

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1080 OF 2013

R. Mahalingam

...Appellant

versus

The Chairman, Tamil Nadu
Public Service Commission and another

...Respondents

J U D G M E N T

G. S. Singhvi, J.

1. This appeal is directed against judgment dated 3.2.2010 of the Division Bench of the Madras High Court whereby the writ appeal filed by the appellant was dismissed and the order passed by the learned Single Judge negating his challenge to the order of punishment was upheld.

2. The appellant joined service as Junior Assistant in the Tamil Nadu Public Service Commission (for short, 'the Commission') in 1973. He was promoted as Assistant in 1975 and as Assistant (Selection Grade) in 1988. In February, 1990, the appellant was sanctioned unearned leave from 12.2.1990 to 25.2.1990 for private work. During that period, 'P' Section of the Commission is said to have directed him to work as Invigilator at Bharathiyar Women Arts College, Chennai, which was one of the centers for the written examination on 17.2.1990 and 18.2.1990 held for recruitment of Assistant Surgeons.

3. In the examination held on 17.2.1990, six candidates sitting in Hall No.76 were given the question papers of the afternoon examination in the morning examination. As soon as the Chief Invigilator Shri Syed Abdul Kareem came to know about this, he took back the question papers of the afternoon examination and issued the question papers meant for morning examination. This incident was reported in the newspapers. The Commission took serious view of the matter and got registered a First Information Report. Simultaneously, the Controller of Examinations recorded the statement of the Chief Invigilator on 20.2.1990 and 22.2.1990. The same is reproduced below:

“STATEMENT OF SYED ABDUL KAREEM GIVEN TO THE CONTROLLER.

The following facts are submitted.

I was posted as chief invigilator to conduct examination in Bharathi Arts College for women, North Madras on 17.2.90 FN & AN and on 18.2.90 FN.

I collected the question papers in two bundles one for FN Session and another for AN session at 8.00 A.M. from the TNPSC office and took them by Auto to the examination centre. At about 9.50 A.M. on 17.2.90 myself with two other invigilators, Mr. Balasubramanian Assistant from D.M.E.'s Office and other Mr.Syed Abdul Kareem opened the sealed packet of question paper. The question papers were distributed to all the eight halls which were distributed to the candidates by the invigilators posted in the Halls. But in one of the Halls i.e., Hall No. 76 where 41 candidates were allotted it was found that after noon question papers were mingled. On hearing the fact I immediately received back 6 question papers from 6 candidates and issued them other question papers intended for fore noon session. These six papers were kept in my personal custody till the end of the examination. When I wanted to inform the facts to the TNPSC office immediately, the invigilator Thiru Mahalingam, Assistant, TNPSC office who was assisting me requested me not to inform since the papers were immediately received back from the candidates. Further he said that the staff attached to TNPSC office who were responsible for this mingling the question papers would be punished and the name of the TNPSC will be spoiled. Since he is a serviced employee of the TNPSC, I

had to take his advice considering that he is pleading knowing all pros and cons. The after noon question papers bundle was opened at 1.50 p.m. on 17.2.1990 by myself and two other invigilators Mr. R. Balan Assistant D.M.E's office and one Mr. N. R. Sundararaman Assistant KCH, Madras. These papers were distributed to the candidates at 2 p.m. there was no complaint about mingling or shortage of question papers.

At the close of examination myself and Thiru Mahalingam with the assistance of two staff of college packed the un-used answer papers and unused question papers 64 question papers of FN session and 11 A.N. Session papers and another bundle of 71 AN session papers. While packing a lady sweeper brought certain question papers and handed over to the persons who were packing. Immediately these papers has also been packed along with the balance question papers.

During end morning session the six candidates who were served the A.N. session question papers were asked to wait and the answer papers were received back and they were requested to be seated in a separate room opposite to the Hall till the commencement of after noon session. The candidates were seated in a small room till the after session when Tiffin or coffee offered to them, they refused to get.

The AN session question papers received back from the candidates six in no. were kept in my pocket first and then kept in my bag after 2 p.m.

Before me

Sd/

Controller of Examinations

Sd/-

Syed Abdul Kareem.

20.2.90.

