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W.A.No.60 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. No.60 of 2023
and
C.M.P. No.558 of 2023**

D.Shanmugasundram

...Appellant

Vs.

1.The Deputy Inspector General
of Registration,
Cuddalore.

2.The District Registrar,
Chidambaram,
Cuddalore District.

3.The District Registrar(Audit)
Thanjavur.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 13.09.2022 made in W.P.No.15965 of 2017 on the file of this Court and allow the writ appeal.

For Appellant : Mr.L.Chandrakumar for
Mr.Muthu Ganesa Pandian



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For Respondents : Mr.C.Kathiravan,
Special Government Pleader

JUDGMENT

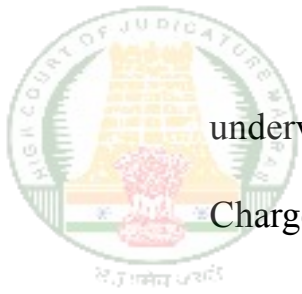
(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.)

This Writ Appeal is filed against the order of the learned Single Judge in W.P.No.15965 of 2017 dated 13.09.2022, insofar as the challenge to the Charge Memo was rejected on the premise that, the writ petition against Charge Memo ought not to be entertained.

2. Brief Facts:

The appellant was appointed as Junior Assistant in the year 1975 and promoted to the post of Sub-Registrar, Grade-I during the year 1999. He reached the age of Superannuation on 30.06.2017 A.N. While so, a Charge Memo dated 16.06.2017 was issued against the appellant, 14 days prior to his date of retirement. The allegation levelled against the appellant is that he undervalued certain documents, which were presented for registration, resulting in financial loss to the State Exchequer to the tune of Rs.39,19,219/- (Rupees Thirty Nine Lakhs Nineteen Thousand Two Hundred and Nineteen only). Details regarding the documents, which were

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undervalued at the time of registration were set-out in the Annexure to the

Charge Memo furnished to the appellant.

3. The appellant herein challenged the Charge Memo by way of writ petition in W.P.No.15965 of 2017 and the same came to be dismissed by the learned Single Judge on the premise that the writ petition against Charge Memo ought not to be entertained. The relevant portion of the order is extracted hereunder:

"3. No writ against the charge memo is entertainable in a routine manner. The writ against the charge memo is entertainable only on limited grounds, if the charge memo is tainted with allegation of malafides or issued by an incompetent authority having no jurisdiction. In all other circumstances, the charged official has to defend his case by participating in the enquiry. Thus, the Courts would not interfere with the process of enquiry in a routine manner. The authorities on initiation of disciplinary proceedings, must be allowed to proceed and conclude the same by following the procedures as contemplated under the Discipline and Appeal Rules. The scope of entertaining the writ petition against the charge memo is certainly limited and judicial review can be exercised only on exceptional circumstances, when the writ petitioner establishes the legal infirmity for quashing the charge memo."

Aggrieved by the same, the appellant preferred the present writ appeal.

4. According to the learned counsel for the appellant, the challenge is primarily on the ground that the learned Single Judge ought to have



entertained the writ petition for the following reasons:

a) That the alleged error in discharging quasi-judicial functions for which the disciplinary proceeding initiated would not constitute misconduct. In this regard, reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case *Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409* (hereinafter referred to as "Nagarkar"), to submit that every error of law in discharge of quasi-judicial function would not constitute misconduct for it would then impinge upon the independent functioning of quasi-judicial authorities.

b) That the Charge Memo is vague inasmuch as it does not even point out any Government Order or Provisions which have been violated by the appellant resulting in / causing loss to the Government, with an ulterior motive.

c) The fact that no witnesses were examined is again indicative of the fact that the initiation of major penalty proceedings against the appellant invoking Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules is not warranted.

d) That the Charge Memo has been issued only on the basis of local audit remarks which by itself cannot be the basis for initiating disciplinary proceeding.



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e) That the appellant followed the instructions of the Inspector General of Registration.

f) That the impugned proceeding having been initiated 4 years after the alleged occurrence on the verge of the appellant's retirement is unjustified and arbitrary.

