HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

***

W.P.No.7288 of 2020

Between:

P.Ranjan Kumar

……Petitioner

and

State of Telangana and another

…….Respondent

Date of Judgment pronounced on : 25-06-2021

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes

HIGH COURT FOR THE STATE OF TELANGANA :: HYDERABAD

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W.P.No.7288 of 2020

%25-06-2021

P.Ranjan Kumar .... Petitioner

Versus

$ State of Telangan and another

..... Respondents.

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> HEAD NOTE:

!Counsel for the petitioner	:Sri M.Surender Rao, learned Senior Counsel, representing Sri Srinivasa Rao Madiraju, learned counsel for the petitioner.
^ Standing Counsel for R-2	:Sri B.Nalin Kumar

? Cases referred

[1] AIR 1988 S.C. 1395
[2] (1996) 3 S.C.C. 364

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

&

HON'BLE SRI JUSTICE K.LAKSHMAN

W.P.No.7288 of 2020

ORDER (per AKS,J):

This Writ Petition is filed seeking a Writ of Mandamus declaring G.O.Ms.No.61 dt.27-12-2019 issued by the 1st respondent as illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and Consequently the proceedings issued by the 2nd respondent in Roc.Nos.3021/2016 and 146/2017 Vigilance Cell dt.30-12-2019 are also illegal and unjust and therefore the same are liable to be quashed and also to declare that the petitioner is entitled to be reinstated into service with all consequential benefits.

2. Heard Sri M. Surender Rao, learned Senior Counsel, representing Sri Srinivasa Rao Madiraju, learned counsel for the petitioner and Sri B.Nalin Kumar, learned Standing Counsel for the 2nd respondent.

3. It has been contended by the petitioner that he was initially appointed as a Junior Civil Judge-cum-Judicial First Class Magistrate on 06-05-1994, after undergoing regular selection process, in pursuance to a Notification issued by the Andhra Pradesh Public Service Commission. The petitioner has further contended that after rendering considerable length of service, he was promoted as Senior

Civil Judge during the year 2005 and further promoted as the District and Sessions Judge in the month of September, 2015.

4. The petitioner has further contended that he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. While he was working as Additional District Judge at Jagtial in Karimnagar District, the Members of the Bar Association, more particularly, the President of the Jagtial Bar Association had made a complaint against him alleging that he is not giving respect to the President of Bar Association and he is collecting illegal gratification for passing favourable orders by utilizing the services of one Srikanth, Office Subordinate, as a mediator for striking deals with parties and advocates; and that based upon those allegations, he was placed under suspension on 18-08-2017 by the High Court.

5. It has been further contended by the petitioner that a charge memo on 15-12-2017 was served on him and was asked to appear before the enquiry officer; that the so-called complaint filed by the President, Jagtial Bar Association, on 05-11-2016 was not accompanied by any sworn affidavit and the Standing Orders of the High Court were not followed before initiation of the disciplinary proceedings against the petitioner and the disciplinary authority ought not to have initiated disciplinary proceedings against the petitioner.

6. In all, four Articles of Charges were framed which read as follows:

"ARTICLES OF CHARGE NO.1:-

That you Sri P.Ranjan Kumar, former II Additional District Judge, Jagtial, Karimnagar District, now under suspension, while working as such, during the relevant period,

(i) Maintained a set of advocates and more particularly Sri Omprakash, Advocate and through whom you used to collect illegal gratification for passing favourable orders, irrespective of the nature of the case and unless and until you receives money, you would not be pronouncing orders/judgments, and

(ii) also used the services of Sri Srikanth, Office Subordinate of your Court as a mediator for striking deals with parties/advocates and collected illegal gratification through him, and

(iii) used to say openly in the Bar Association, Jagtial that "everyone in other departments is earning money and so why not you and myself" and also used to say "live and let live" and would be very liberal and encourage such practices, and

thus, acted in such a biased manner against the judicial ethics and gave a wrong signal to the legal fraternity, which a judicial officer ought not to have done, which act of yours if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of Rule 3 of A.P. Civil Services (Conduct) Rules 1964.

