



W.P.No.29813 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.06.2026

Pronounced on : 19.06.2026

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.29813 of 2011

and

M.P.Nos.1 of 2011 and 1 of 2014

M.Sivaraj (Died)
Staff Driver,
B/18, Tamil Nadu Magnetite Colony,
Thaththaiyankarpatty Post,
Karuppur via
Salem – 636 012.

2. Kamala W/o. Sivaraj

3. Gunasekaran S/o. Sivaraj

4. Divya Vasanthkumar
D/o. Sivaraj

5. Lakshmiyamma
W/o. Munusamyraj

(P2 to P5 are residing at,
2/151, Saravana Nagar,
Nadupalayam, Peedampalli,
Coimbatore South,
Coimbatore – 641 016.
(P2 to P5 are substituted as L.Rs of



W.P.No.29813 of 2011

deceased sole petitioner vide order
dated 30.04.2026 made in
W.M.P.No.13531/2026 in
W.P.No.29813/2011)

... Petitioners

vs

1. The Chairman and Managing Director,
5/52, Tamil Nadu Magnesite Ltd.,
Jagir Ammapalayam Post,
Omalur Main Road,
Salem – 636 302.

2. The Assistant Manager,
(Service and Administration),
5/52, Tamil Nadu Magnesite Ltd.,
Jagir Ammapalayam Post,
Omlaur Main Road, Salem – 636 302.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order made in Letter No.E1/Pers/52-1992 dated 13.04.2010 passed by the second respondent and the consequential order made in Na.Ka.No.E1/Pers/52/2011 dated 26.10.2011 passed by the first respondent and quash the same and further directing the second respondent to reinstate the petitioner in service with continuity of service along with back wages and all other attendant benefits and pass orders.

For Petitioners : Mr.T.S.Praveenrajan
for Mr.G.Pugazhenth



WEB COPY



W.P.No.29813 of 2011

For Respondents : Mr.M.Vijayakumar
for Mr.M.R.Raghavan

ORDER

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the records.

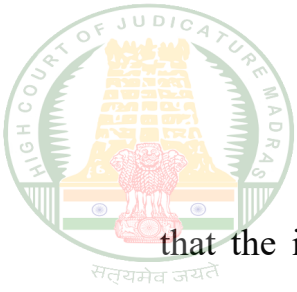
2. Shorn of unnecessary details, the case of the petitioner (since deceased and legal representatives having come on record) in brief is that aggrieved by the order of the second respondent dated 13.04.2010 passed pursuant to the issuance of charge memo dated 25.03.2009 and the subsequent enquiry held, he had filed an appeal before the first respondent viz., Chairman and Managing Director on 10.06.2010; that in the appeal, a re-enquiry was ordered; that the disciplinary authority / 2nd respondent *vide* letter dated 18.08.2010 directed fresh enquiry and appointed another enquiry officer as the earlier enquiry officer had retired from service; that the enquiry officer once again conducted enquiry on various dates during the period October 2010 to February 2011 and submitted his enquiry report on 25.02.2011; that in the enquiry report submitted on 25.02.2011, the charges against the petitioner were held not proved; that the disciplinary authority, on



W.P.No.29813 of 2011

receiving the enquiry report wherein the charges were held not proved, did not issue any notice of disagreement with the findings of the enquiry officer for him to submit an explanation, nor the second respondent to passed any order thereafter.

3. The petitioner contended that on the respondents deciding to hold enquiry afresh and issuing notice dated 18.08.2010, the order dated 13.04.2010, whereby he was awarded penalty of dismissal from service on the ground the charges against him were held as proved, the appeal filed by him and pending before the first respondent, became infructuous automatically; and that the first respondent, without taking note of the said fact of he himself having ordered fresh enquiry and the second respondent thereafter issuing notice and appointing a new enquiry officer, had proceeded to adjudicate the appeal, wherein he had also considered the subsequent proceedings like the second enquiry held and the findings of the enquiry officer, and holding that re-enquiry ought not to have ordered; that the first respondent observing as above, had set aside the second enquiry report without issuing notice to the petitioner, thereby acted as a revisional authority while discharging functions of an appellate authority, which action it is contended as illegal and without authority or sanction of law. Thus, it is contended



W.P.No.29813 of 2011

that the impugned order is vitiated and was passed in violation of principles of natural justice.

