



W.A(MD)No.60 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.04.2025

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.60 of 2025
and
CMP(MD)No.366 of 2025**

1. The State of Tamil Nadu,
Rep by its Principal Secretary to the Government,
Higher Education Department (F1),
Secretariat, Chennai.

2. The Director of Collegiate Education,
O/o. Director of Collegiate Education,
Chennai - 600 006.

3. The Principal,
Alagappa Government Arts College,
Karaikudi,
Sivagangai District.

... Appellants

vs.

E.Vasanthakumar Samuel

... Respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters
Patent, against the order dated 09.07.2024 made in W.P(MD)No.13667 of
2021.



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For Appellants : Mr.J.Ashok
Additional Government Pleader

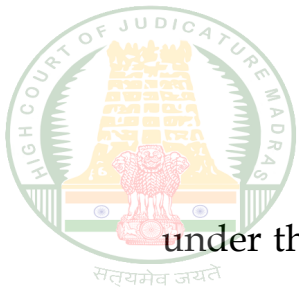
For Respondent : Mr.H.Mohamed Imrab for
M/s.Ajmal Associates

JUDGMENT

(Judgment of the Court was made by **J.NISHA BANU, J.**)

This writ appeal is filed against the order dated 09.07.2024 made in W.P(MD)No.13667 of 2021.

2. The respondent / writ petitioner was initially appointed as Professor of Commerce at Government Arts College for Women, Ramanathapuram, on 14.10.1998 and thereafter, he was transferred to the 3rd appellant college on 18.10.2004. He was promoted as Head of Department (Commerce) on 01.06.2016. On 07.03.2017, he was issued with a charge memo by the 2nd appellant, alleging that while he was working in the 3rd appellant college, he had sexually harassed three students, including one minor boy while issuing hall tickets on 04.11.2006, thereby violating Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules, 1973. In this regard, a FIR was also registered



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under the POCSO Act on 08.11.2016 against the respondent and he was

remanded to judicial custody on 09.11.2016. In view of the same, he was

placed under suspension by the 2nd appellant on 21.11.2016. The

respondent submitted an explanation dated 10.11.2017 denying the

charges and requested to revoke the suspension. Not satisfied with the

explanation, an enquiry was ordered. The enquiry officer conducted the

enquiry and submitted his report dated 20.12.2017, holding the charges

as proved. Thereafter, the respondent submitted an explanation dated

02.04.2018 pointing out the defects in the conduct of departmental

enquiry. However, without considering the same, the 1st appellant vide

G.O(D)No.131, dated 26.05.2021 had imposed a punishment of

compulsory retirement. Consequent thereto, the 3rd appellant passed an

order dated 31.05.2021 relieving the respondent from service.

Challenging those orders, the respondent filed the writ petition. The

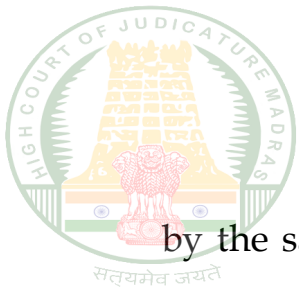
Writ Court holding that in the absence of appropriate opportunity to the

respondent to lead evidence and cross examine the witnesses of the

department, the entire findings of the enquiry officer would be vitiated

for not following the principles of natural justice, set aside the

impugned punishment order and allowed the writ petition. Aggrieved



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by the said order, the Education Department and the College in which the respondent was working, have filed this appeal.

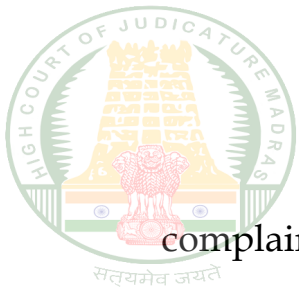
3. Assailing the impugned order, learned Additional Government Pleader would state that mere perusal of the enquiry files would show that at each and every stage of the disciplinary proceedings, the respondent was put on notice, he was permitted to submit his objections in writing and the same was also duly considered by the enquiry officer and therefore, the finding of the Writ Court that the enquiry findings are vitiated for not following the principles of natural justice, is arbitrary and non application of mind. In support of the said contention, he would rely on the judgment of the Hon'ble Supreme Court in *Union of India and others vs. P.Guansekaran* reported in (2015) 2 SCC 610, wherein, it has been held that under Article 226 of the Constitution, the High Court shall not re-appreciate the evidence and shall not go into the adequacy / reliability of the evidence. Further, the High Court shall not interfere with the finding of the enquiry officer, unless it is found that the enquiry has not been conducted in accordance with law. In this case, the respondent was



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given opportunity at each and every stage of the disciplinary proceedings and there was no procedural violation in conducting the disciplinary proceedings and hence, the interference of the Writ Court is unwarranted.