ARTICLES OF CHARGE NO.2:-

While so, in two Sessions Cases viz., S.C.No.207 of 2013 & S.C.No.292 of 2013, in which Sri Ch.Madan Mohan, Advocate, representing the accused therein, you, having received Rs.6.00 lakhs as illegal gratification from Sri Omprakash, advocate, for passing acquittal order in those two sessions cases in favour of accused

therein and subsequently, sensing repercussion from the rude and adamant behavior of the victim therein, returned the said amount and passed common judgment on 07-11-2016 convicting the accused i.e. A-1 to A-3 therein and thus, acted in such a biased manner against the judicial ethics, for extraneous consideration, which a judicial officer ought not to have done, which act of yours if proved or established would amount to grave misconduct, unbecoming of a judicial officer within the meaning of Rule 3 of A.P. Civil Services (Conduct) Rules 1964.

ARTICLE OF CHARGE NO.3:-

While so, in connection with the case in MVOP No.53 of 2016, wherein the respondents have remained ex-parte and having recorded the evidence of the petitioners therein on 13-05-2016, reserved the same for judgment/order and it was only on 14-06-2017 i.e. after a lapse of more than one year, you pronounced the judgment allowing the OP, in part, contrary to the statutory provisions as contemplated under Order XX of Civil Procedure Code, 1908 (Act 22 of 2002 which came into effect from 01-07-2002), with an ill motive, dodged the matter for extraneous consideration, which act of yours if proved or established would amount to grave misconduct and unbecoming of a Judicial Officer within the meaning of Rule 3 of A.P. Civil Services (Conduct) Rules 1964.

ARTICLE OF CHARGE NO.4:-

While so, in the award dt.14-06-2017 passed in MVOP No.53 of 2016, you ordered the compensation amount to be deposited in ICICI Bank, Jagtial Branch, contrary to the various circular instructions issued by the High Court from time to time in that behalf to deposit the awarded amounts in interest yielding fixed deposits in Nationalized Banks and thus acted in deviation of High Court's circular instructions for extraneous consideration, which act of yours if proved or established would amount to grave misconduct and unbecoming of a Judicial Officer within the meaning of Rule 3 of A.P. Civil Services (Conduct) Rules 1964."

The petitioner has submitted a detailed explanation on 29-01-2018 denying the said charges.

7. Thereafter, the High Court decided to conduct a regular departmental enquiry and that the petitioner has submitted his objections before the enquiry officer in respect of entertaining the complaint dt.05-11-2016 made by the President, Jagtial Bar Association. The enquiry officer had not entertained the said objections and proceeded with the enquiry and after conducting detailed enquiry, the enquiry officer has submitted a report on 06-09-2019 holding that the second part of the first limb of the Article of Charge No.1 stands proved, while the first part of the first limb of the Articles of Charge No.1 and the second limb and third limb of the Articles of Charge No.1 were not proved and the Article of Charge No.2 was also not proved. However, the Articles of Charge Nos.3 and 4 were held to be proved.

8. The enquiry report was furnished to the petitioner on 29-09-2019 and the petitioner has submitted his objections to the said enquiry officer’s report on 22-10-2019 and the disciplinary authority has recommended to the State Government for imposing a major penalty of Compulsory Retirement and the State Government had issued G.O.Ms.No.61 dt.27-12-2019 imposing a major penalty of Compulsory Retirement against the petitioner and the High Court had issued consequential proceedings on 30-12-2019 and retired the petitioner in pursuance of the orders passed by the State Government

in the said G.O. Challenging the same, the present Writ Petition is filed.

