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W.P.No.13 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13 of 2024 and
WMP.Nos.6 & 7 of 2024

Dr.R.Damodharan

... Petitioner

Vs.

1.The Government of Tamilnadu,
Rep. By its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai 600 009

2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned orders made in i) Lr.no.41312/D2/2019-8, dated 06.12.2022, ii) G.O.(D) No.1482 dated 29.11.2023, and iii) G.O.(D) No.1485 dated 30.11.2023 passed by the first respondent, quash the same and consequently direct the first respondent to permit the petitioner to retire with all attendant service and retirement benefits.

For Petitioner : Mr.N.Manokaran

For Respondents



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For R1 : Mr.G.Ameedius,
Government Advocate

For R2 : Mr.N.Velmurugan,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 06.12.2022 thereby differing from the enquiry officer's report and held the charges 1 to 3 as 'proved' and the order dated 30.11.2023.

2. The petitioner was placed under suspension in pursuant to the order dated 06.12.2022. The petitioner was appointed as Municipal Health Officer in Dindigul Municipality on 10.11.1993 through Tamilnadu Public Service Commission. Thereafter, he was promoted to the next higher post. Finally he was promoted to the post of Deputy Director of Public Health and Preventive Medicine on 27.03.2001. In fact, he was also given honorarium and cash award for his unblemished service to the public at large. While being so, the petitioner was served with charge memo consisting the following three charges:

CHARGE-I



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While you Dr.R.Dhamodaran (A.O) were working as Deputy Director of Health Service, Udhagamandalam, The Nilgiris District, during your tenure, you (A.O) misguided the Medical Officers of PHCs in The Nilgiris District, to buy the R.O System at an exorbitant rate of Rs.21,000/- each; while the same is available in the range of Rs. 12,000 to Rs.15,000 in the market and thereby you (AO) caused loss to the Government Patient Welfare Society funds. Thus you (A.O) have committed official misconduct by abusing your official position.

CHARGE-II

While you Dr.R.Dhamodaran (A.O) were working as Deputy Director of Health Service, Udhagamandalam, The Nilgiris District during your tenure you (A.O) misguided the Medical Officers of PHCs in The Nilgiris District, to purchase the Oxygen concentrator at an exorbitant rate of Rs.42,655/, where as the original price was only Rs.22,500/- inclusive of taxes, and thereby you (AO) caused loss to the Government Patient Welfare Society funds. Thus you (A.O) have committed official misconduct by abusing your official position.

CHARGE-III

While you Dr.R.Dhamodaran (A.O) were working as Deputy Director of Health Service, Udhagamandalam,



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The Nilgiris District during your tenure, you (A.O) purchased medicines from private Pharmacy on your (A.O) own and then compelled the Medical Officers of PHCs in The Nilgiris District to pay for it. Thus you (A.O) have committed official misconduct by abusing your official position.

Thereby you (A.O) had failed to maintain absolute integrity and devotion to duty in Government Service and acted in a manner unbecoming of a Government Servant and violated Rule 20(1) of Tamil Nadu Government Servants conduct Rules 1973.

2.1 The petitioner submitted explanation and without being satisfied with the same, enquiry was ordered. During the enquiry, the petitioner was served with charge memo dated 14.02.2014. The petitioner participated in the enquiry and the enquiry officer held all the three charges as 'not proved'. In pursuant to the same, it was filed before the disciplinary authority i.e. the first respondent herein. On receipt of the same, without giving opportunity to the petitioner, differed the findings of the enquiry officer and held all the charges 1 to 3 as 'proved'. Thereafter, the petitioner was issued the order impugned dated 06.12.2022, thereby calling upon the petitioner to submit further



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representation for passing final order. In pursuant to the said order, the petitioner was suspended from service at the fag end of his service by order dated 29.11.2013. By order dated 30.11.2023, the petitioner was not permitted to retire on his reaching the age of superannuation on the afternoon of 30.11.2023.