In continuation of my statement dated 20.2.90 given to the Controller of Examinations it is further stated that I missed to mention the following facts there in it, at about 12.30 p.m. Thiru Gurumoorthy, a Member of TNPSC visited the examination centre and met me and enquired about the conduct of the examination. Though I was prepared to inform the Member about the receipt of Mingling of question papers, again Mr. Mahalingam stopped me and requested not to tell. After about some time the Member left the centre. At about 3.00 P.M. one of the Under Secretaries of the TNPSC office visited the Examination Centre and took a written statement from me. Again I did not inform him the fact of the mingle of the question papers in the morning session at the insistence of the same person Mr. Mahalingm. Though I should have informed the fact to the both the officials but did not do so under the impression that being a senior staff of the TNPSC office Mr. Mahalingam might have had the knowledge of the consequences and he would have known the gravity of the incident, I had to take his words. Had he not been posted, I would not have been misled. But on 15.2.90 he visited my office at about 11.30 AM and informed me

that he had been posted as Invigilator to Bharathi College for Women where I was posted as Chief Invigilator. He assured me that he would assist me on 16.2.90 after noon also in arranging the examination halls. So he did what he promised and after posting all the other invigilators to various halls, I retained Mr. Mahalingam with me to assist so he was with me all along the day till I left the examination centre at about 6.45 pm on 17.2.90. The list of invigilators posted to my centre does not contain the names of the three staff of TNPSC office who were posted as Invigilators. They are Mr. Mahalingam, Mr. Sekarao and Mr. Udhaya Kumar. But they are having their individual orders that too they did not handed over to me. I did not ask for any help in writing from the TNPSC office. The absentees statement were also prepared by Mr. Mahalingam only.

Before Me.

Sd/-

Controller of Examns.

Sd/-

Syed Abdul Kareem.

22.2.90”

(underlining is ours)

(reproduced from the SLP paper book)

4. Inspector, State Crime Investigation Department to whom the investigation of the criminal case was entrusted also recorded the statement of the Chief Invigilator on 26.2.1990. The relevant portions thereof are extracted below:

“STATEMENT OF SYED ABDUL KAREEM AGE 55/90 S/O SYED THASTAGINI, NO.8, S.R.P.KOIL STREET, NORTH THIRU VI.KA.N-AGAR, MADRAS-82.

.....
During the month of February 1990 an order from the office of TN-PSC came to me on 14.2.90 to conduct the TNPSC Examination for Assistant Medical Officer post on 17.2.90 full day and 18.2.90 half day (fore noon only). I went to TNPSC office on 15.2.90 and met the Superintendent of the concerned Section (I do not remember his name) in person. I told him that I am suffering from heart ailment as such it is not possible for me to conduct the examination and hence made a request to appoint some other person. He told me that this order is passed by District Collector, Chennai as such it is not possible for us to do anything and asked me to get the amount by sending a man with me. I got the cheque and came to him and asked a list of persons who are going to assist me. At this time TNPSC gave 19 persons to assist me. But certain persons informed me over phone at G.H. that it is not possible for them to assist me. Again I went to the TNPSC Office on 16.2.90 and informed the position to the concerned Superintendent at about 2 noon. He told me that they had posted 5 persons to

