

(2008) 12 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No. 16209 of 2008

R. Madhavan, Assistant Director of Rural Development
(Retired), Regional Institute of Rural Development

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 15, 17, 9
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 19
Tamil Nadu Government Servants Conduct Rules, 1993 — Rule 19

Citation : (2008) 12 MAD CK 0023

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : Vijay Narayan for R. Parthiban, for the Appellant; P. Gurunathan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—The Petitioner has come forward with this writ petition praying for a Writ of Certiorari and mandamus calling for the

records relating to the impugned proceedings of the first Respondent issued in Letter No. 8386/E1/2008-1, RD&PR Department dated

03.06.2008 and quash the same and consequently direct the Respondents to drop further proceedings based on the charge memorandum dated

17.09.2007 in proceedings Roc No. 51311/07/DPG-22, dated 17.09.2007.

2. The case of the Petitioner is as follows:

When the Petitioner herein was working as Assistant Director of Rural Development and Panchayat Raj Department, the second Respondent

herein issued a charge memo in Roc. No. 51311/07/DPC-22 dated 17.09.2007,

based on the complaint given by one D. Kalavathi claiming herself as the second wife of the Petitioner. The charges against the Petitioner are as follows:

i) That he has married Tmt. D. Kalavathi in the year 1985 who is residing at No. 2/784, V.O.C. Nagar, Pidamanery, Kumarasamypet Post,

Dharmapuri District and working as Noon Meal Organiser at Thiruvalluvar Arivagam, Kumarasamypet, Dharmapuri District when he is already

having a wife by name Tmt. Pre-mavathy, residing at Block No. 15, Pad-mavathy Nagar, VGN Garden Road, Nelumbur, Mogappair West,

Chennai - 37.

ii) That he has entered into a second marriage when already having a spouse living and thus he violated Rule 19(ii) of Tamil Nadu Government

Servant's Conduct Rules, 1973.

The Petitioner has submitted his explanation dated 25.10.2007 denying the charges enclosing the below mentioned documents

i) Invitation of his marriage held on 18.06.1972 with Premavathy

ii) School Certificate of his son M. Puni-than

iii) School Certificate of his daughter M. Kavitha

iv) Copy of the Birth Certificate of Mr. Praveen Kumar, son of said D. Kalavathi wherein it is shown that Karunanithi is his father

v) Registered Sale deed dated 01.06.1990 executed in favour of one Athimoolam and Kalavathi wherein Athimoolam was stated as Kalavathi's

husband

vi) Gift Deed dated 09.05.1994 executed by Athimoolam in favour of Kalavathi mentioning her as his wife

vii) Encumbrance Certificate dated 17.08.2007

viii) House warming ceremony invitation dated 09.02.1997 in the name of Kalavathi

ix) Ration Card No. 09/P/046099 (1998-2003) issued in the name of Kalavathi and her family

x) Copy of Tamil Nadu Government Gazette No. 23 dated 12.06.2002 issued at the instance of Kalavathi for changing her son's name as M.

Praveenkumar instead of K. Praveenkumar

xi) Petitioner's ration card No. 01/W/0014850 (2005-2009)

xii) Photo identity card dated 26.01.2001 issued by Election Commission of India to the Petitioner at Dharmapuri Constituency

xiii) Photo identity card dated 28.03.2006 issued to the Petitioner at Villi-vakkam Constituency

On receipt of the Petitioner's explanation, the second Respondent appointed Mr. K. Meenakshi Sundaram, Joint Director of Rural Development,

Project Officer, Mahalir Thit-tam, Dharmapuri as enquiry officer. The enquiry officer has sent notice to Kalavathi to appear for an enquiry on

13.02.2008, but she has sent a letter dated 05.02.2008 to the Respondents 1 and 2 herein stating that she was not interested in pursuing the

complaint, which was also forwarded to the Enquiry Officer. On receipt of the said letter, the Enquiry Officer again sent a notice directing