4. Counter affidavit on behalf of the first respondent is filed.

5. The first respondent by the counter affidavit did not deny or dispute the factual aspect of the petitioner joining the service as a staff driver and the second respondent having issued a charge memo, appointing the enquiry officer to conduct an enquiry into the charges, the enquiry officer submitting a report and based on the findings of the enquiry officer, the petitioner being issued a second show cause notice dated 10.12.2009; that the petitioner submitting explanation dated 23.12.2009; that the second respondent thereafter passing an order dated 13.04.2010 dismissing the petitioner from service; and that the petitioner being aggrieved by the said order having filed appeal there against to the first respondent on 10.06.2010.

6. The first respondent by the counter affidavit contended that as an appellate authority the order of dismissal was revoked and a fresh enquiry from the initial stage was ordered; that the petitioner was however placed under suspension; that as the enquiry officer who had conducted the enquiry earlier, having retired



W.P.No.29813 of 2011

from service, the Factory Manager (SKD) was appointed to conduct the enquiry through communication dated 14.08.2010; that the enquiry officer, after conducting enquiry afresh, submitted his findings/enquiry report on 25.02.2011; that the enquiry officer in his report concluded that the charges are framed based on doubts and the petitioner was not guilty of misconduct.

7. The first respondent by the counter affidavit further contended that he had returned the findings of the enquiry officer dated 25.02.2011, with a direction that the benefit of suspicion should normally go to the accused in a judicial process and not in departmental enquiry and sought for the enquiry to be conducted thoroughly by the enquiry officer without giving lead to judgment.

8. The first respondent by the counter affidavit further claimed that the enquiry officer once again submitted his findings on 07.07.2011 stating that the charges were framed based on the doubts and hence, the charges were not proved.

9. The first respondent by the counter affidavit contended that though in subsequent enquiry findings have been returned as charges not proved, on the basis

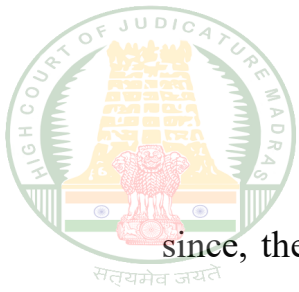


W.P.No.29813 of 2011

of materials made available in the enquiry and also keeping in mind in the past record on the petitioner of having been charge sheeted eight times earlier on different occasions during his service, for misconduct and punished with suspension and other category of punishment, and inspite of the same he having not changed his character/attitude, passed final order holding that the charges levelled against the petitioner were proved by passing an elaborate order dated 27.10.2011 dismissing the petitioner from service.

10. The first respondent also contended that since, the petitioner was charge sheeted for serious misconduct, a detailed enquiry was conducted to probe into the charges levelled against the petitioner; that the enquiry was conducted in accordance with the principles of natural justice; that the charges were found proved initially; that the order of dismissal is based on adequate and relevant material and is in accordance with the principles of natural justice; and that the punishment imposed on the petitioner is just and proper.

11. The first respondent by the counter affidavit further contended that



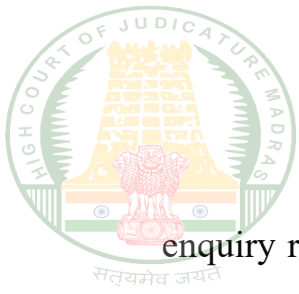
W.P.No.29813 of 2011

since, the petitioner is an employee and the respondent is an industry, as per the provisions of the Industrial Disputes Act, the present writ petition is not maintainable and the petitioner should seek redressal of his grievance under the provisions of the Industrial Disputes Act.

12. On these grounds, the respondent justified its action in passing the impugned order and prayed for dismissal of the writ petition.

13. I have taken note of the respective contentions as urged.

14. At the outset, it is to be noted that the respondents by the counter affidavit while justifying the action of passing the impugned order had claimed that action has been taken against the petitioner by dismissing him from service after conducting enquiry in accordance with the procedure, by following principles of natural justice and also considering the relevant material. However, it is to be noted that the first respondent, while passing the impugned order had sat in appeal over his earlier decision of ordering re-enquiry into the matter in the appeal filed by the petitioner on 10.06.2010 against the order dated 13.04.2010. It is pursuant to the said direction, notice for re-enquiry was issued on 18.08.2010 and not one



W.P.No.29813 of 2011

enquiry report but two enquiry reports were submitted by the enquiry officer with finding that charges against petitioner were not proved and are framed based on doubts. The first respondent by setting aside the enquiry reports dated 25.02.2011 and 07.07.2011 wherein the findings were not to his liking, has brazenly ignored the findings, recorded thereby violating all the known cannons of law to be adhered to by an appellate authority.