assist me from their section. Kindly conduct the examination with them and asked his Assistant by name Saveriyar to give me the names of 5 persons in writing. He gave me a list in his hand writing as (1) Udhayakumar; 2) Sekaran; 3) Mahalingam; 4)Aasir and the name of another person not known but know the person. On 16.2.90 Mahalingam came to my office at G.H. at 12.00 hours and told me that he is on leave and studying for Group I examination but he will come and assist me. Mahalingam is known to me from the year 1985-86 onwards. On the next day that is on 17.2.90 I went to TNPSC office at 8.00 AM and got two bundles containing question papers by affixing seal on the cloth as 17.2.90 Forenoon 10.00 AM to 12.00 Noon as one bundle and 17.2.90 Afternoon 2.00 PM to 5 PM as another bundle and went Bharathi Women's College in an Auto and reached there at about 8.45 AM. Mahalingam was waiting there. 19 persons came there to assist me (invigilators). I gave them answer sheets, thread and white papers and send them to each and every hall. Then at 9.50 hours I took the question bundle for the forenoon and affixed my signature in the face slip of the said bundle in the presence of two invigilators (1) G.Balasubramaniam (Assistant, D.M.E), Chennai-5 and (2) Aazir, School Assistant, Thayar Sahib Street, Anna Salai, Chennai-2 and also got their signature. Then I have ripped the seal of the bundle and got the signature of the said two persons in the paper inside the bundle and I have also put my signature. Then at 10 hours I gave the question papers to invigilators and instructed them to take the question papers to the respective halls. I have appointed Syed Ibrahim and Thiru N.R.Sundararaman as invigilators for hall No.76. The said Ibrahim told me that six students told him that the question papers issued to them are for the afternoon examination as it seems that six question papers for the afternoon examination have been found mixed with the question papers for the forenoon examination. Immediately I went to that hall No. 76 and made enquiry and came to know it as true. Immediately I got back the afternoon question papers from the six students and issued the question papers for the forenoon. I kept the said six question papers which are intended for the afternoon at my custody. Then I have decided to inform it to TNPSC office and it was written by Mahalingam as per my dictation. Mahalingam told me that if the said letter is sent the staff of TNPSC office will get some trouble, that the name of Controller will be spoiled, that the said Controller belongs to his community and that he is going to get the post of District Collector shortly. Hence I have not informed it to TNPSC over phone. Mahalingam also turned the letter written by him. He also told me that he had got back the after noon question papers immediately as such there is no possibility for the students to read over it. No problem will arise and pleaded me that do not inform it to any one. Then the examination was going on. I went around all the halls. No complaint received from the students. It was written in the face slip of the forenoon bundle as 410 question papers. On counting it is found 412 question papers. I gave 339 persons from it and out of the remaining 75, 64 question papers for forenoon and 9 for the afternoon. I kept the said

question papers in a cover. At about 12 Noon one member of TNPSC Mr. Gurumurthi came there. He asked me whether any problem. I asked Mahalingam whether we will inform to him. But Mahalingam told me that it is not necessary to say this now as we have not given any report in the morning itself as such if we say it now it will become a mistake. Hence I have not informed it to him. He saw the afternoon bundle with the seal and he did not verify the forenoon question paper bundle and left away. All the invigilators made a complaint to Gurumurthi that the amount paid to them is not sufficient. He gave a reply that we had already informed about it to the Government. Then at 2.00 PM Mr. Nithyanandam, Under Secretary of TNPSC office came there. He also made enquiry about the examination. He got a statement from me. I gave a report as nothing special. At that time at about 1.50 Noon, I have opened the afternoon bundle in the presence of (1) Balan and (2) Sundararaman in the face slip it is found as 17.2.90 2.00 PM to 5.00 PM and written as 410 Question papers and I got the signature from both of them and I have also affixed my signature. Then I gave the answer sheets and question papers to the invigilators and send them to the examination hall. Examination was over. There was no problem. At 5.00 PM I have collected the answer sheets and the remaining question papers. All the invigilators returned except Mahalingam. We made bundle of the answer sheets after counting. I kept the remaining question papers in a cover. At about 6.30 PM the sweeper handed over to me two question papers and I found some scribbling and I have kept that also in a cover and put Seal. I have kept the model question paper given to me in the said cover. Mahalingam went away after putting all these in an Auto. I went to TNPSC Office with Electrician at about 7 PM. The said electrician was working at Bharathi Women's College. One under Secretary was in the upstairs and I do not know his name. I have handed over the bundles to him for which he gave acknowledgement and I got it. I went to TNPSC Office on the next day 18.2.90 at 8.00 AM. They gave me the question papers at 8.20 AM. One Under Secretary came with me in the auto, who got the bundles from me on 17.2.90 evening. Then Mahalingam came there and all invigilators came. I have sent the answer sheets to the respective halls. Then at 9.50 AM I have opened the bundle in the presence of two invigilators and the Under Secretary and in the label of the bundle it is written as 18.2.90 Forenoon 10.00 AM to 12 Noon and got the signature of two invigilators and I have also affixed my signature. I do not remember their names. Then I have opened the bundle and after counting it was 410 papers. I gave the required question papers at 10.00 Hours. On that day there was no problem in the examination. At 12.00 Noon I have collected the answer sheets, made bundle by affixing seal and took it TNPSC office by Auto and handed over it there and got the acknowledgement.

INSPECTOR
STATE CRIME INVESTIGATION DEPARTMENT

(underlining is ours)
(reproduced from the SLP paper book)

5. After about one month, the Commission issued Memorandum dated 27.3.1990 for holding departmental inquiry against the appellant under Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules (for short, ‘the Rules’) on the following charges:

“1. That, Thiru R. Mahalingam, Assistant had gone to the examination hall unauthorisedly on the pretext of assisting the Chief Invigilator while he was on Unearned Leave on Private Affairs.

