



W.P.No.6909 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2025

CORAM

THE HONOURABLE MRS JUSTICE N. MALA

**WP No. 6909 of 2021
and WMP.No.7464 of 2021**

Dr.R.Muthukumar,

... Petitioner

Vs.

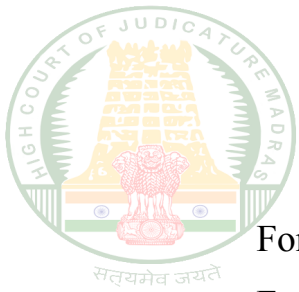
1. The Director of Medical Education,
Kilpauk, Chennai 10.

2.The Associate Professor of Bio – Chemistry/
Enquiry Officer, Thanjavur Medical College, Thanjavur.

3.The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Chennai -9.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent in connection with the impugned order passed by him in GO (D).No.50 Health and Family Welfare (1-2) Department dated 08.01.2015 and confirmed by the same respondent in GO (D) No.1523 Health and Family Welfare (1-2) Department dated 10.10.2019 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.



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For Petitioner(s) : Mr.M.Muthappan

For Respondent(s): Mrs.M.Sneha
Spl.Counsel

* * * * *

ORDER

This Writ Petition is filed to call for the records of the 3rd respondent in connection with the impugned order passed by him in GO (D).No.50 Health and Family Welfare (1-2) Department dated 08.01.2015 and confirmed by the same respondent in GO (D) No.1523 Health and Family Welfare (1-2) Department dated 10.10.2019, to quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.

2.The petitioner after completion of MBBS Degree, joined service as Assistant Surgeon, Primary Health Centre, Mattusalai, Thanjavur. The petitioner after completion of his PG Degree was posted to serve at Primary Health Centre, Vallam, Villupuram District. The petitioner was thereafter posted as Tutor in Surgery in Stanley Medical College & Hospital, Chennai, and later transferred and posted as Assistant Professor of Surgery in Stanley Medical College. Later the petitioner was transferred and posted to serve as Assistant Professor of Surgery in Thanjavur Medical College & Hospital, where he served from September 2005 till 30.10.2007. Meanwhile, the petitioner applied for



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Voluntary Retirement (VRS), from 02.01.2008 and went on leave from 01.11.2007. The petitioner's request for voluntary retirement was rejected on 05.11.2007. On 08.01.2008, the petitioner was relieved from duty from Thanjavur Medical College, with effect from 01.11.2007. According to the petitioner, thereafter he was neither given any posting nor directed to report before any authority. Whiles, the petitioner was issued with a charge memo containing three charges on 24.06.2009. The petitioner did not submit his defence to the charge memo. In any event, an Enquiry Officer was appointed to enquire into the charges framed against the petitioner. The petitioner could not attend the enquiry held on 07.04.2014, due to ill-health. Though the petitioner received the summons for the second hearing on 11.04.2014, as the enquiry was scheduled for the same day, he was not able to attend the enquiry. So also the petitioner was not able to attend the enquiry on 15.04.2014. Meanwhile, the petitioner filed a Writ Petition in W.P.No.14156 of 2014, for a Writ of Mandamus, directing the second respondent, therein to finalise the disciplinary proceedings, within the time fixed by this Court. The said Writ Petition was disposed of by this Court vide order dated 03.06.2014, directing the second respondent to complete the disciplinary proceedings and to pass final orders within a period of six months from the date of receipt of a copy of the same. Thereafter, the Enquiry Officer conducted an ex-parte enquiry and submitted his



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report holding that all the three charges against the petitioner were proved. The

first respondent vide letter dated 05.08.2014, directed the petitioner to furnish his explanation to the Enquiry Officer's report, by annexing a copy of the same to the letter. The petitioner thereafter submitted his explanation to the Enquiry Officer's report on 04.09.2014. In pursuance of the petitioner's explanation, on 08.01.2015, the third respondent passed the impugned order imposing the punishment of dismissal from service. The petitioner thereafter submitted a review petition to the third respondent and the third respondent after a lapse of four years dismissed the review petition on 10.10.2019, thereby confirming the dismissal order passed on 08.01.2015. Aggrieved by the impugned orders dated 08.01.2015 and 10.10.2019, the petitioner has filed the above writ petition for the aforesaid relief.

3.The respondents filed a detailed counter denying all the averments and allegations made in the writ petition. The respondents submitted that the petitioner was dismissed from service after following the procedures contemplated in law. The respondents further submitted that the petitioner was unauthorisedly absent for a major part of his service (i.e) for over a period of 8 years and 7 months out of total service period of 18 years, which fact would prove that the petitioner was not interested in serving the respondents. The



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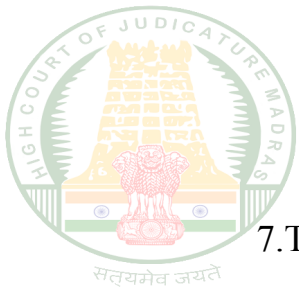
respondents submitted that after considering the petitioner's representation and

based on the facts and circumstances of the case, the punishment of dismissal from service was imposed. The respondents therefore prayed that the writ petition was devoid of merits and the same deserved to be dismissed.

4.The learned counsel for the petitioner submitted that the Enquiry conducted by the Enquiry Officer was against all canons of law and therefore the impugned order of punishment based on such illegal enquiry could not be sustained. The learned counsel submitted that the order of punishment as well as the review order were non-speaking orders and hence the same deserved to be set aside. The learned counsel for the petitioner submitted that in any event the punishment imposed by the disciplinary authority was excessive and disproportionate to the nature of the misconduct. The learned counsel therefore prayed that the impugned order be set aside and the writ petition be allowed.

5.The learned Special Counsel for the respondents reiterated the submissions made in the counter affidavit.