15. The first respondent, before whom the petitioner had filed appeal on 10.06.2010, having directed for conduct of fresh enquiry and the second respondent pursuant to thereto having appointed an enquiry officer who had conducted enquiry and submitted report on 25.02.2011, could not have proceeded with the appeal further and on the other hand, if was in disagreement with the findings in the report, ought to have recorded reasons for disagreement by way of a disagreement note and called upon the petitioner to offer his explanation before taking further action thereon.

16. Further, it is also to be noted that initially the disciplinary action against the petitioner was initiated by the second respondent and not the first



W.P.No.29813 of 2011

respondent and the first respondent was only required to consider the appeal filed by the petitioner against the order dated 13.04.2010. The first respondent not only recorded his findings disagreeing with the enquiry report dated 25.02.2011, but once again returned the findings to the enquiry officer on 25.03.2011 to conduct enquiry thoroughly and put up finding of enquiry without giving “lead to judgment”.

17. The first respondent having directed the enquiry officer to conduct enquiry thoroughly, however, on the enquiry officer submitting his findings once again on 07.07.2011, stating that the charges against the petitioner are framed based on doubt and hence, charges were not proved, in total disregard to the said report had passed the impugned order in utter violation of principles of natural justice. The first respondent while passing the impugned order did not specify in what capacity the said order is being passed i.e., either as appellate authority or as disciplinary authority substituting the second respondent.

18. If only the first respondent was wearing the hat of disciplinary authority, he ought to have issued notice to the petitioner before passing the impugned order. Admittedly, no such notice was issued in the name of the office

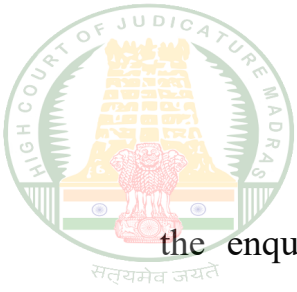


W.P.No.29813 of 2011

of the first respondent nor there is any proceeding by which the disciplinary proceedings initiated under the signature of the second respondent were made over to the first respondent for him to assume jurisdiction and pass such an order.

19. Further, the second respondent, having passed an order earlier on 13.04.2010 and the said order as stated in the counter affidavit having been set aside by the appellate authority, who incidentally happens to be the first respondent himself, and fresh enquiry being ordered, the order of the second respondent by which the petitioner was dismissed from service ceased to exist. It is only after fresh enquiry as ordered by appellate authority is conducted, further proceedings could have been initiated and action could have been taken.

20. The first respondent, on the other hand while considering the appeal filed by the petitioner against the order of the second respondent dated 13.04.2010, having ordered fresh enquiry could not and should not to have proceeded further with the appeal on the basis of the earlier order of dismissal passed by second respondent, more particularly when the subsequent enquiry officer had found the charge not proved. The first respondent by adjudicating the appeal, setting aside the dismissal order and ordering enquiry afresh, could not have ignored or set aside



W.P.No.29813 of 2011

the enquiry reports submitted subsequently on re-enquiry, including his own decision of revoking the order of dismissal dated 13.04.2010 and ordering a fresh enquiry from the initial stage, as if the first respondent is conferred with the powers of revisional authority. The aforesaid action of the first respondent, shows that he sat in appeal over his own decision, which is not permissible in law. Thus, the manner in which the first respondent conducted and passed the impugned order clearly shows that the first respondent not only abdicated his duties as appellate authority but also approached and dealt with the matter with prejudice, resulting in the impugned proceeding as passed being vitiated both in fact and law, making it unsustainable in any manner. The aforesaid action by the first respondent has lead to travesty of justice.

