

A THE INSPECTOR OF PANCHAYATS AND
DISTRICT COLLECTOR, SALEM

v.

S. ARICHANDRAN & ORS.

B (Civil Appeal No. 6776 of 2022)

SEPTEMBER 23, 2022

[M. R. SHAH AND KRISHNA MURARI, JJ.]

C *Service Law – Departmental Inquiry – Dismissal – Non-compliance of Principles of Natural justice – Impermissibility of – Held: Respondent-delinquent was facing the departmental inquiry w.r.t serious charge of misappropriation – As the order of dismissal was set aside on the ground that the same was in breach of principles of natural justice, the High Court ought to have remitted the case to the Disciplinary Authority to conduct the inquiry from the point*
D *that it stood vitiated and to conclude it after furnishing a copy of the Inquiry Report to the delinquent and giving him an opportunity to submit his comments thereon – Impugned order passed by the Division Bench as well as Single Judge of the High Court ordering reinstatement of the respondent with back wages set aside – Case*
E *remitted to the Disciplinary Authority to conduct the inquiry as aforesaid – Further, considering the fact that earlier also the dismissal order was set aside on the ground that it was in breach of principles of natural justice and the matter was remitted back and thereafter again when the fresh order of dismissal has been passed, it is again found to be in violation thereof and again the matter is to*
F *be remitted back, the appeal is allowed with costs of Rs. 50,000/- to be paid by the appellant to the respondent-delinquent.*

Chairman, Life Insurance Corporation of India and Ors. v. A. Masilamani (2013) 6 SCC 530 : [2012] 11 SCR 35; State of Uttar Pradesh and Ors. v. Rajit Singh, 2022 SCC Online SC 341 : 2022 (5) SCALE 199 – relied
G *on.*

Case Law Reference

	[2012] 11 SCR 35	relied on	Para 3
H	2022 (5) SCALE 199	relied on	Para 3

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6776 A
of 2022.

From the Judgment and Order dated 29.10.2021 of the High Court
of Judicature at Madras in W.A. No. 2735 of 2021.

Amit Anand Tiwari, AAG, D. Kumanan, Sheikh F. Kalia, Ms. Mary
Mitzy, Ms. Devyani Gupta, Ms. Tanvi Anand, Advs. for the Appellant. B

S. Nagamuthu, Sr. Adv., M. P. Parthiban, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment C
and order passed by the High Court of Judicature at Madras dated
29.10.2021 in Writ Appeal No. 2735 of 2021 by which the Division Bench
of the High Court has dismissed the said appeal and has confirmed the
order passed by the learned Single Judge directing the appellant to D
reinstate the respondent – original writ petitioner into service and pay
arrears payable to him, the District Collector, Salem District, Tamil Nadu
has preferred the present appeal.

2. That a departmental inquiry was initiated against the respondent,
who was a Panchayat Assistant, for having committed the misconduct
of misappropriation of funds pertaining to Samuthram Panchayat in E
connivance with the erstwhile President of the said Panchayat. By order
dated 25.09.2006, an order of punishment was passed against the
respondent – delinquent. The order of punishment was the subject matter
of Writ Petition No. 1710 of 2007 before the High Court.

2.1 By judgment and order dated 07.01.2009, the High Court F
allowed the said Writ Petition by quashing the order of dismissal and
remanded the matter for fresh disposal observing that no inquiry
whatsoever was held as required under the law. That thereafter, on
remand, the inquiry was conducted after affording an opportunity to the
delinquent to defend his case. However, without giving a copy of the G
Inquiry Report to the delinquent and without calling for his comments on
the Inquiry Officer's Report, a fresh order dated 11.06.2009 came to be
passed. The delinquent – respondent filed a writ petition before the High
Court by way of Writ Petition No. 1152 of 2012.

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A 2.2 The learned Single Judge allowed the said writ petition and ordered reinstatement with back wages by observing that the order of dismissal dated 11.06.2009 was in breach of principles of Natural Justice as the copy of the Inquiry Report was not given to the delinquent and without calling for his comments on the Inquiry Officer's Report, the order of dismissal was passed. The judgment and order passed by the
B learned Single Judge was the subject matter of appeal before the Division Bench.