Kalavathi to appear for an enquiry on 27.02.2008, but she did not turn up. Thereafter, the enquiry officer, with the available records, concluded

the enquiry and found that both the charges are not proved and submitted his report to the Respondents on 29.02.2008. The first Respondent is

also fully aware that the date of superannuation of the Petitioner was 31.03.2008, but not chosen to consider the enquiry officer's report before

the said date, however, allowed him to retire from his service reserving their right to proceed against him further. The Petitioner, having waited for a

long period and the first Respondent has not taken any steps to pass final orders in the disciplinary proceedings, has filed WP No. 9708 of 2008

seeking direction to the first Respondent to pass final orders within a reasonable time and this Court also disposed it on 22.04.2008 directing the

Respondents to pass final orders in the disciplinary proceedings within a period of four months. Thereafter, the first Respondent sent the impugned

communication of second show cause notice dated 03.06.2008 informing the Petitioner that he disagrees with the findings of the enquiry officer on

the alleged ground that circumstantial evidence produced by the said Kalavathi are clinching and prove that the Petitioner married her when the first

marriage with Mrs. Premavathy subsists and called upon him to submit his explanation within 15 days from the date of receipt of the same. The

said communication is impugned in this writ petition.

3. The case of the Respondents as could be seen from their common counter affidavit is as follows:

Based on the complaint given by the said Kalavathi along with photographs and records to show that she married the Petitioner, a preliminary

enquiry was ordered at the level of Additional Director of Rural Development from the Directorate who personally enquired Kalavathi and the

Petitioner and after verification of the documents furnished by both sides, the authority found that the Petitioner has violated Rule 19(ii) of Tamil

Nadu Government Servants Conduct Rules, 1993. Based on the preliminary enquiry report, the charges under, Rule 17(b) of Tamil Nadu Civil

Services (Appeal and Disciplinary) Rules, were framed against the Petitioner for bigamy. In the enquiry, the Petitioner has produced the

documentary evidence relating to his marriage with first wife only, whereas, the said Kalavathi furnished proof ""for the illegal relationship"" with the

Petitioner, which was not refuted by the Petitioner with concrete evidence. The enquiry officer failed to consider the documentary evidence

produced by the said Kalavathi namely (i) Family Card No. 09/G/0354247 of 2005-2009 issued by-Civil Supplies and Consumer Protection

Department (ii) Identity card of Kalavathi issued by Dharmapuri Assembly Constituency on 04.10.2000 (iii) Course completion certificate and

conduct certificate dated 18.05.2007 in the name of Praveen Kumar issued by the college where he is studying (iv) Letter of Petitioner dated

27.12.2007 addressed to Porutchelvi requesting her to handover money borrowed by her to his wife Kalavathi (v) LIC Policy dated 14.11.2003

in the name of Kalavathi and (vi) Photographs and the said documents were considered by the first Respondent and rightly issued the second show

cause notice by disagreeing with the findings of the enquiry officer. The disciplinary authority has every right to disagree with the findings of the

enquiry officer when evidence is available to connect the delinquent officer with the imputation of charges

4. Mr. Vijay Narayan, learned senior counsel appearing for the Petitioner submitted as follows:

The Respondents averred that a preliminary enquiry was conducted in which the Petitioner as well as Kalavathi appeared and produced

documents and thereafter, the charge memo was issued, which is factually incorrect, indeed no such preliminary enquiry was conducted. If any

such preliminary enquiry is conducted, the report of the same should have been served along with the charge memo, but not served; that even the

