

W.P.No.11754 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 05.06.2024

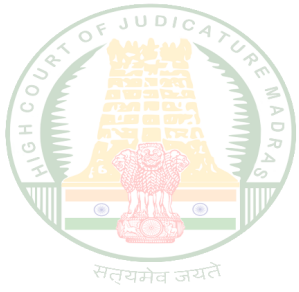
CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHYW.P.No.11754 of 2024
and W.M.P.Nos.12830 and 12831 of 2024

T.S.Jawahar Ali Khan .. Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Revenue and Disaster Management Department,
Fort St. George,
Chennai - 600 009.
2. The Additional Chief Secretary /
Commissioner of Revenue Administration,
Commissionerate of Revenue Administration &
Disaster Management,
Exhilagam, Chepauk,
Chennai - 600 005.
3. The District Collector,
Collector Office Road,
Moovendar Nagar,
Villuppuram,
Tamil Nadu - 605 602.
4. The Special Deputy Collector (Arbitrator) /
Enquiry Officer,
National Highways,
District Collector Office,
Villuppuram. .. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records in connection to the order passed by the 3rd respondent/District Collector in Na.Ka.A1/28637/2016, dated 09.10.2023 and quash the same as being arbitrary, illegal as the major punishment of dismissal is passed without taking note of the admitted factual aspects and legal principles of law and direct the respondents to permit the petitioner to retire from service with effect from 30.04.2017 with all service and monetary benefits and further direct the respondents to disburse the pensionary benefits including the monthly pension, commutation of pension, surrender leave, gratuity, provident fund and the special provident fund with 12% interest per annum within a time-frame as fixed by this Court.

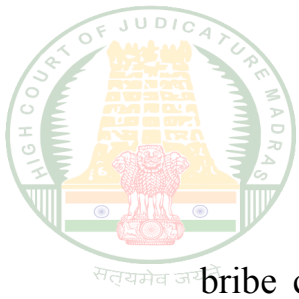
For Petitioner : Mr.R.Singaravelan,
Senior Counsel,
for Mrs.V.Ambika

For Respondents : Mr.S.Balmurugan
Government Advocate

ORDER

This Writ Petition is filed challenging the impugned order, dated 09.10.2023. By the said order, the punishment of dismissal from service was imposed on the petitioner. The petitioner had also filed a statutory appeal, dated 27.11.2023. Since the same was not considered, the petitioner approached this Court.

2. The case of the petitioner is that a charge memorandum was issued to the petitioner on 21.04.2017 containing two charges that he demanded a



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bribe concerning his official duties from one *Pachaiyappan, Poongunran* and *Naavappan* obtained a sum of Rs.17,000/- as bribe. The petitioner submitted his explanation denying the charges. An oral enquiry was conducted and by an enquiry report, dated 23.05.2017 charges were held as not proved.

3. It is the case of the respondents that a further show-cause notice, dated 27.09.2017 was issued. A copy of the said notice is also produced by the respondents. The entire notice is extracted hereunder:-

விழுப்புரம் மாவட்ட வருவாய் அலகினில், முன்னாள் மண்டல துணை வட்டாட்சியர், மேல்மலையனூர் மற்றும் தற்போது விழுப்புரம், மாவட்ட ஆட்சியர் அலுவலகத்தில் ஜி-பிரிவு தலைமை உதவியாளராக பணிபுரிந்து பணியிடை நீக்கத்தில் உள்ள திரு.டி.எஸ்.ஜவஹர் அலிகான் மற்றும் மேல்மலையனூர் வட்டாட்சியர் அலுவலகத்தில் அலுவலக உதயினாகராக பணிபுரிந்துவரும் திரு.ஏ.வெங்கடேசன் ஆகியோர்களது பணியில் ஏற்பட்ட குறைபாடுகளுக்காக தமிழ்நாடு குடிமைப்பணி (ஒழுங்கு மற்றும் மேல்முறையீடு) விதிகளில் விதி 17 (b)-ன் கீழான குற்றக்குறிப்பாணையின் மீது இறுதி ஆணை பிறப்பித்திடுவதற்கு முன்னூர் தனியர்களுக்கு இறுதி வாய்ப்பு அளித்திடும் பொருட்டு விழுப்புரம் மாவட்ட ஆட்சியர் அவர்களால் நேரடி விசாரணை எதிர்வரும் 13.10.2017 பிற்பகல் 5.00 மணிக்கு விழுப்புரம் மாவட்ட ஆட்சியர் அலுவலகத்தில்



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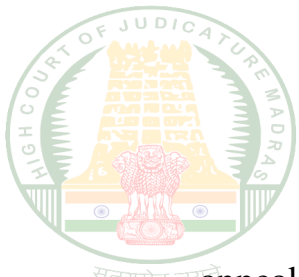
நடைபெறவுள்ளது. எனவே, மேற்படி தினத்தில் தவறாது நேரடி விசாரணைக்கு ஆஜராகிடுமாறு தனியர்கள் திரு.டி.எஸ்.ஜவஹர் அலிகான் மற்றும் திரு.ஏ.வெங்கடேசன் ஆகியோர்கள் கேட்டுக் கொள்ளப்படுகிறார்கள். இதில் தவறும் பட்சத்தில் தனியர்கள் கொடுத்துக்கொள்ள சமாதானம் ஏதுமில்லை என கருதி இறுதி ஆணை பிறப்பிக்கப்படும் என்பதை அறியவும்.

Thereafter, the petitioner submitted his explanation on 13.10.2017.

After considering the same, the present order of punishment was passed.