2. That, he had gone to the examination hall and take up the official work and acted as Invigilator while he was on leave.

3. That, he had prevented the Chief Invigilator from sending a report to the Controller of Examinations about the distribution of afternoon question paper in the forenoon and the resultant leakage of question paper.”

6. In his reply, the appellant pointed out that his name did not figure in the first information report got registered with the police and the remand report and that the real culprits had already been apprehended. The appellant also claimed that he was not connected with the leakage of question papers.

7. The copies of two statements made by the Chief Invigilator were not supplied to the appellant and he was asked to make a statement by the Enquiry Officer. In his statement dated 12.10.1990, the appellant denied all the allegations levelled against him. For the sake of reference, the appellant’s statement is reproduced below:

“Charges framed in this office Memorandum No: 2316/D5/1990 dated: 27.3.90 have been read out to Thiru R. Mahalingam.

Question : Do you accept the charges?

Answer: No. Three charges were framed against me. I sought time to offer my explanation after filing the charge sheet or receipt of a final police report. My letter seeking permission to offer my explanation refused and directed me to appear for the oral enquiry. *Even though I have not preferred for the oral enquiry as directed by the imperative authority of the office I simply obeyed the orders and appeared for the oral enquiry.*

Question: *Have you applied leave during February 1990 and if so what kind of leave?*

Ans. I have applied U.E.L. on private affairs during February 1990.

Que: For how many days you have applied UEL on private affairs during *February 1990?*

Ans: I do not know.

Que: Have you got prior permission for the said leave?

Ans: I have applied leave sufficiently in advance. But the leave sanction order was received during my leave period to my home.

Que: It is reported that you have gone to the examination hall unauthorisedly on the pretext of assisting the Chief Invigilator while you were on unearned leave on private affairs. What do you say about this charge?

Ans: Regarding the first and second charges, I wish to inform you that though the charges have been framed on two counts, they have been framed so on the sole ground that my presence in the examination hall unauthorized one. Before advertng to the allegations made in charges 1 and 2 I wish to inform you Sir Please refer our office letter No: 377/Pl/90, dated 16.2.90 which is a letter appointing me as an Invigilator which was signed and issued by the competent authority. A Xerox copy of the letter is produced. I also found my name in the list sent to the Chief Invigilator. The chief Invigilator verified the list with the appointment letter issued by the office and permitted me to act as Invigilator.

Que: Have you received the appointment order by post or in person?

- Ans: I have received in person.
- Que: For what reason you have come to office though you were on leave at that time?
- Ans: I used to visit University Library during my leave period - I have also happened to visit to office to see whether any letter was received to my name.
- Que: At the examination hall what kind of work was allotted to you by the chief Invigilator?
- Ans: I have been instructed to do the distribution of main and additional answer books and collection of answer books from each hall except question papers.
- Que: Have you been allotted to the work of distribution of question paper to each hall?
- Ans: No.
- Que: What do you say about charge 3 framed against you?
- Ans: I have nothing to say about the charge No.3 since the office in its Memorandum dated 11.10.90 has stated to the effect that enquiry by the *Police in connection with the leakage of question papers (Assistant Surgeon recruitment)* is going on separately whereas departmental action has been taken against him mainly for his having unauthorisedly acted as Invigilator while he was on leave.
- Que: Do you want personal hearing besides oral enquiry?
- Ans: No:
- Que: Whether you want to say anything more about the charges?
- Ans: Yes. Three charges were framed. First two charges are one and the same for which I have given authoritative evidence. For the third charge i.e., resultant leakage of question paper was referred to police for investigation. Moreover the third charge has not been pressed in the office Memorandum dated 11.10.90. When I moved the court for anticipatory bail it was stated before the Court in the counter affidavit that the Petitioner was interrogated in connection with mixing of question paper and not to the leakage of question paper. Secondly when I was seeking permission to officer my explanation in my letter dated 22.8.90 it was misconstrued by the office that I have

submitted my explanation vide its letter dated 11.9.90. In my letter dated 18.9.90 to furnish a copy of my explanation the office in its letter dated 11.10.90 it has been stated that I have failed to submit the explanation. In my letter dated 18.9.90 I have also requested to state the provision of rules relating to departmental action has nothing to do with the filing of charge sheet or receipt of police report in the matter relating to leakage of question papers. This has not been informed to me. Again in my letter dated 22.8.90 I requested the office to state whether the proposed enquiry is in super session of the earlier orders of the office calling for an explanation or it is part and parcel of these orders (calling for an explanation) or it is a separate one nothing to do with the charges. My request has not been answered.

