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W.P.No.25771 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM:

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.25771 of 2012

and

W.M.P.No. 1 of 2012

J.Chitti Babu

...Petitioner

Vs

1. The Principal Secretary to Government
Social Welfare and Nutritious Meals Programme Department
Fort St.George, Chennai – 600 009.

2. The Commissioner of Social Defence,
300, Purasaiwalkam High Road, Chennai – 10.

...Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records connected with the Government order issued in GO.(Pa).No.80 Social Welfare and Nutritious Meals Programme Department dated 20.07.2012 passed by the 1st Respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.



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For Petitioner : Mr. S.Lamvaludhi

For Respondents : Mr.M.Murali
Government Advocate

ORDER

This writ petition is filed seeking for issuance of Certiorarified Mandamus to quash the Government order issued in GO.(Pa).No.80, Social Welfare and Nutritious Meals Programme Department, dated 20.07.2012, passed by the first Respondent and to direct the respondents to reinstate the petitioner into service with all attendant benefits.

2. The case of the petitioner is as follows:-

2.1 The petitioner joined in service as Gardener in the Social Defence Department and he hails from downtrodden community and he discharged his duties at most to the satisfaction of his higher officials. While he was working as Gardener, Government Children Home for Boys, Chengalpattu, he was placed under suspension by the proceedings of the Superintendent,



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Government Children Home For Boys, Chengalpattu issued in the Proceedings
No.471/A1/2003 dated 05.03.2003.

2.2 Thereafter, Superintendent of the Children Home issued a charge memo under Rule 17(b) of CCA (D & A) Rules on 18.06.2003. There were totally six charges leveled against the petitioner and the charge memo itself was signed by the Superintendent of Children Home for Boys, Chengalpattu on 19.06.2003 whereas the Superintendent appointed the enquiry officer by his proceedings dated 28.03.2003 and in that proceedings it was mentioned the charges are issued under Rule 17(a) of CCA (D & A) Rules

2.3. The enquiry officer given its finding that charges 1, 2, 6 are proved and 3, 4, and 5 are not proved and the charges 1 to 5 are that on 02.02.2003, the petitioner has taken up boy namely Jeeva admission No. 436 to pour water in the garden. The 3th charge was that the petitioner has compelled the said inmate Jeeva, misbehaved with him and he tried to do unnatural offence on him. The 6th charge was that the record and the daily grown grease list were



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not maintained.

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3. The learned counsel for the petitioner would submit that the official witnesses were appeared before the enquiry officer on 14.10.2004 given his findings that 1st charge on 02.02.2003 to do garden work. The petitioner has taken the said Jeeva without permission of the Assistant Superintendent. The enquiry officer after the thorough enquiry given his opinion that the boy himself stated that "I have gone with the petitioner" hence it is proved that the petitioner has not taken the boy Jeeva to pore water. The 2nd charge on 02.02.2003 that the petitioner has taken inmate Jeeva independently and have not invited other boys to do the same work. In regard to the 1st charge and 2nd charges, the petitioner has given his concrete reply with eye witness but the enquiry officer has given his findings that the Superintendent Thiru.P.Mani and the Assistant Superintendent Thiru.Gopal stated that in the 1st garden the said Jeeva was working. But the enquiry officer in his findings very categorically stated that it is true that the said Jeeva compelled by the petitioner to do garden work but the petitioner has not misbehaved with him but he has stated the



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charges are proved, so far to work in the garden.

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4. The learned counsel for the petitioner would further submit that the the 3rd charge is concerned it is very important to decide and to prove the entire charges and which was culminated as punishment of compulsory retirement. The enquiry officer has given his findings after recording the statement of the said Jeeva and other witnesses and given his findings that the 3rd charge is not proved. The 4th charge is that the petitioner used to do the same thing with other inmates are also, but the enquiry officer has given his findings that there is no material to prove the same, hence the charge is not proved. So far the 5th charge is concerned, the petitioner has not done duty as a Gardner. The enquiry officer having perused the records and given his findings that this charge also not proved. It is further submitted by the learned counsel for the petitioner is that all the charges are related to one issue that the petitioner has compelled the inmate of the Children Home to do garden work and he has misbehaved with him. That charge is concerned the enquiry officer has given his clear findings that the charge is not proved but he has given his findings



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that the petitioner has extracted work from the said inmate Jeeva and the petitioner has not maintained the records properly.