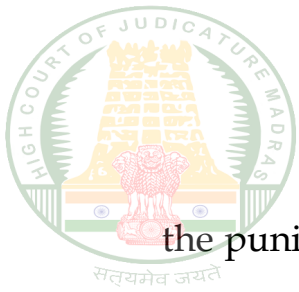
4. Countering to the objections raised by the respondent to the charge memo that the charges were not specific about the date, time and place of occurrence; no preliminary enquiry was conducted before issuing the charge memo and he was not furnished with the copy of the complaint given by the affected students, learned Additional Government Pleader would contend that there is no motive for the students to lodge a false complaint against the respondent and further only after four months of the registration of criminal case, charge memo was issued. However, as soon as the arrest of the respondent in the criminal case, he was placed under suspension and after his release on bail, disciplinary proceedings were initiated. As regards non supply of complaint given by affected students, it is stated that even in his explanation, the respondent denied the statement in the complaint, which by itself would prove that he was issued with a copy of the



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complaint. However, without considering those aspects in proper perspective, the Writ Court has quashed the punishment order on a flimsy ground of violation of principles of natural justice in the conduct of enquiry. Thus, he would pray for setting aside the impugned order.

5. The learned counsel for the respondent would state that the very same discrepancies pointed out by the respondent regarding the conduct of enquiry, were pointed out by the TNPSC when the matter was placed before it for its opinion. The TNPSC has categorically stated that the entire enquiry report is based on inference and presumption which is not supported by the evidence of either the department or the delinquent and further, the conclusion of the enquiry officer is based on certain vague written statements. Despite such defects pointed out by the TNPSC, the 1st appellant imposed the punishment of compulsory retirement, which is shockingly disproportionate to the gravity of the charges, especially when the criminal case registered against the respondent ended in acquittal. The Writ Court rightly pointed out the procedural violation in the conduct of enquiry and held that such violation vitiates the entire findings of enquiry and accordingly set aside



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the punishment and allowed the writ petition. Thus, he would pray for

dismissal of the writ petition.

6. Heard both sides.

7. It is pertinent to extract the relevant passage of the impugned order to indicate as to how the Writ Court came to the conclusion that there was procedural violation in the conduct of enquiry:

"10. The writ petitioner herein had been visited with a charge memo by the 2nd respondent and the charge is precisely with respect to the alleged misbehaviour of the delinquent by indulging and compelling few students including a minor boy mentioned in the charge insisting for sexual advancements. A careful perusal of the enquiry report dated 20.12.2017 would reveal that the enquiry has been proceeded with respect to the two charges framed as against the delinquent on the basis of the complaint lodged by the students

(i) to the 3rd respondent College Principal

(ii) the complaint from the 3rd respondent College Principal to the Police Department

(iii) The First Information Report

(iv) and the letter of the Superintendent of Prison Department.

Apart from the delinquent, one V.Muruganantham, Guest Lecturer in the 3rd respondent College, one Karthick, student of the 3rd respondent College and



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one V.S.Raja Sethupathi, yet another student of the 3rd respondent College

during the academic year 2012 to 2015, were examined in the enquiry of the disciplinary proceedings. The explanation given by the delinquent has also been taken into consideration and finally, the Enquiry Officer on the basis of the written statements given by the witnesses, delinquent and the documents concluded that the charges as against the writ petitioner stands proved. Following which, the opinion of the Tamil Nadu Public Service Commission was sought for as to the punishment to be imposed on the delinquent. Interestingly, the Deputy Secretary of the Tamil Nadu Public Service Commission by her letter dated 02.12.2020 to the 1st respondent, after careful examination of the entire file placed before her had observed as follows:

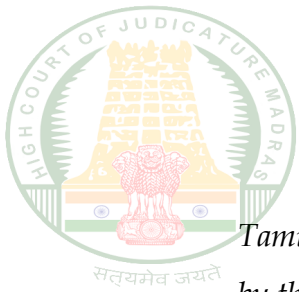
“(i) The Enquiry Officer did not conduct the enquiry in the fullest sense with the students who have preferred complaint as against the delinquent, but the same had been conducted only for name sake.