9. Learned Senior Counsel for the petitioner contended that the petitioner has earlier approached the Supreme Court by filing W.P. (Civil) No.248 of 2020 and the Supreme Court was pleased to dispose of the said writ petition on 18.02.2020 directing the petitioner to first approach the High Court for the State of Telangana. In compliance of the orders passed by the Supreme Court, the petitioner has filed the present Writ Petition.

10. It has been further contended by the learned counsel for the petitioner that the disciplinary authority ought not to have entertained the complaint dt.05-11-2016 made by the President, Jagtial Bar Association, as it was not accompanied by any sworn affidavit and also it violates Sanding Order Nos.147 and 148 issued by the High Court for the State of Telangana. The said Sanding Orders read as follows:

> ***"Standing Order 147:-***
>
> *The Vigilance cell of the High Court which is under the purview of thee Registrar (Vigilance) deals inter alia with complaints against judicial officers in the State viz., District Judges, Senior Civil Judges, Junior Civil Judges/Judicial Magistrate of First Class and also the Judicial Ministerial staff. It's functions include among others, the preparation of office notes of complaints received against judicial officers and members of the judicial ministerial staff and suo motu reports from the District Judges, maintenance of dossier registers of judicial officers, preparation of office notes on particular*

subjects which come up for consideration of the Hon'ble Judges of the Disciplinary Committee and causing advance circulation of the same to the Hon'ble Judges."

Standing Order 148:- Procedure for Processing Vigilance Matters:

As per the procedure evolved, whenever a Complaint is received against any District Judge, a Note is to be put up before the Hon'ble the Chief Justice. If His Lordship, on considering the same, directs the matter to be placed before any of the Hon'ble Judges for discreet enquiry, the same is to be circulated to the Hon'ble Judge, as proposed by the Hon'ble the Chief Justice. The Report transmitted to the Registrar (Vigilance) by the Hon'ble Judge will, then, be placed before the Disciplinary Committee after approval of the same by the Hon'ble the Chief Justice. Action has to be taken according to the Resolutions taken in the Disciplinary Committee Meeting. If the Hon'ble Chief Justice issues any other direction, the same has to be complied with.

If complaints are received against a Senior Civil Judge or a Junior Civil Judge, a note is to be put up before the Hon'ble the Chief Justice. If the Hon'ble the Chief Justice opines to call for a report from the Hon'ble Judge is to be addressed to send a Report on the allegations levelled against the Officers. On receipt of the said Report, again the matter is to be placed before the Hon'ble the Chief Justice. If His Lordship, on considering the same, directs to place the Report and the Complaint before the Disciplinary Committee, the same is to be done. Action has to be taken according to the Resolution of the Disciplinary Committee; otherwise, the directions of the Hon'ble Chief Justice are to be followed.

On instructions from the Hon'ble Chief Justice, the Vigilance Cell will also function as 'Intelligence Cell' and makes its own enquires about them is conduct/corruption, if any, in the State Judiciary and place the Report before his Lordships for appropriate Orders."

11. Learned Senior Counsel has further contended that a perusal of the above said Standing Orders makes it abundantly clear that whenever any complaint is made against any judicial officer, the case has to be placed before the Hon'ble the Chief Justice and later before the Hon'ble Judges for conducting discreet enquiry and complaint has to be accompanied by sworn affidavit. But in the instant case, no sworn affidavits were accompanied along with the complaint and the then Principal District and Sessions Judge, who was at the helm of affairs, had not even verified the contents of the alleged complaint made against the petitioner. If any complaint is received against a District Judge and when the disciplinary authority concerned intends to initiate any disciplinary proceedings, a note has to be placed before the Hon'ble Chief Justice who directs the matter to be placed before the Hon'ble Judges for discrete enquiry. But, in the instant case, the Hon'ble Chief Justice has not initiated any disciplinary proceedings against the petitioner and the Registrar who is equivalent cadre to that of petitioner had initiated disciplinary proceedings against the petitioner. The importance of Standing Orders Nos.147 and 148 were dealt with by this Court in W.P.No.4597 of 2012 dt.15-10-2012. As the initiation of disciplinary proceedings against the petitioner is contrary to the said Sanding Orders, the entire disciplinary proceedings initiated against the petitioner including that of punishment of Compulsory Retirement imposed against him are liable to be set aside.