21. Though the first respondent by the counter affidavit had claimed that the petitioner being an employee and the respondent management being an industry, the petitioner has to avail the remedy provided under the Industrial Disputes Act and as such, the present writ petition is not maintainable, as noted herein above, the petitioner can be relegated to avail the remedy provided under the Industrial Disputes Act, if only the respondents had followed the procedure

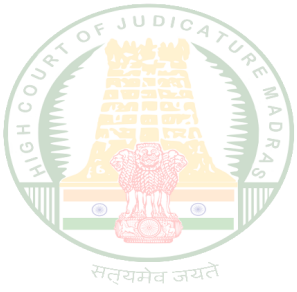


W.P.No.29813 of 2011

known to law while passing the impugned order. As apparent on record and from a reading of the order as well as the counter affidavit filed by the first respondent shows, that the first respondent, while acting as appellate authority, instead of adjudicating the appeal, issued directions of interim nature, like revoking the order of the second respondent, ordering fresh enquiry and upon submission of enquiry report, disagreeing with the same and passing order setting aside the re-enquiry notice issued by the second respondent and also the enquiry report which was not even put to the petitioner, and also rejecting the appeal, resulting in not only violation of principles of natural justice but also a miscarriage of justice at the hands of the first respondent.

22. In these circumstances, it is a settled position of law that mere existence of an alternate remedy is no bar to entertain a writ petition under Article 226 of Constitution of India. The Hon'ble Supreme Court in **Tamil Nadu Cements Corporation Limited V. Micro and Small Enterprises Facilitation Council and others** reported in **2025 INSC 91**, dealing with entertaining a writ petition directly observed as under :-

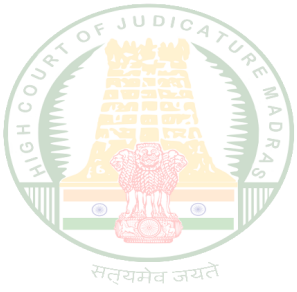
“13. The access to High Courts by way of a writ



W.P.No.29813 of 2011

WEB COPY

petition Under Article 226 of the Constitution of India, is not just a constitutional right but also a part of the basic structure. It is available to every citizen whenever there is a violation of their constitutional rights or even statutory rights. This is an inalienable right and the Rule of availability of alternative remedy is not an omnibus Rule of exclusion of the writ jurisdiction, but a principle applied by the High Courts as a form of judicial restraint and refrain in exercising the jurisdiction. The power to issue prerogative writs Under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and cannot be restricted or circumscribed by a statute. It has been well settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies - i) where there is a violation of principles of natural justice or fundamental rights; ii) where an order in a proceeding is wholly without jurisdiction; or iii) where the vires of an Act is challenged.



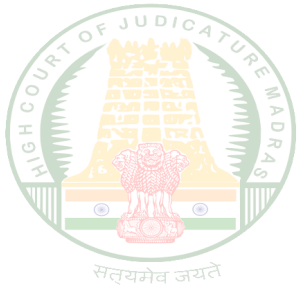
W.P.No.29813 of 2011

WEB COPY

Noticeably, the MSEFC as a statutory authority performs a statutory role and functions within the four corners of the law.”

23. This Court has not come across an abysmal order than the present one in recent times where the concerned authority is not clear himself as to in what capacity he is discharging his duties and functions. In view of the above, that the impugned order cannot be sustained and the petitioner is entitled to all the consequential benefits due to him, as if he is in service till the date of retirement/death.

24. Accordingly, this Writ Petition is allowed, the impugned order dated 26.10.2011 is set aside. The respondents shall pay all the consequential benefits due to the petitioner within eight weeks from the date of receipt of a copy of this order. This Court is also of the view, it is a fit case for awarding costs. Accordingly, Rs.50,000/- (Rupees Fifty Thousand Only) is awarded as costs payable to the petitioner by the first respondent. As the first petitioner is stated to have deceased, the costs shall be paid to the legal representatives who had come on record in this petition. Consequently, connected Miscellaneous Petitions are closed.



W.P.No.29813 of 2011

WEB COPY

19.06.2026

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
dh

To

- 1.The Chairman and Managing Director,
5/52, Tamil Nadu Magnesite Ltd.,
Jagir Ammapalayam Post,
Omalur Main Road,
Salem – 636 302.
2. The Assistant Manager,
(Service and Administration),
5/52, Tamil Nadu Magnesite Ltd.,
Jagir Ammapalayam Post,
Omlaur Main Road, Salem – 636 302.



WEB COPY



W.P.No.29813 of 2011

T. VINOD KUMAR, J.

dh

Pre-delivery order made in
W.P.No.29813 of 2011

19.06.2026