



W.P.No.31282 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	8/11/2023
Delivered on	22/3/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.31282 of 2016

Anuradha

...Petitioner

vs.

- 1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.
- 2.The Chairman,
Appointment Committee,
Corporation of Chennai,
Rippon Buildings,
Chennai-600 003.
3. The Secretary,
Government of Tamil Nadu,
Municipal Administration & Water Supply,
Fort St. George,
Chennai-09.

..Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records from the file of the first respondent in Proceeding No.C.A.D.R.D.C.No.A1/7351/07 dated 17/3/2010 and the first respondent in Proceeding No.C.A.D.R.D.C.No.A1/7351/07 dated 6/7/2010 and G.O.Ms.No.366 dated 5/7/2013 passed by the third respondent and quash the same.

For Petitioner : Mr.R.Singaravelan
Senior Advocate
for Mr.S.Selvaraj

For Respondents : Mr.S.Gopinathan
Standing Counsel
for R1 and R2

M/s.M.Jayanthi,
Additional Government Pleader
for R3

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ORDER

This Writ Petition is filed to quash the proceedings No.C.A.D.R.D.C.No.A1/7351/07 dated 06.07.2010 and G.O.Ms.No.366 dated 05.07.2013.



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2. The petitioner was appointed as Female Ward Attender on 8-12-1993 on compassionate grounds in Corporation of Chennai. While she was working as Assistant at Central Accounts Department, she applied for earned leave from 04-04-2007 to 23-06-2007 for travel abroad for joining her husband in Qatar and sought extension of leave from 24/6/2007 to 21-09-2007 for further period of 90 days. Thus, the petitioner has sought for in all 171 days leave which was granted by the 1st respondent.

3. The petitioner has again requested for extension of leave up to 20.01.2009 mentioning various reasons. The respondent has issued charge memo to the petitioner for her absence without grant of leave and appointed an Enquiry Officer to enquire the charges against the petitioner. The petitioner has attended the enquiry and on conclusion of enquiry, she was given punishment of compulsory retirement by an order dated 17.3.2010. As against the said order, petitioner has filed a statutory appeal before the 2nd respondent and the same was rejected by the 1st respondent. As against the said rejection of appeal, the petitioner has



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filed a revision before the 3rd respondent and the same was also rejected by the 3rd respondent confirming the punishment given by the 1st respondent. Hence, this Writ petition.

4. The learned Senior counsel for the petitioner submitted that the impugned order dated 17.03.2010 is passed without assigning any valid reasons without considering the explanation of the petitioner, the petitioner was denied the opportunity to defend the enquiry. He has further submitted that after submission of Enquiry Officer's report no explanation was called for by the 1st respondent from the petitioner. In the order dated 17-3-2010, though it is mentioned that a letter dated 19-10-2009 was sent to the petitioner through the Thapal section of the 1st respondent but no letter was received by the petitioner.

5. It is further submitted that the 1st respondent had sanctioned leave to the petitioner for travel abroad to join her husband and though she was to join duty on 22/9/2007, she had sought for extension of leave, as the petitioner was pregnant was advised not to travel. The 1st respondent has not chosen to pass any orders on the petitioner's request for extension of leave and hence the charges are not maintainable against the



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petitioner.

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6. The learned counsel for the respondent Nos.1 and 2 has submitted that the petitioner did not rejoin duty after the expiry of the leave already sanctioned and also her extension of leave was rejected and the petitioner was directed to rejoin duty vide office memorandum dated 20.11.2007. It was submitted that the said memorandum was sent to her by registered post to the address given by her at the time of leaving the Country, but the letter was returned to office of respondent Nos.1 and 2, on 28.11.2007 with an endorsement as “UNKNOWN”.

7. The petitioner had submitted her explanation for charges framed against her in the letter dated 22.02.2009 and on receipt of the petitioner explanation, she was directed to appear before the Enquiry Officer dated on 13.04.2009 at 11.00AM for enquiry for the charges framed against her vide memorandum A.C.C.No.1/7351/07, dated 01.04.2009, but the petitioner failed to appear before the Enquiry Officer for enquiry on 13.04.2009 and that further chance was given to her by directing to appear for enquiry on 08.05.2009 at 11:00 a.m. vide this office memorandum dated 29.04.2009. But the petitioner has again failed to attend the enquiry in the stipulated time on 08.05.2009, however, she



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had submitted a letter on 09.06.2009 by post in which she had stated that the memorandum dated 01.04.2009 was not received by her in time and that she was unable to attend the enquiry and hence she had been directed to appear for enquiry on 30.06.2009 at 11:00 a.m. vide Memorandum A.C.C.No.A1/7351/07, dated 15.06.2009 and then she appeared before the enquiry officer on 01.07.2009 at 11:00 a.m., and participated in the enquiry.