documents stated to have been produced by the said Kalavathi along with the complaint were not even furnished to the Petitioner along with the charge memo, which amounts to denial of opportunity; that the Petitioner denied all the charges in his explanation and produced relevant documentary evidence to show that the charges are false; that the said Kalavathi each and every time changed her husband/husbands name and prayed for permission to cross-examine her; that the said Kalavathi, even before the date of enquiry has sent a communication that she was not pursuing her complaint; that nevertheless the said letter, the enquiry officer has sent notice to her directing her to appear for an enquiry, but she did not choose to appear; that even any such documents received by the Respondents from Kalavathi, the same should be considered only after marking it by her before the enquiry officer; that when Kalavathi has admittedly not marked any of the documents, the documents relied on by the first Respondent to issue the impugned show cause notice is based on the same, which is untenable; that when disciplinary authority disagrees with the findings of the enquiry officer, he must assign valid reason, but no such valid reason is assigned in the second show cause notice except relying on unmarked documents; that the complainant herself has chosen to send a letter informing the enquiry officer that she was not pursuing the complaint besides that she did not appear despite notice from the enquiry officer, which factors were properly considered by the enquiry officer and found that both the charges against the Petitioner were not proved. Whereas, the first Respondent deliberately ignored the said vital factors and erroneously issued the impugned communication and prayed for quashing of the same. In support of his contention, the learned senior counsel appearing for the Petitioner relied on the below mentioned decisions:

i) (K: Govindasamy v. Tamil Nadu Civil Supplies Corporation Limited, rep. by its Senior Regional Manager, Madras and Anr.) 1998 WLR 486

wherein a learned single Judge of this Court in Para Nos. 11 and 13 held thus:

11. .. Admittedly, no one was examined on the side of the Corporation/ Management and no opportunity was given to the Petitioner to examine the witnesses as claimed by him in the Questionnaire form. Hence, the contention of the learned Counsel for the Petitioner is well founded and the punishment imposed on the Petitioner is vitiated.

13. Further, it is settled law that it is for the management to prove the charges beyond any doubt. Merely because the Petitioner did not seek

opportunity that would not mean that charges were established. As observed by Shivaraj Patil, J., in a decision reported in TV. Ramakrishnan v.

T.N.C.S. Corporation Ltd. 1995 2 LLN 1081 it was for the management to establish the charges by the materials on record. As a matter of fact,

in our case, it is seen that the Petitioner not only denied the charges but also sought permission to examine witnesses on his side even in the

Questionnaire form. The said procedure has not been followed. Kanakaraj, J., in W.P. No. 11145 of 1987 dated 19.02.1991 has taken the same

view that failure to follow the said principle vitiates the enquiry and ultimate order passed by the Respondents. Abdul Wahab, J., in a decision

reported in 1997 (2) LLN 892 K. Mohan Doss v. T.N. Civil Supplies Corporation has held that without examining any witness and searching

documents, submission of a report by the Enquiry Officer and basing on that report, imposition of punishment cannot be sustained ! and the

procedure adopted for enquiry is not proper. In Writ Appeal No. 782 of 1992 dated 18.03.1997, the Division Bench of this Court, in a similar

circumstance, has held as follows:

...We are of the view and it is by now well-settled that in a domestic enquiry, as in a regular trial the burden of proof of establishing the guilt on a

charge is always on the accuser and not on the accused and this burden must be discharged fully in conformity with the principles of natural justice.

The employer should take steps first to lead evidence against the workmen charged, give him an opportunity to cross-examine the said evidence

and then should ask the concerned workman whether he wants to give any explanation about the evidence led against him. Before asking the

workman to produce his evidence, it was also held in catena of cases, that it is not fair at the very outset to closely cross-examine even at the

commencement of the domestic enquiry the delinquent officer concerned and act upon the answers given or materials gathered during the

preliminary enquiry, without making it part of the regular enquiry during the course of the domestic enquiry held by the enquiry officer appointed for

the purpose. The procedure adopted by the domestic enquiry officer in this case as also the materials relied upon could not be said to be a legal

one and enquiry is vitiated seriously. The order of punishment passed on the basis of such enquiry and the enquiry report cannot also be sustained by us.

ii) (S. Sargunam v. T.N. Civil Supplies Corporation Ltd., (rep. by its Senior Regional Manager), Thanjavur Region, Thanjavur and Ors.) 2001 (3)

L.L.N. 665 wherein in Para No. 11, a learned single Judge observed thus:

11.1 fail to understand as to how the charges against the Petitioner could be held to have been proved without examining any one of the witnesses

or by producing documents for the perusal of the Petitioner considering the nature ; of the charges. For instance, with reference to charge No. I,

the charge is that the Petitioner has tampered the records in order to change the number of gunnies noted against the condition of the gunnies and in

order to hide the actual transaction held in this case. To this charge, the Petitioner had explained that he had not signed the acknowledgments

anywhere in the loading points. The said charge cannot be proved without the production of the records, which are alleged to have been tampered

and without adducing oral evidence to speak to the alleged tampering of the records.