12. Learned Senior Counsel further contended that there is ambiguity in the findings of the enquiry officer's report. Article of Charge No.1 consists of three limbs. The first and second limbs are interconnected to third limb. But the enquiry officer has split the first limb of Article of charge No.1 into two parts and gave a specific finding that first part of first limb of Article of Charge No.1 as not proved in the following manner:

> *"On the above analysis, it must be held that no evidence whatsoever has been placed on record in proof of the Charged Officer maintaining a set of Advocates and more particularly, Sri Omprakash, Advocate, for collecting illegal gratification for passing favourable orders. This part of the first limb of the Articles of Charge No.1 is therefore not proved."*

However, the second part of first limb of the Article of Charge No.1 is dealt in respect of the allegation regarding 'not pronouncing the judgments on time' and the same was considered and held to be as proved along with Articles of Charge Nos.3 and 4.

13. In respect of second and third limbs of Article of Charge No.1, they were held not to be proved when the first limb of Article of Charge No.1 is not capable of being split into two parts as was done by the enquiry officer. The first limb of Article of charge No.1 reads as follows:

> ***"First Limb of ARTICLES OF CHARGE NO.1:-***
>
> *That you Sri P.Ranjan Kumar, former II Additional District Judge, Jagtial, Karimnagar District, now under suspension, while working as such, during the relevant period,*

Maintained a set of advocates and more particularly Sri Omprakash, Advocate and through whom you used to collect illegal gratification for passing favourable orders, irrespective of the nature of the case and unless and until you receives money, you would not be pronouncing orders/judgments."

14. As seen from the above, the first limb of Article of the Charge No.1 cannot be split into two parts. The Articles of Charge Nos.3 and 4 which were held to be proved by the enquiry officer which are trivial in nature and in respect of Article of Charge No.3 which relates to not pronouncing the orders on time and pronouncing the order after lapse of more than one year in respect of one M.V.O.P.No.53 of 2016 which was reserved on 13-05-2016 and the judgment was pronounced after nearly one year on 14-06-2017 is concerned, the petitioner submits that CPC is not strictly applicable when it comes to the matters of MVOPs. Order XX CPC is not applicable to MVOPs and this charge ought not to have been held as proved against the petitioner by the enquiry officer.

15. Learned Senior Counsel further contended that in respect of Article of Charge No.4, alleging that the petitioner has not followed the Circulars issued by the High Court and directed the compensation amounts to be deposited in a private bank, since the petitioner was newly promoted as District and Sessions Judge, he had no knowledge about depositing the compensation amounts in a nationalized bank and as his predecessors were depositing the compensation amounts in ICICI bank, the petitioner had also directed the compensation amounts

to be deposited in ICICI bank. It is a trivial charge of not following the High Court's Circular and the punishment of Compulsory Retirement is shockingly disproportionate to the charges levelled against the petitioner. Therefore, impugned punishment order of Compulsory Retirement is liable to be set aside and prayed to direct the respondents to reinstate the petitioner into service with all consequential benefits.

16. Learned counsel for the petitioner has relied upon by the judgment of the Supreme Court in **Ishwar Chand Jain v. High Court of Punjab & Haryana and another**[1] and contended that the Supreme Court in the said case held that in the absence of any supporting affidavit to the complaint, the statement of advocates, recorded, if any, cannot be held to be any verifiable material to substantiate the allegations and that if judicial officers are under constant threat of complaints and enquiry on trifling matters and if the High Court encourages anonymous complaints to hold the field, the subordinate judiciary will not be able to administer justice in an independent and honest manner.