(ii) The Enquiry Officer ought to have obtained appropriate explanation and answers from the various stakeholders to the enquiry in a questionnaire format which was not done by the Enquiry Officer.

(iii) The Enquiry Officer had negated the evidence of the colleagues, especially the fellow lecturers of the delinquent and has proceeded the enquiry against the delinquent unilaterally.

(iv) The Enquiry Officer has conducted the enquiry and concluded the enquiry against the delinquent on the basis of the vague written statements obtained from the students.”

11. Having observed supra, the Deputy Secretary of Tamil Nadu Public Service Commission further concluded in her opinion that the enquiry report was fully based on the inference and presumption of the Enquiry Officer and the same was not based on the evidence which was led by the delinquent and that of the department concerned. In view of the same, further the Deputy Secretary of



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Tamil Nadu Public Service Commission, considering the acquittal order passed by the Fast Track Mahila Court, Sivagangai, in Special Case No.39 of 2018 dated 09.12.2019 recommended a punishment of compulsory retirement instead of removal from service to the 1st respondent. The 1st respondent passed the impugned order dated 26.05.2021, on the basis of the recommendation of the Tamil Nadu Public Service Commission and the entire file of the writ petitioner.

.....

.....

14. As far as the instant case is concerned, on appointment of an Enquiry Officer, the Enquiry Officer ought to have allowed the respondents 2 and 3 to lead evidence as against the delinquent writ petitioner at the first instance. However, the said exercise was not done by the Enquiry Officer as rightly observed by the Deputy Secretary of the Tamil Nadu Public Service Commission and the Enquiry Officer has proceeded to receive vague written statements from the students and no evidence has been led as against the delinquent by the department. That apart, the delinquent was also not given an opportunity to lead evidence on his side and also to cross examine those students who gave written statements as against him. In addition to that, the Enquiry Officer had completely negated the written statement and oral evidence of Thiru. V.Muruganantham, Guest Lecturer and he was also not cross examined by the department. The evidence of Thiru. V.Muruganantham as elaborated in the enquiry report stands in favour of the delinquent. That apart, the testimony of two more students namely, M.Karthick and V.S.Raja Sethupathi, as well as the written statement also stands in favour of the delinquent and the same has also not been put to cross examination by the department. However, the Enquiry Officer concluded the enquiry as against the delinquent. Without reflecting on the specific flaws pointed out by the delinquent as to the conduct of the departmental enquiry proceedings as against him in his explanation dated 02.12.2017, the 1st respondent proceeded to impose a punishment of compulsory



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retirement as against the delinquent writ petitioner.

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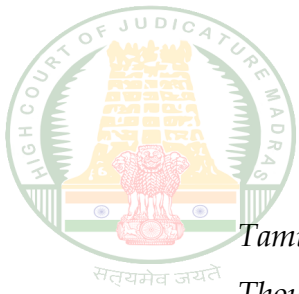
15.

16. However, in the instant case, the entire enquiry is based on inference and presumption on the basis of the vague written statements of the various students, not supported by appropriate documentary evidence. No witness was examined to prove the vague written statements and the written complaint of the students. That apart, a FIR which had culminated in Special Case No.39 of 2018 on the file of Fast Track Mahila Court, Sivagangai, also ended in acquittal of the writ petitioner herein by its order dated 09.12.2019. Though the learned Additional Government Pleader categorically contended that the said acquittal was not an honorable acquittal but the same was on benefit of doubt.

17.