8. The learned counsel for the respondent contended that the enquiry was conducted on 01.07.2009 and the enquiry officer had furnished the enquiry report and the same was dispatched to the petitioner on 15.10.2009 and 19.10.2009 for offering further explanation, if any, in addition to the explanations earlier furnished. But the petitioner had not submitted any explanation for the above said Memorandum. Hence, the petitioner was directed to "retire from service compulsorily".

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

10. The petitioner who was working as Assistant in the Central Accounts Department of Corporation of Chennai has applied for earned



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leave from 4/4/2007 to 23/6/2007 to join her husband who is working at

Qatar. Subsequently, sought for extension of leave from 24/6/2007 to 21/9/2007, thereby, on the whole, she has applied for 171 days of leave.

The said leave was sanctioned by the first respondent. Subsequently, the petitioner has not reported back. Accordingly, three charges have been framed, stating that the petitioner has not reported subsequent to the expiry of leave period of 171 days and on account of her absence from duty, lot of disturbance was caused to the administration and that the address she has given in Qatar is incorrect. All the charges have been proved and finally, the petitioner has imposed a punishment of compulsory retirement.

11. According to the petitioner, she has requested for extension of leave for a period of six months through a letter dated 11/9/2007, stating that she was pregnant and her husband is suffering from Jaundice. By way of another letter, dated 13/3/2008, she has requested for grant of maternity leave for a period of three months from 23/3/2008 to 22/6/2008. Subsequently, on 17/7/2008, the petitioner has intimated the first respondent that she has given birth to a baby boy on 21/4/2008 and enclosed medical certificate and requested to grant



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maternity leave from 21/4/2008 to 20/7/2008..Later, on the fourth occasion, she has submitted one more letter, extending the leave for a period of six months i.e., from 21/7/2008 to 20/1/2009.

12. According to the respondents, the leave application sent by the petitioner dated 11/9/2007 for extension of leave was rejected. The petitioner was directed to join duty and it was sent to the address to which the petitioner has given in her leave application. However, it was returned unserved as “unknown”. That means, the leave address given by the petitioner is incorrect. The petitioner who has left the Country to reach her husband with a sanctioned leave of 171 days was expected to report to duty after the leave period. In case, if the leave as sought for by her was not sanctioned, she should have reported back to the duty. The leave sought for by the petitioner was rejected and the intimation sent to her was also not served. The petitioner has not bothered to enquire as to the fate of her applications for extension of leave. If at all the petitioner is not residing in the address in which she has given at the time of relieving and if she has been residing in other address, she could have informed the first respondent about her change



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of address in Qatar. At least, she could have enquired the first respondent as to whether her leave was extended or not. Unless the petitioner gives correct address, the respondent Department will not be in a position to communicate the decision of her leave application. She should have consulted her colleagues of the first respondent office and reached out the office to know whether leave has been granted or not but she has kept quiet and continued to stay in Qatar from 22/9/2007 and failed to join the duty.

13. During the course of enquiry, though the learned Senior Counsel for the petitioner has submitted that principles of natural justice have not been followed, she herself has admitted in the writ petition that she attended the enquiry on 1/7/2009. It is submitted further that witnesses were not examined during the course of enquiry. However, it has to be noted that there is no dispute in this case that the petitioner has failed to attend subsequent to the expiry of the leave period of 171 days and that her request for sanction of leave was rejected. Therefore, when the material placed before the Court is clear, there was no necessity to examine any witnesses. If at all the petitioner wanted to examine herself to explain the reasons for not returning back, she was at liberty to do so.



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However, having appeared in the enquiry, she cannot say that opportunity not given for producing evidence.

14. The only question that arises for consideration is whether her absence from attending the duties is justified. The burden of proving this aspect lies on the petitioner but not on the Department. The petitioner who has attended the enquiry on 1/7/2009 should have produced the evidence to the effect that she was not in a position to travel back to India to attend the work. If at all the petitioner's presence was required in Qatar, she should have travelled back to India and reported in her office and applied for fresh leave explaining the reason and got the leave sanctioned, as per the leave Rules. But she was continuously remained absent without even bothering as to what was happened to her leave application. In view of the above, the petitioner has not made out a case.

15. Be that as it may. The learned Senior Counsel appearing for the petitioner has pointed out that the Commissioner, Corporation of Chennai, by name Thiru.Rajesh Lakhani has issued impugned



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proceedings dated 17/3/2010, directing her to retire compulsorily. In the said proceeding, it is specifically mentioned that the petitioner has got a right of Appeal to the Appointing Committee within sixty days from the date of the order. Accordingly, the petitioner has preferred an appeal before the Appointing Committee. The said Appeal was considered and rejected.