5. Mr. Gurunathan, learned Government Advocate appearing for the Respondents submitted that preliminary enquiry was conducted, a prima facie

case was made out against the Petitioner and thereafter, the charge memo under Rule 17 (b) was issued; that the documents produced by the said

Kalavadhi are clinching to prove that the Petitioner married her when the first marriage was subsisting; that the said documents were not properly

considered by the enquiry officer; that the first Respondent/disciplinary authority has every right to disagree with the findings of the enquiry officer

when the enquiry officer failed to consider the valid evidence and rightly issued the second show cause notice; that the Petitioner was allowed to

retire reserving the right of the Respondents to proceed against him pursuant to the charge memo, hence, the date of his superannuation no way

assumes importance and prayed for dismissal of the writ petition.

6. This Court carefully considered the submission of both sides and perused the material records. The disciplinary enquiry starts with a written

complaint from somebody except the cases where the fact must be brought to the notice of the punishing authority or misconduct may be noticed

by him personally and he may straightaway give the charge sheet without any complaint or preliminary investigation. In case a complaint is received, it is always necessary and desirable that such complaint must be reduced into writing. In this case, it is stated that Kalavathi gave a complaint in writing against the Petitioner, but the copy of the complaint was not served on the Petitioner. The Respondents have contended that they have conducted preliminary enquiry, which was denied by the Petitioner and stated that no such preliminary enquiry was conducted or copies of the preliminary enquiry report was furnished to him. If the copies of the preliminary enquiry report are not supplied, then the irresistible conclusion is that the delinquent had been prejudiced. Therefore, it is necessary to supply the copies of the prior statement recorded during the preliminary enquiry in order to give reasonable opportunity to the delinquent for cross-examination as held by the Honourable Supreme Court in Para-6 of the decision reported in (State of Madhya Pradesh v. Chintaman Sadashiva Vaishampayan) AIR 1961 SC 1623, 1629 which is extracted hereunder:

6. It has been urged before us by Mr. Khaskalam that in dealing with the Respondent's contention that the enquiry was defective Mr. Justice Sen has scrutinised the merits of the findings made against the Respondent in the enquiry as though he was hearing an appeal against the said order, and that, it is urged, is outside the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution. It may be conceded that some of the observations made by the learned judge justified this argument. The learned judge has, for instance, commented on the fact that the charge supplied to the Respondent did not give sufficient particulars; and has also expressed his disapproval of the conclusion recorded in the report that there was overwhelming evidence on the record against the Respondent; and that may seem like examining the correctness of the findings of fact recorded in the enquiry; but even if these observations made by the learned judge are left out of consideration on the ground that the learned judge was not entitled to consider the merits of the findings made against the Respondent, there are two points on which the learned judge has substantially based his conclusion, and it is on those two points that it is necessary to concentrate in dealing with the present appeal. The

first point is that the Respondent should have been given a copy of the application on the strength of which the preliminary enquiry was started

against him; and the second that the statements of Rajab Ali and Noor Bhai recorded by Mr Ghatwal should have been supplied to him. In

appreciating the significance of these points, it is necessary to recall the broad features of the evidence adduced against the Respondent. In respect

of each charge evidence was given by the person who paid the money to Rajab Ali and Noor Bhai or one of them in order that it should be paid in

turn to the Respondent. Nooruddin, s/o Saoji Veerani, Noor Mohd., s/o Hasham, and Kasim Bhai are the three witnesses who gave evidence in

support of the three charges respectively. The first witness said that he had given in all Rs. 12,000 to Rajab Ali and Noor Bhai in three instalments

of Rs. 3000, Rs 3000 and Rs 6000. Similarly the second witness said that he had paid Rs. 11,000 to Rajab Ali and Noor Bhai by two instalments

of Rs 6000 and Rs 5000 respectively, and the third witness stated that he was arrested after the police action, and he was told that if he paid the

