

(2009) 10 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 3536 of 2008

S. Maria Sebastian

APPELLANT

Vs

The District Educational Officer, The Corporate Manager, R.C.
Schools and The Correspondent, St. Lawrence Higher
Secondary School

RESPONDENT

Date of Decision : 24-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 MLJ 224

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : S.M. Subramaniam, for the Appellant; C.K. Vishnupriya, Additional Government Pleader (Education) for R. 1 and Isaac Mohanlal, for R. 2 and R. 3, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—Writ Petition is filed challenging the second show-cause notice dated 10.2.2004 issued by the second respondent in

Proceeding No. EDN/K/CM/FI 54/54/2004.

2. The brief facts of the case are as follows:

While working as a teacher in the third respondent school, on 31.1.2003, the petitioner is said to have valued the revision test papers for the 10th

Standard through students. It is further stated that the petitioner beat one student by name C. Sasikumar. With regard to the above incident (i.e.)

beating of the student, it appears that a police complaint was lodged by the parents of the student who suffered injury and he was treated in the

hospital. The parents gave a complaint to the Headmaster and the education authorities as well. On 3.2.2003, the correspondent of the third

school and others made some enquiries with regard to the incident and in order to find out the reason for the incident, the school appointed one

Mr. A. Maria Stephen, Advocate to conduct a preliminary enquiry into the episode and submit a report. Such appointment was made by

proceedings dated 19.2.2003. The proceedings dated 19.2.2003 was challenged in W.P. No. 6703 of 2003 by the present writ petitioner. The

court based on the counter-affidavit filed by the present respondent school came to the conclusion that the enquiry was preliminary in nature and

since no charge memo was issued at that stage, the writ petitioner cannot plead prejudice. The W.P. No. 6703 of 2003 was dismissed with an

observation that the school should comply with the undertaking given in paragraph 13 of the affidavit. The third respondent school stated in the

counter-affidavit filed in the earlier writ petition that after the preliminary enquiry is conducted, if there is any material to proceed further, then a

charge memo will be issued.

3. Thereafter, the charge memo was issued on 10.6.2003. In this, the proceedings dated 19.2.2003 appointing the advocate as the preliminary

enquiry officer and his report dated 6.6.2003 are referred to in the reference as Serial Nos. 1 and 3 and the order dated 7.4.2003 passed by this

Court in earlier W.P. No. 6703 of 2003 is referred to as Serial No. 2.

4. As to the nature of the charges framed against the writ petitioner there is no dispute. On 18.6.2003, the writ petitioner requested the

management to furnish a copy of the preliminary report dated 6.6.2003 so as to give his explanation. The management replied on 24.6.2003

stating that the preliminary enquiry and the report is only for the purpose of determining as to whether disciplinary proceedings should be initiated

or not. It is clearly stated that it was not intended to punish the petitioner without proper enquiry. It is very specifically stated in the reply letter

dated 24.6.2003 as follows:

The statements recorded there and the report thereof are not going to be used against anyone in the ongoing disciplinary proceedings, and hence

there is no need to supply copies thereof to the participants.

The petitioner was asked to give his reply and he will be given ample opportunity to defend his case. On 27.6.2003, petitioner gave an explanation

to the show cause notice. On 20.8.2003, a retired Chief Educational Officer was

appointed as enquiry officer on due intimation to the petitioner.

Petitioner once again asked for a copy of the police complaint, the answer sheet and the preliminary enquiry report which was duly answered and

turned down by the enquiry officer. The enquiry was thereafter conducted and a report was submitted on 5.2.2004 holding that all the charges as

proved. In the enquiry report, the list of witnesses and the documents relied upon has been mentioned. Based on the enquiry report, on 10.2.2004,

the second show-cause notice was issued to show cause as to why the enquiry report should not be accepted and disciplinary action should not be

initiated against the writ petitioner. Along with the second show cause notice, a copy of enquiry report was furnished to the petitioner. One week's

time was given for petitioner's explanation. On 16.2.2004, the writ petitioner requested for 15 days' time which was granted by the management.

Without replying to the second show cause notice dated 10.2.2004, the present writ petition has been filed challenging the same.

5. The primary contention raised by the writ petitioner is that in the charge memo dated 10.6.2003, there is a reference to the preliminary enquiry

report dated 6.6.2003 and that report has not been furnished in spite of specific request, besides, other documents that have been requested by

him. Therefore, it is contended by the learned Counsel for the petitioner that the petitioner is unable to reply to the show-cause notice and

effectively defend his case. The non-supply of the documents relied upon has caused great prejudice to the petitioner and therefore, the second

show cause notice and the enquiry report have to be set aside by this Court. The proceedings impugned in the writ petition should be quashed.