18. Even in the instant case, the criminal case dealt with by the Fast Track Mahila Court, Sivagangai, as against the writ petitioner ended in acquittal after examination of various witness. That apart, in the disciplinary proceeding initiated as against the writ petitioner, the Enquiry Officer has certainly proceeded to conclude the enquiry as against the writ petitioner without conducting the enquiry as mandated by law and without allowing the respective parties to lead evidence and cross examine the respective witnesses. Though it is pointed out by the learned Additional Government Pleader that the offence with which the petitioner had been alleged to have committed is of grave nature, this Court consciously refrain from commenting upon the same, for the sole reason, that the 1st respondent has passed the impugned order without giving due explanation for the flaws pointed out by the delinquent in the charge and in the enquiry, more particularly as pointed out by the Secretary, Tamil Nadu Public Service Commission.

19. Having not elaborated the impugned order in that aspect, mechanically without application of mind sticking to the recommendation of the



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Tamil Nadu Public Service Commission, the impugned order came to be passed.

Though it is pointed out by the learned Additional Government Pleader that the punishment imposed on the delinquent is not shockingly disproportionate, I am of the considered view that, the impugned order will not stand the scrutiny of law for the sole reason that the same has been conducted without giving due opportunity to the delinquent to lead evidence and to cross examine the witnesses of the department. In the absence of appropriate opportunity to lead evidence and cross examine the witnesses of the department, the entire findings of the Enquiry Officer would be vitiated for not following the principles of natural justice. However, in the instant case, it is brought to the notice of this Court that the delinquent had already attained the age of superannuation on 30.04.2024.

20. That apart, the complainants are the students who graduated in the 3rd respondent College during the period 2012-2015, 2017-2018 and 2016-2017. In view of the same, re-appreciation of evidence would also be difficult, if the matter is remanded back to the 2nd respondent as the learned senior counsel rightly pointed out that if the foundation is struck an edifice will not stand in the instant case, since the entire basis on which the departmental enquiry which had been conducted as against the delinquent itself is found irregular and the consequential findings of the Enquiry Officer and the impugned order passed, by which the punishment which is imposed on the petitioner would also automatically be quashed. Accordingly, the impugned order is hereby quashed."

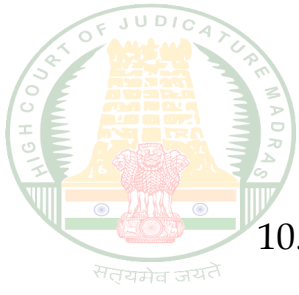
8. As rightly pointed out by the Writ Court, the enquiry officer did not examine the affected students, whereas, based on the vague written statements received from them, proceeded to conclude the enquiry against the respondent. Further, the enquiry officer negated the



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evidence of the colleagues of the respondent and proceeded to conclude the enquiry against the respondent unilaterally. Despite the above said defects pointed out by the TNPSC, the 1st appellant bent upon to impose the punishment of compulsory retirement. The observation of the TNPSC itself would prove that the enquiry was not conducted in accordance with law.

9. Though the learned Additional Government Pleader relied on the Apex Court's judgment in *P.Gunasekaran's case (supra)*, as narrated supra, in the instance case, the enquiry having not been conducted in accordance with law, the ratio laid down in *P.Gunasekaran's case* will have no application in this case. Considering the fact that since the affected students were all completed their graduation from 2012 to 2017, re-appreciation of evidence would be difficult and also the fact that the respondent also attained superannuation on 30.04.2024, the Writ Court declined to remand the matter for fresh consideration. We do not find any infirmity in the order of the learned Judge.



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10. Accordingly, the Writ Appeal is dismissed. No costs.

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[J.N.B, J.] [S.S.Y, J.]
08.04.2025

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The Principal Secretary to the Government,
State of Tamil Nadu,
Higher Education Department (F1),
Secretariat, Chennai.

2. The Director of Collegiate Education,
O/o. Director of Collegiate Education,
Chennai - 600 006.

3. The Principal,
Alagappa Government Arts College,
Karaikudi,
Sivagangai District.



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W.A(MD)No.60 of 2025

J.NISHA BANU, J.
AND
S.SRIMATHY, J.

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JUDGMENT MADE IN
W.A(MD)No.60 of 2025
DATED : 08.04.2025