of the instant writ petition is that, the petitioner was appointed as a Junior Officer in the respondent Corporation in the year 1983 and he was promoted to the post of Assistant Manager and was posted to act as a Branch Manager in Tuticorin Branch, till 1996. While so, the petitioner was issued a charge memorandum on 18.12.2001 for creating a bogus letter and for other dereliction of duty, such as not obtaining the proper approval to refund the EMD amount of Rs.1,90,000/-, and illegally handing over the EMD cheque to a third party. Further, he also charged for hatching conspiracy to defraud the Corporation.

2.1. It appears that the respondent-Corporation has initiated a enquiry proceeding. While the domestic enquiry proceeding was pending, the petitioner has filed writ petition in W.P. No. 16649 of 2005 challenging the domestic enquiry proceedings, by seeking an order of mandamus, directing the respondents to permit him to enquire two witnesses by name Mr. Ravindran and Mr. Chelladurai. It appears that the writ petition was subsequently withdrawn with a direction, to the



petitioner to submit the explanation and to conclude the enquiry proceedings within a reasonable time.

2.2. In pursuance of the order of this Court, the respondents proceeded with the enquiry proceeding and the enquiry officer has submitted an enquiry report on 29.01.2004 holding that, except Charge No. 3, the other four charges were proved. However, the disciplinary authority has deviated from the enquiry officer's report and has called for further representation from the enquiry officer in respect of the deviated finding in respect of Charge No.3. Ultimately, on receipt of the explanation from the petitioner herein, the disciplinary authority held that all the five charges have been proved and has imposed the punishment of termination on 17.04.2012. It appears that the petitioner has filed an appeal before the Board of Directors on 15.05.2012 and the Board of Directors also has dismissed the appeal on 30.01.2013 confirming the order of termination. Thus, the petitioner has challenged such termination through the instant writ petition.

3. It is the submission of the learned counsel for the petitioner that the respondent has not given adequate opportunity to examine the witnesses so as to disprove his case. It is also the contention of the learned counsel for the petitioner that due opportunity was not provided to the petitioner and that the enquiry



proceeding was conducted in a farce manner. It is also the contention of the petitioner that the enquiry report is not substantiated with adequate evidences. Therefore, it is the contention of the petitioner that the punishment imposed against the petitioner is liable to be interfered with.

4. However, the learned counsel appearing on behalf of the respondents would vehemently contend that the respondent has conducted an enquiry in accordance with rules and procedure, and that the petitioner has been provided with sufficient opportunity, and that the petitioner has participated in the enquiry. It is also the contention of the learned counsel for the petitioner that the contentions raised by the petitioner that he was not provided with an opportunity to examine the witnesses Mr. Ravindran and Mr. Chelladurai, cannot be agitated once again through the instant writ petition. Therefore, the learned counsel for the respondents would vehemently contend that while exercising the power of judicial review, this Court cannot go into the veracity of the evidence and the punishment imposed by the disciplinary authority.

5. I have given my anxious consideration to either side submission.



6. From the submissions made by the learned counsel for the petitioner, though he raised an objection in respect of non-examination of certain material witnesses, in the first round of litigation by filing the W.P. No.16649 of 2005, he raised an objection in respect of non-examination of Mr. Ravindran and Mr. Chelladurai. However, later on, he himself withdrawn the said writ petition and has participated in the domestic enquiry proceeding without any demur.

7. In the said writ petition, this Court had given liberty to the petitioner and directed the petitioner to submit his explanation and also has given direction to the disciplinary authority to dispose of the explanation and conclude the enquiry, within a period of four weeks. It appears that subsequent to the direction of this Court, he participated in the enquiry and during the enquiry proceeding, when the enquiry officer has specifically asked the petitioner in respect of the examination of Mr. Ravindran, the petitioner himself has stated that Mr. Ravindran is not willing to participate in that enquiry and ultimately the enquiry proceeding has ended against him. Therefore, having participated in the enquiry, and having submitted before the enquiry officer about the unwillingness of Mr. Ravindran to participate in the enquiry proceeding, it is too late in the day to once again agitate the very same ground in the second round of writ petition, while challenging the order of punishment.

8. It is also relevant to mention here that the petitioner has challenged the



termination order before the appellate authority, and the appellate authority has also confirmed the order of termination.

9. It is pertinent to mention here that, while exercising the power of judicial review, unless there is a perversity in the order of the disciplinary authority, writ Court cannot interfere with the findings and punishment imposed by the disciplinary authority. Here the charge against the petitioner is serious in nature and that through the enquiry report, the charges have been proved and further, due opportunity has been provided to the petitioner. Considering the gravity of the charges, there is no dis-proportionality in imposing the punishment of termination of service.

10. In order to understand the power of judicial review, this Court deems it appropriate to refer the following judgments: -

- (i) ***B.C.Chaturvedi Vs. Union of India*** reported in **(1995) 6 SCC 749**,
- (ii) ***Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava*** reported in **(2021) 2 SCC 612**;
- (iii) ***The Indian Oil Corporation & Ors., Vs. Ajit Kumar Singh & Anr.***, reported in **2023 LiveLaw (SC) 478**.

Through the above judgments, the following principles are emerging:-

- (i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment



and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like an appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority are perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

11. In view of the above principles, this Court could not find any perversity in the order of the termination, passed by the disciplinary authority. Thus, this Court could not find any merits in the writ petition.

12. Learned counsel for the petitioner would also submit that in spite of specific request, no copies of the office papers were provided to him. But such contentions cannot be urged before the writ Court at the first instance.



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13. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

08.08.2024

Index :Yes/No

Neutral Citation :Yes/No

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