In the charge memorandum framed against Thiru Savariar it was stated how the appointment order was issue to him even *though he was on leave. Hence the office is fully aware that my presence in the examination hall was authorized one.*

A notice of the proposed enquiry was given only a day in advance. Ample opportunity was not given.

Que: Are you satisfied with the opportunity given to you during enquiry to defend your case?

Ans: So far as the conduct of the oral enquiry is concerned, I am fully *satisfied*.

Sd/-
R. Mahalingam"

(reproduced from the SLP paper book)

8. Thereafter, the Enquiry Officer submitted report holding the appellant guilty of all the charges. A copy of the enquiry report was made available to the appellant and he was asked to submit further written statement of defence. In reply, the appellant submitted representation dated 21.11.1990 and prayed that he may be allowed to submit further written statement of defence either after filing of chargesheet by the police or receipt of the detailed police report. He submitted another representation on 4.2.1991 to the Deputy Secretary (Admn.) of the Commission. The same reads as

under:

“To:

The Deputy Secretary (Admn.)
TNPSC, Madras-600002

Madras-600002
Dated 4th Feb, 1991.

Sir,

Sub: Establishment -TNPSC - R. Mahalingam, Assistant-Disciplinary
Action.

Ref: *This office Memorandum No. 2316/D5/90, dated
11.1.1991.*

Kindly refer to the report of the enquiry officer which appears to have been made out entirely relying upon the report (Dated 22nd February 1990) of the Chief Invigilator, miserably superseding the factual evidences deposited by me at the oral enquiry.

While the Chief Invigilator was apparently, not at all interrogated in regard to the correctness of his statement, the credibility of his report is doubtful. As such, the report of the Enquiry officer which is entirely based upon it, is seemingly questionable and appears arbitrary too. However, to enable me to defend the charges a copy of the report of the Chief Invigilator may kindly be furnished to me.

Further, to back up my statement that the Chief Invigilator, before permitting me to take up the 'Invigilation Duty' did verify with his papers and records and ticked against my name found therein among other personnel of the Tamil Nadu Public Service Commission appointed as Invigilators by the Office viz. Thiruvialargal M. Segaran and Udhayakumar, a copy (preferably Xerox copy) of the list of Invigilators sent to the Chief Invigilator may kindly be obtained from the Chief Invigilator and furnished to me.

On receipt of the above copies of the records I shall submit my statement to defend the charges, as called for in the reference cited.

Thanking you

Yours faithfully,

(Sd/-)

R. Mahalingam.”

(reproduced from the SLP paper book)

9. In response to the appellant's request, the Commission made available the statement of the Chief Invigilator recorded by the Controller of Examination. After receiving the same, the appellant submitted application dated 18.4.1991 to the Deputy Secretary (Administration) for grant of permission to cross-examine the Chief Invigilator, the officer of the Commission in whose presence request is sought to have been made to the Chief Invigilator not to report the matter to the Commission and the person who appointed him along with others as Invigilators. He also submitted representation dated 20.5.1991 to the Chairman of the Commission and sought his intervention for ensuring compliance of the rules of natural justice. However, without waiting for the decision of his representations, the Secretary of the Commission passed order dated 10.10.1991 and imposed punishment of removal from service.

10. The departmental appeal filed by the appellant was dismissed by the Chairman of the Commission vide order dated 14.8.1992. He reiterated the findings recorded by the Enquiry Officer and the Secretary that the appellant had unauthorisedly done the work of Invigilator and prevented the Chief Invigilator from reporting the matter to the Commission.

11. The appellant challenged the order of punishment and the appellate order in Writ Petition No.19251/1992 but could not convince the learned Single Judge to quash orders dated 10.10.1991 and 14.8.1992. The writ appeal filed by him was dismissed by the Division Bench of the High Court, which expressed concurrence

with the learned Single Judge that the enquiry was held against the appellant in consonance with the rules of natural justice and the findings recorded by the Enquiry Officer were based on proper analysis of the records produced during the enquiry.

12. We have heard learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The Courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The Court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the Court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the Court.

