

M. Muthambika Vs. the Chairman,

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Court : Chennai

Decided On : Apr-23-2010

Judge : T. Raja, J.

Appeal No. : W.P. No. 12735 of 2005

Appellant : M. Muthambika

Respondent : The Chairman,; the Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board And; the G

Advocate for Def. : S. Packiaraj, Adv. for Respondents 1 to 3

Advocate for Pet/Ap. : J. Saravanel, Adv.

Judgement :

ORDER

T. Raja, J.

1. The short point raised in the present Writ Petition is that the petitioner was removed from service by the second respondent, by an order of removal passed by the disciplinary authority who was also a member in the Appellate board. Therefore, the impugned appellate order confirming the order passed by the original authority cannot stand the test of scrutiny of this Court. Similar matter has already been considered by this Court in W.P. No. 2296 of 2005 dated

17.06.2009, wherein this Court has held that if the disciplinary authority who has dealt with and imposed the punishment of removal from service, has become a member of the Board hearing the appeal, then there is always a likelihood of the bias against the petitioner.

2. It is an accepted principle of natural justice that a person should not be a judge in his or her own cause. In common law, this principle has been derived from the Latin maxim - 'nemo debet esse iudex in propria sua causa'. A reasonable permutation of this principle is that no judge should adjudicate a dispute, which he or she had dealt with in any capacity, other than a purely judicial one. The failure to adhere to this principle creates an apprehension of bias on part of the said judge. In this context, it will be useful to refer to a fascinating observation of Justice P.N. Bhagwati in *Ashok Kumar Yadav v. State of Haryana* : 1985 (4) SCC 417:

One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the Judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias 'It is in accordance with natural justice and common sense that the Judge likely to be so biased should be incapacitated from sitting'. The basic principle underlying this rule is that justice must not only be done but must also appear to be done.

3. Further, the basic principle underlying the above said rule is that justice must not only be done, but must also appear to be done. Therefore, the impugned order passed in such proceedings is liable to be set aside and accordingly, the same is set aside on the basis of the principle that no man can be a judge on his own costs. Accordingly, following the ratio laid down by this Court in W.P. No. 2296 of 2005 this Court while setting aside the impugned order, remands the matter back to the Appellate Authority for disposal of the said appeal in accordance with law. In the present case, the Appellate Board has been re-constituted and, therefore, the matter is remanded back to the Appellate Authority for fresh disposal of the appeal in accordance with law as expeditiously as possible.

4. The parties are at liberty to raise all the issues before the Appellate Board. Accordingly, the present writ petition is disposed of. No costs.

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