5. The findings of the enquiry officer has not furnished to the petitioner to give his effective reply but the head of the Department namely the second respondent/the Commissioner of Social Defence has issued a show cause notice on 05.03.2010 by his proceedings issued in No.4052/A3/2003. The proceedings states that the charge memo issued to the petitioner under Rule 17(a) of CCA (D & A) Rules have been enquired by the enquiry officer and he has given findings that the charges 3, 4, & 5 are not proved but he has decided that 3, 4 & 5 were also proved and directed the petitioner to give explanation for the proved charges. On receipt of such notice, the petitioner has given reply and denied all the charges.

6. The learned counsel would further submit that show cause notice dated 05.03.2010 issued by the Commissioner is perverted in the reference column three proceedings were mentioned the first is charge memo dated



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19.03.2003 regarding the charge memo issued to the petitioner, second is dated 28.03.2008 no such proceedings were issued on that date and the same proceedings issued No. 471/E1/2003 (i.e) for appointment of the enquiry officer. The third is dated 05.05.2003 is the report of the enquiry officer. The first two proceedings are related to the charge memo and appointment of enquiry officer and third is the report of the enquiry officer dated 05.05.2003 that has been not served to the petitioner. The report of the enquiry officer has been straight away sent to the Commissioner of Social Defence, he has not accepted the findings of the enquiry officer and he has differs the findings of the enquiry officer and issued show cause notice that even the charges 3, 4 and 5 are also proved. In regard to the show cause notice dated 05.03.2010, the petitioner has given his explanation, that was not accepted by the second respondent and he has passed an order of compulsory retirement and against that order the petitioner has preferred an appeal to the first respondent and appeal to the Government dated 24.05.2010 has not been disposed of for a long time. The petitioner approach this Court by filing W.P.No.26037/2011, dated 11.11.2011 directed the first respondent to pass orders within 12 weeks.



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Pursuant to the orders of this Court, the first respondent passed orders in G.O.Ms.No.80 Social Welfare and Nutritious Meal Programme Department, dated 20.07.2012 confirmed the orders of the second respondent after the opinion of the Tamil Nadu Public Service Commission. Aggrieved by the order passed by the first respondent, the petitioner has come forward with the present writ petition.

7. The learned counsel for the petitioner would further submit that the show cause notice states that the charges issued under Rule 17(a) of CCA (DA) Rules but the charges are issued under Rule 17(b) of CCA (DA) Rules only and under Rules 17(b) a charge memo has issued, the delinquent must be given an opportunity to give reply to the charges and the enquiry officer must be appointed and after the report of the enquiry officer the delinquent must be given an opportunity to give his reply to the findings of the charges. In the case on hand, for the proved minute drawn by the enquiry officer the appointing authority namely the second respondent not exercised such option straightaway the second respondent called the enquiry officer to furnish his



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findings to him and without offering the delinquent explanation, straightaway he himself issued a show cause notice to the petitioner that he differs with the views of the enquiry officer and offered explanation of the petitioner which is quite contrary to Rule 36 (A) of CCA (D&A) Rules.

8. The learned counsel for the petitioner would further submit that the entire charges except the 6th charge relates to only one issue i.e. the inmate of the Chengalpattu Children Home for Boys namely Jeeva admission No.436 was taken by the petitioner on 02.02.2003 to do garden work and pour waters and he misbehaved with him. The enquiry officer enquired the victim boy namely Jeeva and P.Mani, Superintendent and Thiru. Gopal, Assistant Superintendent of the Children Home for boys as said that the petitioner utilized the services of the boys namely Jeeva to do Garden work but the petitioner has not misbehaved with him. The second respondent in his compulsory retirement order has stated that the probation officers report is sufficient to pass orders even the charges 3, 4 and 5 also proved which is contrary to the findings of the enquiry officer.

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9. The learned counsel for the petitioner would further submits that if there is any lacuna or omission or defalcation on the report of the enquiry officer, it is right on the part of the second respondent to conduct fresh enquiry and enquire and examine the said Jeeva and other boys of that home and even Superintendent and Assistant Superintendent namely P.Mani and Gopal. The second respondent even without any material objects and evidences arrived to a conclusion that the entire charges are proved and ordered compulsory retirement.

10. The learned counsel for the petitioner further submits that an identical issue which arose before this Court and the same is reported in **2007 WLR (7)** held in ***B.Padmaiah Vs Union of India*** held as follows:

“**Held:** Though normally the Court would not interfere with the finding of fact recorded in the domestic enquiry, but, if the finding of guilty is perverse, it would be amenable to judicial scrutiny.