13. Having noticed the parameters laid down by this Court for exercise of the power of judicial review in such matters, we shall now consider whether the appellant has succeeded in showing that the High Court committed an error by declining his prayer for quashing the order of punishment.

14. Rule 8 of the Rules specifies various penalties including dismissal from service

which can be imposed on a member of the Civil Service of the State or a person holding Civil Post under the State. Rule 17(b), which contains the procedure for holding enquiry reads as under:

“17.(a) xxx

xxx

xxx

(b) (i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. “Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof”.

“Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already

been recorded is necessary in the interest of justice, it may recall examine, cross-examine and re-examine any such witnesses as hereinbefore provided,”

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified therein should be imposed on the Government Servant it shall make an order imposing such penalty and it shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed:

xxx

xxx

xxx”

15. An analysis of the above reproduced rule makes it clear that holding of an oral enquiry is sine qua non for recording a finding by the enquiring authority and the report of enquiry must contain sufficient record of evidence and statement of the findings together with grounds thereof.

16. The main allegations leveled against the appellant were that he had unauthorisedly worked as Invigilator and prevented the Chief Invigilator Syed Abdul Kareem from sending report about the incident involving mixing of the question papers of two sessions. On behalf of the Commission, oral evidence is said to have been adduced to substantiate the allegations leveled against the appellant but neither the report of the Enquiry Officer nor the orders passed by the Secretary and the Chairman of the Commission make a mention of that evidence. As a matter of fact, neither of them relied upon the same for recording a finding of guilty against the appellant. Rather, the Enquiry Officer and the two authorities relied upon the portions of the statement made by the Chief Invigilator before the Controller of Examinations and the Inspector completely ignoring that it was he who had asked for substitute

Invigilators because those already nominated had conveyed their unwillingness to work and that in the statements made before the Controller of Examinations and the Inspector, Crime Investigation Department, the Chief Invigilator categorically stated that the appellant had produced the order by which he had been nominated to work as Invigilator and he had no role in bringing the question papers from the office of the Commission or distribution thereof.

17. Unfortunately, the learned Single Judge and the Division Bench of the High Court failed to take cognizance of the admission made by the Chief Invigilator that on a request made by him, five substitute Invigilators including R.Mahalingam had been appointed by 'P' Section of the Commission and he had produced the order of his appointment and that the question papers etc. had been brought by him i.e. the Chief Invigilator from the office of the Commission and opened seals in the presence of two other invigilators . The High Court also did not pay due weightage to the fact that the appellant had not handled the question papers at any stage and he had no role in distribution of wrong question papers to six candidates. These errors and omissions on the part of the learned Single Judge and the Division Bench, in our considered view, are fatal to their concurrence with the finding recorded by the Enquiry Officer, the Secretary and the Chairman of the Commission that the appellant had unauthorisedly worked as Invigilator on 17.2.1990 and 18.2.1990.

18. At the cost of repetition, it deserves to be mentioned that the appellant had no role to play in the matter of mixing of the question papers of the afternoon examination with the morning examination. Before the Enquiry Officer, no evidence

was produced by the Commission to prove that the appellant had the custody of the question papers. Rather, the statements made by the Chief Invigilator before the Inspector, Crime Investigation Department and the Controller of Examinations clearly show that he had collected the question papers from the office of the Commission, that the seals were opened at the examination center in the presence of two persons and the appellant had not played any role in the exercise. Therefore, the appellant cannot be blamed for distribution of wrong question papers to the candidates or the so-called leakage of the question papers.

19. In view of the above discussion, we may have remitted the case to the Commission for reconsideration of the entire matter but, keeping in view the fact that the appellant has already retired from service and he had put in unblemished service of 17 years as on the date of initiation of the departmental proceedings, we do not consider it proper to adopt that course.

20. In the result, the appeal is allowed, the order of punishment passed by the Secretary of the Commission and the appellate order passed by the Chairman of the Commission are quashed and it is declared that the appellant shall be entitled to all consequential benefits including the arrears of salary for the period during which he was kept out of employment. He shall also be entitled to the retiral benefits, which may be admissible to him under the relevant service rules. The concerned authority of the Commission is directed to pay the salary, allowances, etc., to the appellant within 4 months from the date of production of copy of this judgment.

.....J.
[G.S. SINGHVI]

New Delhi,
February 20, 2013.

.....J.
[H.L. GOKHALE]

SUPREME COURT OF INDIA



JUDGMENT