3. Heard, the learned counsel appearing on either side.

4. The learned counsel for the petitioner raised the following grounds: (i) The petitioner was not served with enquiry report, (ii) Before holding the charges as 'proved', the petitioner was not given opportunity to submit his explanation for differing the findings of the enquiry officer by the disciplinary authority and (iii) For the charge memo of the year 2014, enquiry was started only in the year 2018 and submitted enquiry report only on 21.01.2022. The prolonged disciplinary proceedings caused great prejudice to the petitioner. On the verge of retirement, the petitioner was placed under suspension and he was not permitted to retire from his service.



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5. Admittedly, the petitioner was served with charge memo dated 14.02.2014. Though the petitioner submitted his explanation, immediately no enquiry was conducted and only on 18.03.2018, the enquiry was started by appointing enquiry officer. Enquiry was completed and the enquiry officer filed its report only on 21.01.2022. On perusal of the order impugned dated 06.12.2022 along with annexure, revealed that the enquiry officer, after conducting detailed enquiry, held all the charges 1 to 3 as 'not proved'. However, the first respondent was not satisfied with the enquiry report and he himself delivered reasons as mentioned in the annexure and held the charges 1 to 3 as 'proved'. When the first respondent is intended to differ from the findings of the enquiry officer, the petitioner must be given opportunity of hearing so as to why the enquiry officer's report should not be differed and charges 1 to 3 to be held as 'proved'. Whereas the first respondent already decided as against the report submitted by the enquiry officer and held charges 1 to 3 as 'proved'. Thereafter, before passing final order, the petitioner was served with impugned notice dated 06.12.2022 to state reasons for differing the report submitted by the enquiry officer. In the regard, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble



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Supreme Court of India in the case of ***State of Haryana and another Vs.***

Rattan Singh reported in ***1977 (2) SCC 491***, wherein it is held as follows:

*4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the **Indian Evidence Act** may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the **Indian Evidence Act**. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in*



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insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5.1 Therefore, the petitioner must be served with enquiry report before differing the report submitted the enquiry officer. The petitioner



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was not given any opportunity to defend the enquiry report by issuance of show cause notice while differing the enquiry report. Admittedly, the first respondent after finding that the charges 1 to 3 held as 'proved', issued the impugned order dated 06.12.2022 thereby called upon the petitioner to submit representation. Admittedly, the petitioner was not served with any show cause notice along with enquiry report. It is mandatory to serve second show cause notice to the petitioner while differing the enquiry officer's report. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Punjab National Bank and others Vs. Kunj Behari Misra*** reported in ***1998 (7) SCC 84***, wherein it is held as follows:

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 inquiry 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 inquiry officer



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containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry 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.

6. Therefore, the above judgment is squarely applicable to the case on hand and the action of the first respondent is clear violation of principles of natural justice. On this sole ground alone, the impugned orders cannot be sustained as against the petitioner. That apart, on the verge of his retirement, the order of suspension was passed and he was placed under suspension. Further, he was not allowed to retire from his service. The first impugned order in the writ petition was passed on 06.12.2022 thereby held that the charges 1 to 3 as 'proved' and thereafter issued notice to the petitioner to submit his representation to pass final order. Thereafter, after period of nearly one year, the subsequent impugned orders dated 29.11.2023 and 30.11.2023 were passed by the



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first respondent thereby suspended the petitioner from service and also he was not permitted to retire from his service. Though the petitioner submitted his detailed representation for the impugned order dated 06.12.2022, the first respondent failed to pass any final order so far. Without even passing any final order for the charges held as 'proved', now the petitioner has been placed under suspension and he is not allowed to retire from service. Further, the charges are pending from the year 2014 without passing final order even till today.

7. In view of the above, the impugned orders cannot be sustained as against the petitioner and the same are liable to be quashed. Accordingly, the impugned orders dated 06.12.2022, 29.11.2023 and 30.11.2023 are quashed and this writ petition is allowed. The first respondent is directed to permit the petitioner to retire from his service and to disburse all attendant, service and retirement benefits to the petitioner forthwith. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.



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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order

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Note: Issue order copy on 25.04.2024

To

1.Principal Secretary to Government,
The Government of Tamilnadu,
Health and Family Welfare Department,
Secretariat,
Chennai 600 009

2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore 641 001



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G.K.ILANTHIRAIYAN, J.

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