6. Learned Counsel for the petitioner relied upon the decision of the Supreme Court in State of U.P. Vs. Shatrughan Lal and Another, wherein the

Apex Court held in paragraph 6 as follows:

6. Preliminary enquiry which is conducted invariably on the back of the delinquent employee may often constitute the whole basis of the charge-

sheet. Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be

supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be

examined at the departmental trial. This principle was reiterated in Kashinath

Dikshita Vs. Union of India (UOI) and Others, wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.

7. With regard to the preliminary plea on the question of maintainability of the writ petition, challenging the show-cause notice, learned Counsel for the petitioner relied upon the Apex Court's decision in *Siemens Ltd. v. State of Maharashtra and Ors.* reported in 2007 (1) CTC 844.

8. On behalf of the respondents Mr. Isaac Mohanlal, learned Counsel, relied upon the decision in *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), wherein the Apex Court held in paragraph 4 as follows:

...The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charge is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him.

and stated that the procedure adopted by the respondents in conducting the enquiry was consistent by the principles of natural justice and that whatever documents that are relevant for the enquiry are supplied to the delinquent teacher.

9. As far as the request of the petitioner is concerned, as already extracted above, the respondent school have very clearly stated in their letter dated 24.6.2003 that the report is not going to be used in the disciplinary proceedings and therefore, there is no need to supply a copy to the petitioner. This plea is fortified by the Apex Court in the decision reported in Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), in paragraph 9 which reads as follows:

...If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

This view was followed in Pandit D. Aher Vs. State of Maharashtra, as to scope of preliminary enquiry. In the said decision, the Apex Court is of the view that the preliminary enquiries were confidential in nature and are means to arrive at a satisfaction, by the disciplinary authority as to whether a departmental proceeding should be initiated or not and that is the stand of the present respondent school in their letter dated 24.6.2003.

10. The same view was followed in Syndicate Bank and Others Vs. Venkatesh Gururao Kurati, . In paragraphs 17 and 18 of the decision, the very same principle has been emphasized, and reads as follows:

17. In the case of Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), at page 521, para 4 it was held by this Court:

However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or

the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.

11. In the present case, the preliminary enquiry as has been already stated at the time of dismissal of the earlier writ petition (W.P. No. 6703 of 2003) was in the nature of a preliminary enquiry as to whether any action if at all should be taken against the delinquent teacher. In reply to the specific request of the petitioner, the respondent school has clearly stated in their letter dated 24.6.2003 that the report is not going to be used in the disciplinary proceedings and therefore, there is no need to supply copies. Merely on the plea of prejudice, the writ petitioner cannot refrain from replying to the show cause notice when the second show cause notice is issued after full-fledged departmental enquiry where sufficient opportunity was given. Both sides produced documents and witnesses were

examined and also subjected to cross-examination. On the basis of the departmental enquiry by following the principles of natural justice, the report has been given by the enquiry officer stating that all the charges were proved. It is for the petitioner to submit a reply to the second show cause notice. He is also entitled to submit his statement of defence against the finding of the enquiry officer which will be considered by the disciplinary authority in accordance with law.

12. Further, as regards the plea of prejudice, in the enquiry report, there is no reference to the preliminary enquiry report dated 6.6.2003. In such view of the matter, a mere statement of prejudice cannot be a ground to interfere with the second show cause notice. In the light of the decisions of the Apex Court, which have already been referred to above, it is clear that the respondent's school have not proceeded on the basis of the preliminary enquiry report, but only on the basis of a full-fledged enquiry by appointing a retired Chief Educational Officer as enquiry officer. There is no allegation of violation of principles of natural justice insofar as the departmental enquiry is concerned. The documents which are sought for by the petitioner as has already been stated by the respondent school has no relevance for deciding the disciplinary enquiry proceedings and therefore, the plea of prejudice has no basis. Furthermore, the decision in Siemens' case (cited supra) has clearly laid down the principle that ordinarily no writ will be entertained against a show cause notice. A writ would lie when the show cause notice is issued with premeditation and where it is without jurisdiction. Both the situation does not arise in the present case. The said decision is of no avail to the writ petitioner.

13. In the result, the challenge to the second show cause notice fails. The petitioner has not made out the case for interference under Article 226 of the Constitution. The writ petition is dismissed. There will be no order as to costs.