If a decision is arrived at on the basis of no evidence or

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evidence on which no reliable and reasonable person would act, such decision would be perverse-Respondents have taken different yardsticks and their decision varies from person to person even in respect of corruption charge.

Failure to examine the complainant whose complaint is the basis for the disciplinary action against the petitioner and the failure to provide an opportunity to the petitioner to test the veracity of the complaint made against him has resulted in the deprivation of right of the petitioner amounting to gross violation of principles of natural justice-Entire disciplinary proceedings are hence vitiated”

11. The counter affidavit has filed on behalf of the first respondent on 09.09.2015 and the relevant paragraphs are extracted hereunder for better appreciation and understanding:-

“4. With reference to the averments made in paragraphs 4 and 5 of the affidavit. I submit that as per the Superintendent of Government Children Home, Chengalpattu Proceedings No.471/A1/2003, Dated 28-03-2003, one Thiru.N.K.Gopinath, Pshychologist was appointed as Inquiry Officer under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and



Appeal) Rules to enquire into the charges. The enquiry report was submitted by him on 05.05.2003, which was not accepted by the Deputy Director(Admin) of the Department of Social Defence and then advised the Superintendent Government Children Home, Chengalpattu to frame the charges clearly against Thiru. J. Chittibabu on the basis of relevant records and witnesses in the prescribed format vide Deputy Director (Admin) Letter No.4052/A3/2003, Dated: 11.06.2003. In continuation of that Tmt.A.Clory Gunaseeli, Superintendent of Government Observation Home, Cuddalore was appointed as Inquiry Officer vide Director of Social Defence Proceedings No 4052/A3/2003, Dated 02.09.2003 and directed to conduct the enquiry following the procedures laid down in rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Since the Director ordered to issue charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As she felt it delicate to enquire the case in detail and also because this is a very sensitive matter for a female to enquire, Tmt.A.Glory Gunaseeli requested the Director to appoint any male person as Inquiry Officer. Hence, by the same proceedings dated 23.12.2003, Thiru.N.Rathinam, Superintendent, Government Children



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Home, Villupuram was appointed as Inquiry Officer.

7. With reference to the averments made in paragraph 8 of the affidavit, I submit that as per routine procedure, the inmate is taken to do any work, only after getting permission from the Assistant Superintendent and also House Master. But the petitioner had taken the inmate Jeeva without getting any permission from Assistant Superintendent and House Master. Even though the inmates are interested in doing the work, any staff cannot take the inmate for doing work without getting permission(i.e., get sign from both the Officers in the small slip noted Name and Admission No. of the inmate) from Assistant Superintendent and House Master. The Inquiry Officer had stated in his report that the 1st charge was proved on the basis of the records and evidences. And also the 2nd charge was that the petitioner had taken the inmate Jeeva independently and the other boys were not called for doing the same work which was also proved as per the enquiry report.”

12. The learned Government Advocate appearing for the respondents further submitted that the petitioner has filed another W.P.No.16490 of 2021



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before the Madurai Bench of this Court suppressing the pendency of this writ petition (i.e) W.P.No. 25771 of 2012. The W.P.No.16490 of 2021 is dismissed on the ground of delay and laches since the petitioner has come forward after lapse of nine years.

13. Heard both sides and perused the materials available on record.

14. The Petitioner was issued with the charge memo under Section 17(b) of CCA (D & A) Rules on 18.06.2003 containing six charges against the petitioner. The enquiry officer was appointed and he gave an enquiry report dated 05.05.2003 holding that charges 1, 2 and 6 are proved and 3, 4 and 5 are not proved and the charges 1 to 5 are that on 02.02.2003 that the petitioner has taken a boy namely Jeeva admission No. 436 to pour water in the garden and the 3rd charge is that the petitioner has compelled the said inmate Jeeva and misbehaved with him and tried to do unnatural offence on him. Though the enquiry officer has submitted his report that the main charge No. 3 is not proved, the second respondent differed with the findings of the enquiry officer



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and imposed a punishment of compulsory retirement based on the opinion furnished by the Tamil Nadu Public Service Commission. The second respondent while differing with the findings of the enquiry officer did not give proper reasoning and the report of the enquiry officer was also not furnished to the petitioner/delinquent so as to enable him to give explanation and the denial of the same amounts to violation of principles of natural justice.