5. To the contrary, it was submitted by the learned counsel for the Respondents that the order of the learned Single Judge refusing to entertain the writ petition does not warrant interference as it is settled that the writ petition against Charge Memo ought not to be entertained as a matter of routine except under exceptional circumstances such as the very initiation of the proceedings being bad for want of jurisdiction or the Charge Memo being vague so as to render it manifestly arbitrary, which is not the case here. Further, the submission of the learned counsel for the appellant that the appellant cannot be made to suffer/ subject to disciplinary proceedings for the alleged error of law/judgment in discharge of quasi-judicial function is misconceived. Thus, according to the learned counsel, it would be prudent exercise of discretion to practice restraint in respect of challenge to Charge Memo under Article 226 of the Constitution of India and therefore, prayed for dismissal for the writ appeal.



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6. Heard both sides and perused the materials available on record.

7. We see no reason to interfere with the findings of the learned Single Judge for the following reasons:

a. The challenge to the Charge Memo on the premise that the error of law/judgment by an authority in exercise of quasi-judicial function cannot be subject to disciplinary proceedings is misconceived and unsustainable. The reliance on the judgment in the case of *Nagarkar* in support of the above contention cannot be accepted, inasmuch as the judgment in *Nagarkar* holding that every error of law/judgment committed in discharge of quasi-judicial function would not constitute a charge of misconduct, to be the basis for initiation of disciplinary proceedings, is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Union of India v. K.K. Dhawan, (1993) 2 SCC 56*** (hereinafter referred to as "*K.K.Dhawan*") wherein while dealing with the question of disciplinary proceedings vis-a-vis discharge of quasi-judicial function, reference was made to the earlier judgment of the Hon'ble Supreme Court in the case of ***Union of India v. A.N. Saxena, (1992) 3 SCC 12*** wherein, it was held as follows:

"8. In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of



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judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

(emphasis supplied)

After quoting the above passage with approval, the Hon'ble Supreme Court in *K.K. Dhawan* while dealing with errors in making assessment resulting in loss to the exchequer, made it clear that mere discharge of quasi-judicial function would not confer immunity from disciplinary proceedings and proceeded to set out / laid down circumstances which would warrant disciplinary proceedings even in respect of discharge of quasi-judicial functions. The relevant portion of the said judgment is extracted hereunder :

"28. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;



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(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

b. Importantly, subsequent to the judgment in the case of *Nagarkar* the position has been clarified in the case of ***Union of India v. Duli Chand***, reported in **(2006) 5 SCC 680** (hereinafter referred to as "*Dulichand*"), wherein, it has been held that the judgment of the Hon'ble Supreme Court in the case of *K.K. Dhawan* being a judgment of larger Bench of three Judges would bind and the judgment in *Nagarkar* which is a judgment by a Bench of two Judges would no longer be a good law. The following portion of the judgment in the case of *Dulichand* is relevant and extracted hereunder:

"9. In our opinion, Nagarkar case (1999) 7 SCC 409 was contrary to the view expressed in K.K. Dhawan case (1993) 2 SCC 56 . The decision in K.K. Dhawan (1993) 2 SCC 56 being that of a larger Bench would prevail. The decision in Nagarkar case (1999) 7 SCC 409 therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case (1999) 7 SCC 409 this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld."



8. Though we find that the decision in the case of *Nagarkar* is applicable recently by a bench of two Judges of the Hon'ble Supreme Court in the case of *Krishna Prasad Verma v. State of Bihar, (2019) 10 SCC 640*, however, the decision in the case of *Dulichand* holding the decision in *Nagarkar* to be not a good law, was not brought to the notice of the Hon'ble Apex Court. Thus, it is evident that the judgment in the case of *Nagarkar* is not a good law and cannot be relied upon and the decision in the case of *K.K.Dhawan* would govern the question, as to whether it is permissible to initiate disciplinary action in relation to discharge of quasi-judicial function.