17. Learned counsel for the petitioner has further contended that during 2015 and 2016, there was strong resentment among the advocates of Telangana against the Judicial Officers from Andhra area working in Telangana area and they were making baseless allegations against the petitioner who hails from Andhra Area and in fact, during

[1] AIR 1988 S.C. 1395

2015 and 2016, the advocates of Jagtial Bar Association had held *dharnas* demanding that Andhra Judicial Officers working in Telangana area should go back to Andhra area. The complaint made by the President, Jagtial Bar Association is nothing but a complaint made with animosity against the petitioner. The Principal District Judge has not even verified the contents of the complaint made by the President, Jagtial Bar Association and without following Sanding Orders Nos.147 and 148, the disciplinary authority initiated disciplinary proceedings against him. Therefore, the action of disciplinary authority in imposing a major penalty of Compulsory Retirement from service against the petitioner is nonest in the eye of law and is liable to be set aside.

18. The learned Standing Counsel appearing for the 2nd respondent has filed a counter denying all these allegations and it has been contended by the 2nd respondent that the petitioner has not raised all these issues before the disciplinary authority when disciplinary proceedings were initiated against him and the prejudice which has been caused to him by not following Sanding Orders Nos.147 and 148 has not been explained by him. Admittedly, the sworn affidavits of the complainants were taken and their statements were recorded in the presence of the petitioner. So, no prejudice has been caused to the petitioner and the contention of the petitioner that the disciplinary authority has not followed the Standing Orders is totally false at the instance of concerned Hon’ble Judge only the disciplinary

proceedings were initiated against the petitioner, and based upon the sworn affidavits only, disciplinary proceedings have been initiated against the petitioner.

19. It has been further contended by the 2nd respondent that Charges Nos.2 and 3 were held to be proved by the enquiry officer. Except stating that the Order XX CPC is not applicable to MVOPs, no further explanation was put forth by the petitioner for denying Article of Charge No.3 and Article of Charge No.4 also makes it abundantly clear that the High Court has issued Circulars from time to time saying that the amounts have to be deposited only in the nationalized banks or scheduled banks; and ICICI bank is not a scheduled bank.

20. The learned Standing Counsel has further contended that the disciplinary authority has taken a lenient view and imposed punishment of compulsory retirement from service which punishment would enable the petitioner to draw pension and pensionary benefits. So, the contention that punishment of Compulsory Retirement is shockingly disproportionate would not arise as the disciplinary authority has already taken a lenient view and imposed the said punishment.

21. Learned Standing Counsel for the 2nd respondent, in support of his contention, has contended that no prejudice has been caused to the petitioner and he has relied upon the judgment of the Supreme Court in the **State Bank of Patiala and others vs.**

S.K.Sharma[2]**,** wherein the Supreme Court has dealt with the issue as to whether substantial compliance of the Rules has been followed or not. In the instant case, the disciplinary authority has rightly followed the law and initiated disciplinary action and imposed a punishment of Compulsory Retirement for the proven misconduct in the enquiry. Even the petitioner also has not pleaded any theory of prejudice since he was given every opportunity during the course of enquiry. Moreover, the disciplinary authority has taken a lenient view and imposed a penalty of Compulsory Retirement so as to enable the petitioner to draw pension and pensionary benefits. Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed.

22. This Court, having heard the rival submissions made by both the parties, is of the considered view that first part of first limb, second and third limbs of the Article of Charge No.1 were dealt with by the enquiry officer and were held to be not proved. However, the second part of first limb of the Article of Charge No.1 and Articles of Charge Nos.3 and 4 were held to be proved in the departmental enquiry proceedings.

23. Further, the disciplinary authority can impose punishment even if one Article of the Charge is proved. Even if the argument of the petitioner is to be accepted that the first limb of Article of the Charge No.1 cannot be split into two parts, admittedly, the Articles of

[2] (1996) 3 S.C.C. 364

the Charge Nos.3 and 4 were held to be proved independently. Moreover, the second part of 1st limb of the Article of Charge No.1 is identical to the Article of Charge No.3 and the enquiry officer has rightly held that the second part of the 1st limb of the Article of Charge No.1 and the Article of Charge No.3 were held to be proved as there was documentary evidence against the petitioner.