16. It is brought to the notice of this Court by learned Senior Counsel appearing for the petitioner that Commissioner, Corporation of Chennai Thiru Rajesh Lakhani, who has passed the impugned orders of retiring the petitioner compulsorily has again sat as an appellate authority and rejected the appeal of the petitioner. The person who has passed the order of retiring the petitioner cannot sit as Appellate Authority and take decision. If it is allowed, he would certainly confirm his own order and cannot take the decision objectively. Person who passed the order sitting as Appellate Authority is against the principles of natural justice and abuse of his position.

17. Learned Standing counsel appearing for the respondents 1 and 2 has submitted that the appeal Committee consists of three persons has



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considered the appeal and passed the orders. He has admitted that one of the members of the Committee is none other than the Commissioner by name Mr.Rajesh Lakhani, who has passed the orders of retiring the petitioner. Therefore, order passed by the Appointing Committee dated 6/7/2010 consisting of Mr.Rajesh Lakhani, confirming the order issued by Mr.Rajesh Lakhani, the disciplinary authority is erroneous and shall not sustain.

18. The learned counsel appearing for the petitioner has cited a decision reported in (2002) 2 Supreme Court Cases – 290 (AMAR NATH CHOWDHURY Vs. BRAITHWAITE AND CO. LTD AND OTHERS), wherein at paragraph Nos.6 to 8, it has been held thus:-

“6. One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as 'Debet esse Judex in Propria Causa', which is based on the principle that justice not only be



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done but should manifestly be seen to be done.

This could be possible only when a judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias.

Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias.

What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In [Financial Commissioner \(Taxation\) Punjab and others vs. Harbhajan Singh - 1996 \(9\) SCC 281](#), it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami,



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the then Chairman-cum-Managing Director of the Company acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility. In that view of the matter, in the present case, fair play demanded that Shri Krishnaswmai, the then Chairman-cum-Managing Director of the



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Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant.

7. Learned counsel appearing for the respondent, however, pressed into service the "Doctrine of Necessity" in support of his contention. He contended that the rule against bias is not available when, under the regulations framed by the Company, the Disciplinary Authority who happened to be Chairman-cum-Managing Director of the Company was required to preside over the meeting of the Board and, therefore, the then Chairman-cum-Managing Director of the Company was not disqualified to preside over and participate in the meeting of the Board which dismissed the appeal of the appellant. We find no merit in the argument. Rule 3 (d) of the Company's Conduct, Discipline and



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Appeal Rules (in short 'CDAR') defines 'Board' in the following terms:

"Board means the proprietors of the Company and includes, in relation to exercise of powers, any committee of the Board/Management or any Officer of the Company to whom the Board delegates any of its powers."

8. In view of the aforesaid definition of the expression 'Board', the Board could have constituted a committee of the Board/Management or any officers of the Company by excluding Chairman-cum-Managing Director of the Company and delegated any of its power, including the appellate power, to the such a committee to eliminate any allegation of bias against such an appellate authority. It is, therefore, not correct to contend that rule against bias is not available in the present case in view of the 'doctrine of necessity'. We are, therefore, of the



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view that reliance of the doctrine of necessity in the present case is totally misplaced.

9. For the reasons stated hereinbefore, we find that the appeal deserves to succeed. Accordingly, the order and judgment under challenge as well as the order passed by the Appellate Authority are set aside and the matter is sent back to the Appellate Authority to decide the appeal by a speaking order, in accordance with law. Before we part with the case, we further direct that the Company shall not take any step to realise any money which has been paid to the appellant on his superannuation till the matter is finally decided by the appropriate Appellate Authority.

10. The appeal is allowed. There shall be no order as to costs.

19. Considering the discussion made in the foregoing paragraphs, this Court has come to the conclusion that impugned orders are not



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sustainable. It is a settled legal position that High Court under Article 226 of the Constitution of India cannot sit like an Appellate Authority and decide the correctness or otherwise of the order passed by the Disciplinary Authority. Similarly, even in respect of punishment also, generally the High Court cannot intervene and modify the punishment. It is for the competent authority to pass appropriate orders. Hence, it is a fit case to remand the case back to the appointing authority by setting aside the appellate Committee orders.

20. Further, this Court is of the opinion that considering the nature of mis conduct alleged and proved that the punishment of compulsory retirement is too harsh. Perhaps Appointing Committee shall consider these aspects while hearing the Appeal of the petitioner.

21. Considering all the above, this writ petition is disposed of, setting aside the orders passed by the Appointing Committee in Proceeding No.C.A.D.R.D.C.No.A1/7351/07 dated 6/7/2010 and G.O.Ms.No.366 dated 5/7/2013 passed by the third respondent and this matter is remanded back to the Appointing Committee, Corporation of Chennai, to consider the appeal of the petitioner afresh, taking into all



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these aspects into consideration, observations made in respect of proportionality of the punishment and pass appropriate orders by following due process of law by giving notice to both sides, as quickly as possible not later than twelve weeks from the date of receipt of a copy of this order. No costs.

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mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration & Water Supply,
Fort St. George,
Chennai-09.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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