9. It is thus clear that the quasi-judicial authority does not enjoy absolute immunity from disciplinary action in respect of error in discharge of quasi-judicial function. The exceptions have been carved out in *K.K. Dhawan* wherein it has been clarified that the disciplinary proceeding could be initiated even with reference to quasi-judicial function.

10. However, the question as to whether the present case falls within the exceptions carved out requires enquiry / investigation of facts, an exercise of which is alien to jurisdiction of this Court under Article 226 of the Constitution of India. Thus, we are of the opinion that the order of the

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learned Single Judge declining/ refusing to entertain the writ petition, 15

sound exercise of discretion and does not warrant interference.

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11. Secondly, the attempt made on the side of the appellant that the Charge Memo is vague, is unsustainable. A mere reading of Charge Memo discloses the delinquency and also sets out the documents in respect of which or forming the basis for initiation of disciplinary proceedings as would be evident from the following portions of the Charge Memo and its annexure:

Extract from Charge Memo:

‘திரு.த.சண்முகசுந்தரம், சார்பதிவாளர் ஆகிய தாங்கள் தஞ்சாவூர் பதிவு மாவட்டம் கருந்தட்டான்குடி சார்பதிவகத்தில் சார்பதிவாளாராக பணிபுரிந்தபோது 2013 ம் ஆண்டுக்கான மார்ச் காலாண்டு துறைத்தணிக்கை அறிக்கையின்படி தங்களால் ஒரு மனைப்பரிவிற்கு நிர்ணயிக்கப்பட்ட மனைமதிப்பு பதிவுத்துறைத்தலைவர் அவர்களின் ஆணைகளை மீறி குறைவான மதிப்பில் மதிப்பு நிர்ணயம் செய்யப்பட்டு, அவ்வாறு நிர்ணயம் செய்த மனைமதிப்பு தவறானது என தஞ்சாவூர் தணிக்கை மாவட்டப்பதிவாளரால் முடிவு செய்யப்பட்டு அம்மனைப்பரிவில் பதிவான ஆவணங்கள் குறித்து உறுதி செய்யப்பட்ட இத்துடன் இணைப்பில் குறிப்பிட்டுள்ள உள்தணிக்கை குறிப்புரை இனங்களின்படி ரூ.39,19,219/- (ரூபாய் முப்பத்தொன்பது லட்சத்து பத்தொன்பதாயிரத்து இருநூற்று பத்தொன்பது மட்டும்) தாங்கள் அரசுக்கு வருவாய் இழப்பு ஏற்படுத்தி உள்ளீர்கள். இவ்வாறு தாங்கள் பதிவுத்துறைத்தலைவர் அவர்களின் ஆணைகளை மீறியும் அரசுப்பணியில் கவனமின்றியும், அசிரத்தையாகவும், தவறு செய்யும் உள்நோக்கோடும் செயல்பட்டு முத்திரை தீர்வை மற்றும் பதிவுக் கட்டணம் ஆகியவற்றில் அரசுக்கு ரூ.39,19,219/- (ரூபாய் முப்பத்தொன்பது லட்சத்து பத்தொன்பதாயிரத்து இருநூற்று பத்தொன்பது மட்டும்) வருவாய் இழப்பு ஏற்படுத்தியதன் மூலம் அரசுக்கு ஏற்பட்ட இழப்பிற்கு பொறுப்பாகி தமிழ்நாடு அரசுப்பணியாளர் நடத்தை விதி 20(1)ஐ மீறியுள்ளீர்கள்.”



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Extract from Annexure:

இணைப்பு

திரு.த.சண்முகசுந்தரம், கண்காணிப்பாளர், அசல் பத்திரப்பிரிவு, மாவட்டப்பதிவாளர் அலுவலகம், சிதம்பரம் உள்துணிக்கை இழப்பினங்கள்
மேலவெளி கிராமம்- சௌந்தர்யா கார்டன் மனைப்பிரிவில் பதிவான ஆவணங்களின் மூலம் உறுதி செய்யப்பட்ட இழப்பு விவரப்பட்டியல்....