4. *Mr.R.Singaravelan*, learned Counsel for the petitioner submits that when the disciplinary authority has chosen to disagree with the findings of the Enquiry Officer, the same should have been put to the petitioner by specifically indicating the ground of disagreement and the petitioner ought to have given an opportunity to submit his explanation to persuade the disciplinary authority to accept the enquiry officer's report and dissuade him not to defer with the same. The said opportunity is not at all granted in the instant case.

5. *Per contra*, *Mr.S.Balmurugan*, learned Government Advocate for the respondents submits that in any event, the petitioner has filed a statutory



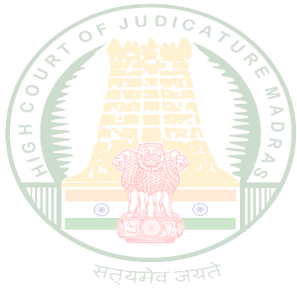
appeal, dated 27.11.2023 and the same shall be considered on merits and this Court need not interfere at this stage.

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6. In view of the said arguments, this Court passed a specific order, dated 26.04.2024, whereby, the learned Counsel for the respondents was directed to get instructions as to (i) whether a second show-cause notice was issued; (ii) if second show-cause notice is issued, whether the reasons for disagreement were disclosed in the said show-cause notice and the same were communicated to the petitioner and (iii) whether the petitioner was given an opportunity to give his further explanation regarding the same.

7. Counter-affidavit is filed by the respondents. In the counter-affidavit, the charges are extracted in paragraph No.5 and thereafter, it states as follows:-

"Thereafter enquiry officer had appointed and he submitted his enquiry report dated 23.05.2017 and thereby this respondents issued a further show cause notice dated 27.09.2017 vide Na.Ka.A1/28637/2016 to the petitioner to appear before this respondent and to submit further explanation if any for which the petitioner alone submitted his explanation on 13.10.2017 reiterating the earlier stand and having dissatisfied with the explanation offered by the petitioner, this respondent passed the order of punishment dated 09.10.2023. Even before passing of final orders, the writ petitioner filed a writ petition in W.P.No.575/2023 praying for mandamus to dispose the disciplinary



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proceedings and this Hon'ble Court also was pleased to pass an order dated 15.10.2023 directing the 3rd respondent to pass appropriate orders on merits."

8. The copy of the said notice, which is said to be the show-cause notice, was extracted above. In that view of the matter, it can be seen that neither proper second show-cause notice was issued nor the reasons for disagreement were communicated to the petitioner and the petitioner was given an opportunity to put-forth his explanation. The law regarding the said issue has recently been dealt with by this Court in *M.Paulpandi Vs. State of Tamil Nadu* in *W.P.No.10380 of 2024, dated 03.06.2024* and the relevant paragraphs are extracted hereunder:-

" 14. It can be seen that the disciplinary authority should form an opinion based on the evidence adduced during the enquiry as to whether any of the penalties specified in Rule 8 should be imposed or not. If it concludes any penalty should be imposed, then an opportunity shall be granted to the delinquent employee to submit his further representation on the enquiry report and such report is to be considered by the Disciplinary Authority. The Rule does not expressly deal with the situation where the Disciplinary Authority proposes to disagree with the findings of the Enquiry Authority. In that case, the matter would be governed by the law laid down by the Hon'ble Supreme Court of India in *Punjab National Bank Vs. Kunj Behari Misra (1998) 7 SCC 84*. It is relevant to extract paragraph 19, which reads as follows:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation



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7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry 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 enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry 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."

(Emphasis Supplied)

15. Similarly in **Yoginath D.Bagde vs. State of Maharashtra (1999) 7 SCC 739** the Supreme Court of India held in paragraph 31 as follows:

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings records by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of



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which the disciplinary authority has proposed to disagree with the findings of the enquiry officer This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

16. Thus, it is clear that even though the Rules say that based on the evidence adduced during the enquiry, the Disciplinary Authority can decide to punish after issuing a show-cause notice, further principles of natural justice have to be read into Rule 17b (ii) that if the Enquiry Officer-s report is in favour of the delinquent and if the Disciplinary Authority proposes to disagree, such reasons have to be specifically communicated to the delinquent employee and only after granting him an opportunity to submit further explanation on such reasons to disagree and only after considering the same, punishment can be imposed. Needless to state such communication of the reasons by the Disciplinary Authority can only be tentative and without hearing the delinquent employee, the Disciplinary Authority cannot render any final finding as to the disagreement with the enquiry report and impose a punishment."



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9. In view of the same, the impugned order cannot stand and therefore, this is a fit case for interference of this Court. The respondents have to continue from the stage of issuing second show-cause notice.

10. Therefore, this Writ Petition is allowed on the following terms:-

(i) The impugned order, dated 09.10.2023 shall stand quashed;

(ii) However, the respondents will be at liberty to proceed afresh from the stage of issuing of second show-cause notice;

(iii) If the respondents choose to proceed afresh, the second show-cause notice should contain the tentative findings of the disciplinary authority indicating the reasons for disagreement and the petitioner should be called upon to submit his explanation regarding the same. Thereafter, the petitioner's explanation should be objectively and dispassionately considered and only thereafter, a final decision can be taken;

(iv) There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.06.2024

Neutral Citation : yes
grs



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1. The Secretary to Government,
Revenue and Disaster Management Department,
Fort St. George,
Chennai - 600 009.
2. The Additional Chief Secretary /
Commissioner of Revenue Administration,
Commissionerate of Revenue Administration &
Disaster Management,
Exhilagam, Chepauk,
Chennai - 600 005.
3. The District Collector,
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VERDICTUM.IN



W.P.No.11754 of 2024

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.11754 of 2024
and W.M.P.Nos.12830 and 12831 of 2024

05.06.2024