15. In the show case notice dated 05.03.2010, the second respondent/Commissioner of Social Defence has stated that the charge memo issued to the petitioner under Rule 17(a) of CCA (DA) rules have been enquired by the enquiry officer and he has given his findings that the charges 3, 4 & 5 are not proved but he has decided that 3, 4 & 5 are also proved without any documentary evidence to that effect. In the show cause notice dated 05.03.2010, the proceedings which were mentioned in reference No. 3 is the report of the enquiry officer dated 05.05.2003 but the same was not served to the petitioner. The report of the enquiry was sent directly to the Commissioner of Social Defence. The appeal against the award of punishment of compulsory



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retirement on the petitioner was also rejected by the first respondent in G.O.(Pa).No. 80 Social Welfare and Nutritious Meals Programme Department, dated 20.07.2012.

16. The Superintendent of Children Home for boys, Chengalpattu and the Assistant Superintendent have said in the enquiry that the petitioner has utilized the service of the boys namely Jeeva to do Garden work but the petitioner has not misbehaved with him and the statement of the said boy namely Jeeva was also recorded by the enquiry officer. Based on which the enquiry officer came to the conclusion that the charges No. 3 is not proved against the petitioner. Despite this clear and categorical finding by the enquiry officer, the second respondent/Commissioner of Social Defence has differed from the above said findings and issued show cause notice dated 05.03.2010 on the petitioner under Rule 17(a) of CCA (DA) rules asking the petitioner to give additional explanation and the second respondent has not clearly stated why he wants to differ from the views of the enquiry officer. There is no reference available in the show cause notice dated 05.03.2010 that itself shows that the



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petitioner was not given any opportunity to give his explanation so far as the findings of the enquiry officer is concerned. Hence it is in violation of Rule 17(b) of CCA (DA) Rules.

17. It is pertinent to note that the show case notice states that the charges against the petitioner are issued under Rule 17(a) of CCA (DA) rules, but the charges are issued under Rules 17(b) of CCA (DA) rules only. It is a well settled law that once the enquiry is completed, the copy of the enquiry report must be furnished to the delinquent in order to give opportunity to give his explanation but in the case on hand it was not furnished and opportunity has been denied to the petitioner which is in clear violation of the service law and rules.

18. The main charge is charge No.3 and the other charges Nos. 1, 2, 4 & 5 are related to charge No. 3. Once the charge No. 3 is not proved as per the findings of the enquiry officer then the charge Nos. 4 and 5 automatically goes off. It is pertinent to note that the second respondent without any material

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objects and evidences arrived to the conclusion that the entire charges are proved and ordered compulsory retirement of the petitioner from the service. It is also pertinent to note that the post of Gardener is coming under basic service. The appointing authorities are the respective Superintendents of the Children Home and in this case the appointing authority/second respondent himself issued an order of punishment. Hence, the petitioner lost a chance of appeal. It is pertinent to note that the only evidence to establish allegations against the petitioner and to make him liable for the charges is only the statement and evidence of the boy namely Jeeva. He himself have deposed before the enquiry officer in the presence of Superintendent and Assistant Superintendent of the Children Home that the petitioner is not misbehaved with him and the statement was also recorded by the enquiry officer and the same was also communicated to the second respondent but the same was not reflected in the order of compulsory retirement passed by the second respondent.

19. The punishment of compulsory retirement imposed on the petitioner/delinquent is disproportionate to the delinquency committed by the



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petitioner and which is commensurate to the gravity of the charges leveled against the petitioner and on this ground also the order of compulsory retirement passed by the second respondent is liable to be quashed.

20. In view of the above factual matrix of this case, the Government order passed by the first respondent in G.O.(Pa).No. 80, Social Welfare and Nutritious Meals Programme Department, dated 20.07.2012 is hereby quashed and the respondents are directed to reinstate the petitioner into service with all attendants benefits within a period of eight weeks from the date of receipt of a copy of this order.

21. With the above direction, this Writ petition is allowed and consequently connected miscellaneous petition is closed. No cost.

21.03.2024

Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To

1. The Principal Secretary to Government
Social Welfare and Nutritious Meals Programme Department
Fort St.George, Chennai – 600 009.
2. The Commissioner of Social Defence,
300, Purasaiwalkam High Road, Chennai – 10.

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J.SATHYA NARAYANA PRASAD, J.

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