வ. எண்	சார்பதிவகம் / பதிவு மாவட்டம்	எந்த காலாண்டு	பாகம் / இனம்	ஆவண எண் ஆண்டு	குறைவு முத்திரைத் தீர்வை	குறைவு பதிவுக் கட்டணம்	கூடுதல்
1.	கருந்தட்டான் குடிதஞ்சாவூர்	மார்ச் 2013	இனம் 8 (வ.எண்.7)	837/2013	52486	7495	59981
2.	கருந்தட்டான் குடிதஞ்சாவூர்	மார்ச் 2013	இனம் 8 (வ.எண்.7)	1413/2013	50300	7190	57490
3.	கருந்தட்டான் குடிதஞ்சாவூர்	மார்ச் 2013	இனம் 8 (வ.எண்.7)	1414/2013	50290	7190	57480
4.	கருந்தட்டான் குடிதஞ்சாவூர்	மார்ச் 2013	இனம் 8 (வ.எண்.7)	1415/2013	50290	7190	57480
5.	கருந்தட்டான் குடிதஞ்சாவூர்	மார்ச் 2013	இனம் 8 (வ.எண்.7)	1516/2013	50300	7190	57490
6.							
7.	கருந்தட்டான் குடிதஞ்சாவூர்	மார்ச் 2013	இனம் 8 (வ.எண்.7)	414/20117	44030	6290	50320
கூடுதல்					3429161	490058	3919219

Thus, the above extract from the Charge Memo would reveal that the submission that the Charge Memo is vague, is contrary to the material available on record.

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12. Finally, it was attempted to suggest that the Charge Memo

liable to be set-aside on the ground of delay in initiation. This argument is contrary to the settled position that mere delay in initiation of disciplinary proceedings by itself would not be a ground to set-aside the disciplinary proceeding. In this regard it may be relevant to refer to the judgment of the Hon'ble Supreme Court in *LIC v. A. Masilamani*, (2013) 6 SCC 530 wherein after referring to the judgments in *State of U.P. v. Brahm Datt Sharma* (1987) 2 SCC 179, *State of M.P. v. Bani Singh* 1990 Supp SCC 738, *Union of India v. Ashok Kacker* 1995 Supp (1) SCC 180, *State of A.P. v. N. Radhakishan* (1998) 4 SCC 154, *M.V. Bijlani v. Union of India* (2006) 5 SCC 88, and *Ministry of Defence v. Prabhash Chandra Mirdha* (2012) 11 SCC 565, it was held as under:

“The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion.”

(emphasis supplied)



13. It is trite law that Courts would be loathe in interfering with disciplinary proceedings at the stage of Charge Memo, for the reasons that it would be pre-mature and the rights of the delinquent are not adversely affected at that stage. The delinquent on the other hand is provided with an opportunity to submit his representation and wait for the decision of the disciplinary authority, who may drop the proceedings and hold the charges as not established. In this regard, it may be relevant to refer to the following judgments:

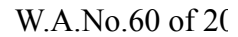
a) Ministry of Defence v. Prabhash Chandra Mirdha, (2012) 11

SCC 565:

"8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance

.....

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay



(emphasis supplied)



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stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. However, it is to be noted herein that we have examined the above issues and made all observations only as a *prima facie* view, for the limited purpose of deciding the maintainability of the writ proceedings under Article 226 of the Constitution of India. Therefore, we intend to make it clear that the observations must not be understood as the expression of the final view of this Court on the issues raised and the appellant is not precluded from raising all grounds that may be available to him including those raised in the writ petition/appeal, before the disciplinary authority. The disciplinary authority shall decide the same, uninfluenced/ unobsessed by any observations made in the writ petition/ appeal.

[R.M.D., J.] [M.S.Q., J.]
11.04.2023

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation : Yes/ No
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R.MAHADEVAN, J.

AND
MOHAMMED SHAFFIQ, J.

Shk

To:

1.The Deputy Inspector General
of Registration,
Cuddalore.

2.The District Registrar,
Chidambaram,
Cuddalore District.

3.The District Registrar(Audit)
Thanjavur.

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and
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