 2.3 By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge to reinstate the
C respondent with full back wages. The impugned judgment and order passed by the Division Bench of the High Court is the subject matter of present appeal before this Court.

 3. Shri Amit Anand Tiwari, learned AAG appearing on behalf of the appellant has vehemently submitted that the respondent was charge
D sheeted for a very serious offence of misappropriation of the amount belonging to the Panchayat. It is submitted that if the Hon'ble High Court found the order of punishment in breach of Natural Justice, in that case, the matter ought to have been remanded to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.
E Reliance is placed on the decisions of this Court in the case of **Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530** as well as in the case of **State of Uttar Pradesh and Ors. Vs. Rajit Singh, 2022 SCC Online SC 341**.

 3.1 Making above submissions and relying upon above decisions,
F it is prayed to set aside the impugned judgments and orders passed by the Division Bench as well as the learned Single Judge of the High Court and to remit the case to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

 4. Present appeal is vehemently opposed by Shri S. Nagamuthu,
G learned Senior Advocate appearing on behalf of the respondent.

 4.1 it is submitted by Shri S. Nagamuthu, learned Senior Advocate appearing on behalf of the respondent that in the facts and circumstances of the case, neither the learned Single Judge nor the Division Bench have committed any error in setting aside the order of dismissal and
H ordering reinstatement with full back wages.

4.2 It is submitted that when earlier the order of dismissal was passed, the same was set aside by the learned Single Judge and the matter was remitted back to the Disciplinary Authority to pass fresh order after holding the inquiry and despite the same again the order of dismissal came to be passed in breach of principles of Natural Justice. It is submitted that therefore as rightly observed by the Division Bench, time and again, the opportunities are not to be given to the Disciplinary Authority to pass fresh orders. It is submitted that therefore, the Hon'ble High Court has rightly not passed any order of remand to the Disciplinary authority.

4.3 It is further submitted that in the present case, as such, there is no loss caused to the Panchayat and the entire amount has been deposited by the Panchayat President.

4.4 It is further submitted that the respondent is suffering since 2006 and therefore, the impugned judgment and order passed by the High Court may not be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India.

5. We have heard the learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent – delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

6.1 At this stage, a recent decision of this Court in the case of **Rajit Singh (supra)**, in which this Court had considered its earlier decision in the case of **A. Masilamani (supra)** is required to be referred to. In paragraph 15, it is observed and held as under:-

“15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the

A delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of *Chairman, Life Insurance Corporation of India v. A. Masilamani*, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

D “16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide *ECIL v. B. Karunakar* [(1993) 4 SCC 727], *Hiran Mayee Bhattacharyya v. S.M. School for Girls* [(2002) 10 SCC 293], *U.P. State Spg. Co. Ltd. v. R.S. Pandey* [(2005) 8 SCC 264] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30]).”

F 6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer’s Report.

G 7. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment(s) and order(s) passed by the Division Bench as well as learned Single Judge of the High Court ordering reinstatement with back wages are hereby quashed and set aside. The case concerned is remitted to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude

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the same after furnishing a copy of the Inquiry Officer's Report and after giving an opportunity to the delinquent to submit his comments on the Inquiry Officer's Report. The aforesaid exercise be completed within a period of six months from today. However, at the same time, considering the fact that earlier also the dismissal order was set aside on the ground that the same was found to be in breach of principles of Natural Justice and the matter was remitted back and thereafter again when the fresh order of dismissal has been passed, which is again found to be in violation of principles of Natural Justice and again the matter is to be remitted back, we allow the present appeal with costs to be paid by the appellant to the respondent - delinquent quantified at Rs. 50,000/-, which shall be paid to the respondent – delinquent within a period of six weeks from today.

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Present appeal is accordingly allowed to the aforesaid extent.

Divya Pandey
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.