24. The contention of the petitioner that Standing Orders Nos.147 and 148 were not followed by the disciplinary authority had been denied by the respondents. A discreet enquiry was conducted before initiation of disciplinary proceedings against the petitioner. So far as Articles of Charge Nos.3 and 4 are concerned, which relates to not following the circular issued by the High Court regarding not pronouncing the judgments on time and second part of first limb of the Article of Charge No.1 is with regard to not pronouncing the orders on time unless and until he received money irrespective of the nature of the case. The enquiry officer specifically recorded a finding that though the oral evidence in this regard is of no particular importance, the documentary evidence is clinching to show that the petitioner was reserving the orders but not pronouncing the judgments in time and some of the I.As filed in the O.Ps were disposed of within seven days and in respect of some I.As in some O.Ps, the orders were pronounced belatedly by keeping them pending for more than three months. The enquiry officer has elaborately considered all these I.As

filed in various O.Ps and has given a specific finding that the petitioner is not pronouncing the orders in time.

25. Insofar as the Articles of Charge Nos.3 and 4 are concerned, the Judicial Officer is expected to follow the High Court Circulars issued from time to time and also pronounce the orders within a reasonable time and these Articles of Charge Nos.3 and 4 are independent charges i.e. they are not framed separately based on the complaints made against the petitioner and the said Charges were held to be proved independently and also the second part of first limb of the Article of Charge No.1 was also held to be proved by the enquiry officer as referred above. Therefore, the disciplinary authority has rightly imposed a penalty of Compulsory Retirement by taking a lenient view.

26. Further, the petitioner has also not raised the theory of prejudice before the disciplinary authority at the stage of initiation of disciplinary proceedings. The Supreme Court in **State Bank of Patiala** (2 supra) held:

> *"34. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:*
>
> *(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set*

aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee

asking for it. The prejudice is self- evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on theground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B.Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -

or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may

have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

34. Now, in which of the above principles does the violation of sub-clause (iii) concerned herein fall? In our opinion, it falls under Principles No.3 and 4(a) mentioned above. Though the copies of the statements of two witnesses [Kaur Singh, Patwari and Balwant Singh] were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination. Of the two witnesses, Balwant Singh was not examined and only Kaur Singh was examined. The respondent did not raise any objection during the enquiry that the non-furnishing of the copies of the statements is disabling him or has disabled him, as the case may be, from effectively cross- examining the witnesses or to defend himself. The Trial Court has not found that any prejudice has resulted from the said violation. The Appellate Court has no doubt said that it has prejudiced the respondent's case but except merely mentioning the same, it has not specified in what manner and in what sense was the respondent prejudiced in his defence. The High Court, of course, has not refereed to aspect of prejudice at all.

35. For the above reasons, we hold that no prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. We are satisfied that on account of the said violations it cannot he said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry. Accordingly, we allow the appeal and set aside the judgment of the High Court affirming the judgments of the Trial Court and Appellate Court. the suit filed by the respondent shall stand dismissed."

A perusal of the above judgment of the Supreme Court makes it abundantly clear that no prejudice has been caused to the petitioner since he was given ample opportunity at every stage of the enquiry and the disciplinary authority, has taken lenient view and imposed

punishment of Compulsory Retirement so as to enable him to draw pension and pensionary benefits. Therefore, this Court is not inclined to interfere with the punishment imposed on the petitioner by the disciplinary authority and we do not see any merit in the Writ Petition.

27. Accordingly, the Writ Petition is dismissed. No costs.

28. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

JUSTICE K.LAKSHMAN

Dt.25-06-2021

Note:-
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