
(2003) 10 MAD CK 0157

In the Madras High Court

Case No : Writ Petition No. 8149 of 2002

R. Vijaya Kumar

APPELLANT

Vs

The Chairman-cum-Managing Director, TEXCO Limited, The
General Manager, TEXCO Ltd. and The Manager, TEXCO Ltd.

RESPONDENT

Date of Decision : 23-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 10 MAD CK 0157

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; V.J. Arulraj, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties. The petitioner was working under the respondents as Project Clerk. He was in charge of distributing PTC/DATC tickets to the counter clerks, working out the commission due to be paid to such clerks. During 1996, while he was posted as Junior Accounts Clerk, a memo dated 13.9.1996 was issued indicating that the petitioner had committed various irregularities and explanation was called for. Thereafter, the petitioner filed a representation. However, the respondent on considering the representation decided to place the petitioner under suspension by order dated 16.5.1997.

2. It has to be noted that before such suspension order was passed, a preliminary enquiry had been conducted. Subsequently, the petitioner filed W.P. No. 13176 of 2000 challenging the order of suspension. The said writ petition was disposed of on 4th August 2000 with the following observation:-

"In any event, without going into the merits and demerits of the case, it is suffice to hold an enquiry into the alleged charges and give a finding on the charges within four months from the date of receipt of a copy of this order, and

thereafter, the disciplinary authority shall pass appropriate final order in the matter within two weeks from the date of receipt of the enquiry report".

3. Such order was passed at the admission stage itself, when the respondents had not appeared and the same had been communicated to the respondents 1,2 and 3. However, in spite of such order no Enquiry Officer was appointed nor any further enquiry was held, but on the basis of the preliminary enquiry report, the petitioner has been dismissed from service. The appeal against such order of dismissal having been rejected, the present writ petition has been filed.

4. The main contention of the learned counsel for the petitioner is to the effect that without holding an enquiry it was not open to the respondents to pass order of dismissal on the basis of the preliminary enquiry report. Eventhough counter has not been filed, the learned counsel appearing for the respondents has submitted that during the preliminary enquiry, the petitioner himself was also examined and therefore, there is no violation of principle of natural justice nor violation of any Rules in dismissing the petitioner on the basis of the preliminary enquiry report. The learned counsel appearing for the respondents relied upon a decision reported in *MANAGING DIRECTOR, ECIL, HYDERABAD vs. B.KARUNAKAR* 1993 (3) SCC 193 to support his case.

5. After hearing the learned counsel for the parties, I am convinced that the order passed by the respondents in dismissing the petitioner from service cannot be sustained inasmuch as such order had been passed without holding an enquiry. It is true that during the preliminary enquiry the petitioner had been examined but at that stage, report was a prima facie conclusion. As rightly contended by the learned counsel for the petitioner, it was only a preliminary enquiry which was conducted with a view to find out whether any further action should be taken or not. Thereafter, the petitioner had been placed under suspension in contemplation of departmental proceedings.

6. As a matter of fact, on earlier occasion the High court in W.P. No. 13176 of 2000 has clearly given direction to the first respondent to appoint an Enquiry Officer and hold an enquiry into the alleged charges and give a finding on such charges. Eventhough the said order was passed and the same had been communicated to the respondents, they had not taken any steps to challenge the same at any point of time. Without complying with such direction, it was not proper on the part of the respondents to pass order of dismissal against the petitioner on the basis of the preliminary enquiry report. Accordingly, such order of dismissal has to be set aside.

7. In view of the fact that certain serious allegations have been made and keeping in view the observations made in the earlier writ petition, the respondents are directed to hold an enquiry in accordance with Rules and Regulations. The petitioner would be reinstated in service on receipt of the present order. Whether he would be placed under suspension in future is a matter left to the discretion of the concerned authorities. The petitioner would be

given suspension allowance for the past. However, the period of suspension would depend upon the ultimate result in the enquiry.

8. The writ petition is allowed to the extent indicated above. No costs.