Respondent Rs 5000 he would be released, and so the money was paid. It is obvious that Rajab Ali and Noor Bhai are the principal witnesses

against the Respondent. It is equally clear from the findings recorded in the report itself that they collected far more than they are alleged to have

paid to the Respondent in two cases. In fact the report says that the excess amount collected by these two witnesses had been quietly pocketed by

them. Thus it was of very great importance for the defence to cross-examine these two witnesses, and for that purpose the Respondent wanted

copies of their prior statements recorded by Mr Ghatwal in his preliminary enquiry. It is difficult to understand how these statements could be

regarded as secret papers, for that alone is the reason given for not supplying their copies to the Respondent. Failure to supply the said copies to

the Respondent made it almost impossible for the Respondent to submit the said two witnesses to an effective cross-examination; and that in

substance deprived the Respondent of a reasonable opportunity to meet the charge. That is the view taken by Sen and Bhutt, JJ. and we see no

reason to interfere with it.

ii) { State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs.,) wherein in Para No. 3, it was held by the Honourable Supreme Court thus:

3. ..Secondly, it was not disputed before us that a preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry

statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary enquiry. Even the

request of the Plaintiff to inspect the file pertaining to preliminary enquiry was also rejected. In the face of these facts which are not disputed it

seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the Plaintiff was denied

reasonable opportunity to defend himself at the disciplinary enquiry; it cannot be gainsaid that in the absence of necessary particulars and

statements of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position it is difficult to accept the

contention urged by the counsel for the Appellant that the view taken by the trial court should be accepted by us. We are satisfied that the

dismissal order has been rightly held to be illegal, void and inoperative. Since the Plaintiff has died during the pendency of the proceedings the only

relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.

7. The Petitioner has categorically stated that no preliminary enquiry was conducted. Even in the counter filed by the Respondents, it is stated that

subsequent to the preliminary enquiry only, charges were framed. As mentioned above, the Respondents have not supplied the report of the

preliminary to the Petitioner.

8. In any event, preliminary investigation is no substitute for departmental enquiry even though full opportunity might have been given to the

delinquent at the preliminary stage.

9. In a disciplinary proceedings against a government servant, it is for the government to substantiate the charges and it is not for the civil servant to

substantiate his defence. Even the provisions of the Indian Evidence Act are not applicable in a departmental enquiry, yet, the Respondents are

required to establish the allegations by producing evidence. Even the contention that documents were shown to the delinquent is not sufficient. It is

the duty of the Respondents to adduce documents in evidence at the enquiry so that the delinquent, by cross-examination, test the truth of the

statements made therein by adducing evidence on his side.

10. In the case on hand, the complainant refused to appear before the enquiry officer despite notice, but the impugned second show cause notice

was caused by the first Respondent relying on the unmarked documents of the complainant. When the burden lies on the first Respondent to

establish the charges, it is not proper for the first Respondent to issue second show cause notice and place the burden on the Petitioner to prove

his innocence, which is opposed to the Rules of natural justice. Non-examination of the complainant certainly prejudice the right of the Petitioner

which has not been taken into consideration by the first Respondent. In this connection, the decisions of the Honourable Supreme Court mentioned

below can be usefully referred to":

i) Khem Chand Vs. The Union of India (UOI)and Others, wherein in Para No. 19, it was held by the Honourable Supreme Court as follows:

19. ...(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses

in support of his defence....

ii) In K.L. Tripathi Vs. State Bank of India and Others, wherein in Para Nos. 41 and 43, the Honourable Supreme Court held thus:

41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural

justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been

any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic

requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance

of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to

sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established

that prejudice has been caused to the Appellant by the procedure followed....