6.I have heard both the learned counsels and I have perused the materials placed on record.



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7.The facts are narrated above and it would suffice to state here that the petitioner was issued with a charge memo on 24.06.2009, containing three charges. The first charge related to the petitioner's unauthorised absence from 01.11.2007 onwards. The second charge related to his failure to attend the Medical Board, which amounted to dereliction of duty and disobedience of the superior officer's order and the third charge related to violation of the Rule 20 of the Tamil Nadu Government Servants' Conduct Rules. The petitioner neither submitted his explanation to the charge memo nor participated in the enquiry. The Enquiry Officer therefore conducted an ex-parte enquiry and submitted his report holding that all three charges against the petitioner were proved. The Disciplinary Authority thereafter issued the show cause notice on 05.08.2014, to the petitioner calling for his explanation to the charge memo and after receiving the petitioner's explanation on 04.09.2014, passed the impugned punishment order dated 08.01.2015, imposing the punishment of dismissal from service. Against the punishment order, the petitioner filed the review petition and the same was also dismissed. Aggrieved by the impugned orders, the petitioner has filed the above writ petition.

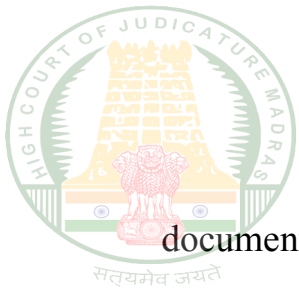
8.On a conspectus of the facts narrated above, the issue that arises for consideration is whether the impugned punishment order is sustainable in law.



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It is trite that enquiry proceedings are quasi-judicial in nature, that the enquiry officer is bound to follow the principles of natural justice and act judicially. A scrutiny of the enquiry report reveals that the enquiry officer merely extracted the charges, recorded the absence of the petitioner, recorded the statement of fact and documents placed before him, framed the points for determination and finally, returned the finding that the charges against the petitioner were proved. There was absolutely no discussion of the evidence on record, when admittedly three documents each were placed by the petitioner and the respondent. Admittedly, the petitioner remained ex-parte and even if the petitioner remained ex-parte, the enquiry officer ought to have ensured that the documentary evidence filed by the respondent was proved by examining the witnesses. Mere filing of the documents would not amount to proof. It is pertinent to note that the respondents had failed to examine any witness to prove the three documents filed by them. In the absence of proof of those documents, the enquiry officer ought not to have relied on the same, since mere filing of the documents without proof will not amount to evidence. The enquiry officer on a purported scrutiny of the documents produced by the respondent held that the charges were proved. Assuming that the documents could be taken as evidence, the enquiry officer ought to have analysed the same and given cogent reasons for accepting the same in proof of the misconduct. There was no discussion connecting the



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documents to the claim of misconduct alleged against the petitioner and absolutely no reasons were assigned in support of the findings which clearly reflects a total non application of mind by the enquiry officer. In the absence of any reasons, in support of the findings that charges were proved, the only inference that could be drawn is that the findings are based on the mere *ipsi dixit* of the officer. Hence in my view, the enquiry report is vitiated and invalid.

9. The records further reveal that in the show cause notice dated 05.08.2014, issued by the third respondent to the petitioner calling for his explanation to the enquiry officer's report, the third respondent predetermined the issue by holding that the Government agreed with the findings of the enquiry officer, that all the three charges against him were proved. When the disciplinary authority/ the third respondent accepted the findings of the enquiry officer, even at the stage of the show cause notice, there was no point in issuing the notice. The show cause notice is meant for obtaining the objections of the delinquent employee to the findings of the enquiry officer and for affording an opportunity to him to defend himself. The third respondent by pre-judging the issue frustrated the object of the notice, making it an empty formality. The disciplinary authority, in my view, by pre-judging the issue acted in violation of the principles of natural justice. Hence, the procedure adopted by the



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disciplinatory authority for imposing the capital punishment of dismissal from service is erroneous and illegal.

10. Apart from the aforesaid lapse in the disciplinary proceedings, the disciplinary authority while imposing the punishment did not consider the petitioner's objections and by a non-speaking order, imposed the punishment of dismissal from service. As the dismissal order results in serious civil consequences, appropriate reasons ought to have been provided for imposing the capital punishment. Even the order passed in review is a non-speaking order, therefore, in my view the impugned orders are invalid and illegal.

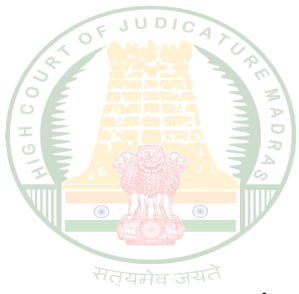
11. It would be worthy to refer to the Judgment of the Hon'ble Supreme Court in this regard. In the case of **Anil Kumar Vs. Presiding Officer and Others** reported in **(1985) 3 Supreme Court Cases 378**, the Hon'ble Supreme Court held as follows:

“5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did



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not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In [Madhya Pradesh Industries Ltd. v. Union of India](#) , this Court observed that a speaking order will at best be a reasonable and at its worst be atleast a plausible one. The public should not be deprived of this only safeguard. Similarly in [Mahabir Prasad v. State of Uttar Pradesh](#) , this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.



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6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

In the light of the above discussions, I find merit in the writ petition. The impugned orders dated 08.01.2015 and 10.10.2019 cannot be sustained and are set aside. Accordingly, this Writ Petition is allowed and the respondents are directed to superannuate the petitioner from service and grant him all monetary benefits, within a period of twelve weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

01.04.2025

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Index : Yes

Neutral Citation : Yes

Speaking order/Non-speaking order

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N.MALA, J.
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To

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Kilpauk, Chennai 10.
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Enquiry Officer, Thanjavur Medical College,
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