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WP.No.20856 of 2023

In the High Court of Judicature at Madras

Dated : 06.9.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.20856 of 2023
& WMP.Nos.20230 & 20231 of 2023 & 2289 of 2024

P.Rudrakumar

...Petitioner

Vs

1.The Secretary to Government,
Micro, Small & Medium
Enterprises [E1(1)] Department,
Secretariat, Chennai-9.

2.The Industries Commissioner &
Director of Industries & Commerce,
SIDCO Office Building, Guindy,
Chennai-32.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the impugned order passed by him in Letter No.11154/EII(2)/2021-9 dated 16.6.2023, quash the same and direct the respondents to pass orders on the disciplinary proceedings based on the Enquiry Officer's report dated 11.1.2023 within a reasonable time frame as deemed fit by this Court.

For Petitioner :

Mr.K.Venkatramani, SC for
Mr.M.Muthappan

For Respondents :

Mr.P.Balathandayutham, SGP



WP.No.20856 of 2023

ORDER

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This writ petition has been filed challenging the proceedings of the first respondent dated 16.6.2023 and for a consequential direction to the respondents to pass orders on the disciplinary proceedings based on the Enquiry Officer's report dated 11.1.2023.

2. The case of the petitioner is as follows :

(i) The petitioner was working as a Deputy Director from November 2018 onwards. A charge memo dated 16.6.2022 came to be issued by the second respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Totally, three charges were framed against the petitioner. The first charge was that he used unprofessional and inappropriate language with sexual innuendos with his subordinate and thus, had violated Rule 20B(1) of the Tamil Nadu Government Servants Conduct Rules. The second charge was that he misused his official position and abused his authority. The third charge was that he failed to maintain absolute integrity in the discharge of his duty.

(ii) The petitioner gave his explanation on 08.7.2022 by denying all the charges. The Enquiry Officer, who was appointed, submitted a report to the effect that charge Nos.1 and 3 were not proved. However, the first respondent, who is the Disciplinary Authority, on



WP.No.20856 of 2023

receipt of the inquiry report, disagreed with the views of the Enquiry Officer and issued the proceedings dated 16.6.2023, which has been put to challenge in this writ petition.

3. The respondents filed a counter affidavit wherein they took a stand that the Disciplinary Authority has the right to disagree with the report of the Enquiry Officer and call for explanation from the petitioner. Accordingly, the first respondent assigned reasons as to why he disagreed with the findings of the Enquiry Officer and issued the notice to the petitioner calling for further explanation. The respondents ultimately justified the issuance of the impugned proceedings dated 16.6.2023 and sought for dismissal of this writ petition.

4. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Special Government Pleader appearing for the respondents.

5. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned proceedings of the first respondent dated 16.6.2023.



WP.No.20856 of 2023

6. The short issue that arises for consideration in this writ petition is as to whether the first respondent followed a proper procedure while disagreeing with the views of the Enquiry Officer and as to whether the impugned proceedings dated 16.6.2023 was issued with a predetermined mind, as a result of which, it is vitiated.

7. Before going into the issue that has been raised in this writ petition, it is important to take note of the fact that the very same complaint that was given by the subordinate officer against the petitioner was first subjected to inquiry by an Internal Complaints Committee, which inquired into the charge of sexual harassment at work place. The said Committee, after conducting a detailed inquiry, came to the conclusion that there was no sexual harassment on the part of the petitioner and accordingly, a report was submitted on 04.5.2021.

8. The aggrieved woman officer thereafter made a separate complaint before the National Commission for Women, New Delhi. Pursuant to that, once again, an inquiry was conducted by the Industries Commissioner and Director of Industries & Commerce, who also found that there was no material to substantiate that the petitioner had indulged in sexual harassment.



WP.No.20856 of 2023

9. The charge memo issued against the petitioner also ended up with appointing an Enquiry Officer, who, after considering the entire materials, submitted a report dated 11.1.2023 to the effect that charge Nos.1 and 3 were not proved. In so far as charge No.2 is concerned, the Enquiry Officer held that it is partly proved on the ground that the petitioner submitted a voluntary retirement application and thereafter, had withdrawn the same and thereby indulged in dilatory tactics.

10. In the light of the above facts, the impugned proceedings of the first respondent dated 16.6.2023 will have to be considered. It is now too well settled through a catena of decisions that where a Disciplinary Authority disagrees with the findings of the Enquiry Officer, the Disciplinary Authority will have to give tentative reasons for such disagreement to the delinquent officer and direct him to give a reply. On receipt of the reply, he has to decide as to whether the reply given by the delinquent officer is acceptable or not. If it is not found acceptable, the delinquent officer must be asked to submit his further explanation with reference to the proposed punishment that is going to be imposed on him.



WP.No.20856 of 2023

11. In the case in hand, a careful reading of the show cause notice would show that it has been issued with a predetermined mind. The first respondent observed that the charges framed against the petitioner were proved. This stand taken by the first respondent in the impugned proceedings is not supported by any reason. In any case, the first respondent was expected to consider the report of the Enquiry Officer and give valid reasons as to why he was not able to accept the findings and as to why he wanted to deviate from the views of the Enquiry Officer. Instead, the first respondent straight away rendered the finding as if the charges were proved and thereafter, the show cause notice was issued to the petitioner. The procedure that was adopted by the first respondent while issuing the proceedings dated 16.6.2023 is illegal and it goes against the settled principles of law.

12. In the light of the above discussions, the impugned proceedings of the first respondent dated 16.6.2023 is hereby quashed. Once again, the matter shall be placed before the Disciplinary Authority, who shall apply his mind afresh on the report of the Enquiry Officer dated 11.1.2023. If the Disciplinary Authority is agreeing with the findings of the Enquiry Officer, then, orders shall be passed. If the findings of the Enquiry Officer are not agreeable, the Disciplinary Authority is directed to follow the proper procedure as



WP.No.20856 of 2023

observed by this Court in this order and proceed further in accordance with law.

13. The writ petition is allowed in the above terms. No costs.
Consequently, the connected WMPs are closed.

06.9.2024

To

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SIDCO Office Building, Guindy,
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WP.No.20856 of 2023

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WP.No.20856 of 2023 &
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