43. It is manifest, therefore, that absence of any denial by the Appellant, indeed admissions on the factual basis and nature of the explanation

offered by the Appellant were considered by the authority to merit the imposition of the penalty of dismissal. Such a conclusion could not, in the

facts and circumstances of the case, be considered to be unreasonable or one which no reasonable man could make.

iii) (Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.) AIR 2001 SC 24 wherein in Para No. 21, it was held thus:

21. Incidentally, Hidayatullah, C.J. in Channabasappa Basappa Happali v. State of Mysore recorded the need of compliance with certain

requirements in a departmental enquiry ? at an enquiry facts have to be proved and the person proceeded against must have an opportunity to

cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence ? on this

state of law, a simple question arises in the contextual facts. Has this been complied with? The answer however on the factual score is an emphatic

no"".

11. Considering the above said factors namely the complainant not appeared and marked documents, whereas the Petitioner has marked the

documents to show that the charges are false, the enquiry officer has rightly found that the charges against the Petitioner are not proved. The

disciplinary authority, while disagreeing with the findings of the enquiry officer must record reasons on the basis of evidence on record. If there is

no proper evidence or there is lacuna in the conduct of enquiry, the disciplinary authority must refer the enquiry back to the enquiry officer for

further investigation. In this case, the first Respondent, without doing so chosen to issue the impugned second show cause notice, which approach

is prohibited under Law. Followed K.R. Deb Vs. The Collector of Central Excise, Shillong,) wherein in Para No. 12, it was held thus:

12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no

proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or

were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no

provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal

to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under

Rule 9.

13. In this case, the complainant has sent a communication to the Respondents 1 and 2 stating that she is not intending to pursue the complaint,

hence, at this stage, that too after the retirement of the Petitioner, it may not be proper or useful to order the enquiry officer to record further

evidence.

14. The principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular

criminal trials as to disciplinary enquiries held under the statutory rules. Followed Nand Kishore Prasad Vs. State of Bihar and Others, wherein the

Honourable Supreme Court, in Para No. 19,20 and 21, held thus:

19. Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallised by judicial decisions. The first

of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement

of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with

some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the

place of proof even in domestic inquiries. As pointed out by this Court in Union of India v. H.C. Goel "the principle that in punishing the guilty

scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held

under the statutory rules".

20. The second principle, which is a corollary from the first, is, that if the disciplinary inquiry has been conducted fairly without bias or predilection,

in accordance with the relevant disciplinary rules and the Constitutional provisions, the order passed by such authority cannot be interfered with in

proceedings under Article 226 of the Constitution, merely on the ground that it was based on evidence which would be insufficient for conviction of

the delinquent on the same charge at a criminal trial.

21. The contentions in the instant case resolve into the narrow issue: Whether the impugned orders do not rest on any evidence whatever, but

merely on suspicions, conjectures and surmises.

15. As held by the Honourable Supreme Court, mere suspicion cannot be allowed to take the place of proof even in domestic inquiries. Applying

the said principle to the case on hand, it is apparent that the impugned second show cause notice was issued by the first Respondent only on

suspicion, hence, on that ground, it is liable to be set aside.

16. The Petitioner retired on 31.03.2008. Even before the said date, the enquiry officer submitted his report to the first Respondent on

29.02.2008. The first Respondent is fully aware of the date of superannuation of the Petitioner, but he kept mum even though he received the

enquiry report submitted by the enquiry officer prior to the date of retirement of the Petitioner. Even after retirement of the Petitioner, the first

Respondent has not taken any steps to proceed further, hence, the Petitioner approached this Court and filed WP No. 9708 of 2008 seeking

direction to the first Respondent to pass final orders in the disciplinary proceedings expeditiously and this Court also, by order dated 22.04.2008

disposed of the said writ petition by directing the Respondents to pass final orders within a period of four months. Thereafter only, the first

Respondent woke up and issued the impugned second show cause notice. The above mentioned de-lay on the part of the first Respondent also

certainly prejudiced the right of the Petitioner.

17. In view of the above said reasons, the impugned second show cause notice dated 03.06.2008 of the first Respondent is quashed. The writ

petition is allowed as prayed for. No costs. The first Respondent is directed to settle the retiral benefits to the Petitioner within a period of four

months from the date of receipt of a copy of this order.