



WP.(MD).No.5265 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.09.2023

PRONOUNCED ON : 03.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.5265 of 2023

and

W.M.P.(MD)Nos.4944, 4945 and 11280 of 2023

T.Kumaravel

... Petitioner

Vs.

1.The Chief Secretary to Government,
Secretariat,
Chennai – 9.

2.The Commissioner/Director,
Office of the Commissioner of Adi Dravidar Welfare,
Chennai - 5.

3.The Joint Director (General)/Financial Controller,
Officer of the Director of Adi Dravidar Welfare,
Chennai - 5.

4.The District Collector,
Ramanathapuram District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the second respondent vide proceedings in Na.Ka.No.R1/1804/2021 dated 18.07.2022 and to quash the same and consequently include the petitioner's name in the panel of District Revenue Officer drawn for the year 2022.

For Petitioner	: Mr.Vijayakumar, Senior counsel For Mr.M.Kumar
For Respondents	: Mr.P.Veera Kathiravan, Additional Advocate General Assisted by Mr.P.Thambidurai Government Advocate

ORDER

The prayer in the writ petition reads as follows:-

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash second respondent vide proceedings in Na.Ka.No.R1/1804/2021 dated 18.07.2022 and to include the petitioner's name in the panel of District Revenue Officer drawn for the year 2022.

2.Heard Mr.Vijayakumar, learned Senior Counsel for Mr.Kumar learned counsel appearing for the petitioner, Mr.Veera Kathiravan learned



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Additional Advocate General assisted by Mr.P.Thambidurai, learned Government Advocate appearing for the respondents and perused the entire materials available on record.

The case of the petitioner in nutshell is as follows:-

3.The writ petitioner joined in Revenue Department as Typist in the year 1993 at Sivagangai District Revenue Unit. Thereafter, he was promoted to the post of Assistant in the year 1996 and further promoted as Deputy Tahsildar in the year 2006 and then promoted as Tahsildar in the year 2010 in Sivagangai District Revenue Unit. Subsequently, the writ petitioner became the Deputy Collector on 12.03.2014 and was posted at Coimbatore Collectorate. Having served as Deputy Collector in various places, he was thereafter posted as Revenue Divisional Officer at Villupuram District on 20.09.2018. Thereafter, he was posted as District Adi Dravidar and Tribal Welfare Officer, Kanyakumari District. Presently the petitioner is serving as the District Inspection Cell Officer, Ramanathapuram.



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4.While so the writ petitioner was visited by a charge memo dated 18.07.2022 and the same was received by the writ petitioner on 23.08.2022. The allegations in the charge memo is with respect to the alleged misconduct in the appointment of four cooks out of 18 cooks after a period of two years. In view of the said charge memo, the writ petitioner was required to submit his explanation within a period of 15 days on the receipt of the same through the District Collector, Ramanthapuram, the fourth respondent on 23.08.2022. That apart the second respondent, who is the Chairman of the Selection Committee vide his proceeding dated 18.08.2022 appointed the third respondent namely Joint Director (General), Adi Dravidar and Welfare Office, Chennai as Enquiry Officer even before serving of charge memo on the writ petitioner. Two counts of charges were framed as against the writ petitioner in the impugned charge memo dated 18.07.2022 and the same is extracted as follows:-

“Charge No.1

திரு.த.குமாரவேல் என்பவர், கன்னியாகுமரி
மாவட்டத்தில் 28.08.2019 முதல் 12.01.2021 வரை மாவட்ட
ஆதிதிராவிடர் மற்றும் பழங்குடியினர் நல அலுவலராகப்
பணியாற்றிய காலத்தில் 2020 - 2021 ஆண்டில் கன்னியாகுமர்



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மாவட்டம், ஆதிதிராவிடர் மற்றும் பழங்குடியினர் நல விடுதிகளால் காலியாக இருந்த 18 சமையலர் காலிபணியிடங்களை நேரடிநியமனம் மூலம் தேர்வு செய்திடும் பொருட்டு தேர்வுக் குழு உறுப்பினர் செயலராக நியமனம் செய்யப்பட்டுள்ளதைத் தொடர்ந்து மேற்படி 18 சமையலர் காலிப் பணியிடங்களை சமையலர் பணிக்காக விண்ணப்பித்துள்ள பணிநாடுநர்களை கொண்டு நேர் காணல் நடத்தி தேர்வு செய்யப்பட்டுள்ளது. இந்நேர்வில் மேற்படி பணி நியமனங்களில் முறைகேடுகள் நடைபெற்றுள்ளதாக வரப்பெற்ற புகாரின் அடிப்படையில் மேற்படி மாவட்டத்தில் நிரப்பப்பட்ட 18 சமையலர் பணி நியமனங்களில் 4 சமையலர் பணியிடத்திற்கு முறைகேடாகத் தேர்வு செய்து அரசு விதிமுறைகளுக்குப் புறம்பாக நடந்து கொண்டு தனது கடமையிலிருந்து தவறியுள்ளார்.

Charge No.2

திரு.த.குமாரவேல் என்பவர், கன்னியாகுமரி மாவட்டத்தில் 28.08.2019 முதல் 12.01.2021 வரை மாவட்ட ஆதிதிராவிடர் மற்றும் பழங்குடியினர் நல அலுவலராகப் பணியாற்றிய காலத்தில் 2020 - 2021 ஆண்டில் கன்னியாகுமர் மாவட்டம், ஆதிதிராவிடர் மற்றும் பழங்குடியினர் நல விடுதிகளால் காலியாக இருந்த சமையலர் காலிபணியிடங்களை நேரடி நியமனம் மூலம் நேர் காணல் நடத்தி தேர்வு செய்திட நியமனம் செய்யப்பட்ட தேர்வுக் குழுவின் உறுப்பினர் செயலராக இருந்துள்ள நிலையில் மேற்படி மாவட்டத்தில் காலியாக இருந்த சமையலர் பணியிடத்தினை நேரடி நியமனம்



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மூலம் நிரப்பிட தேர்வு செய்யப்பட்டுள்ள 18 சமையலர் பணிநாடுநர்களில் 4 நபர்களது சமையலர் பணி நியமனத்தில் விதிமீறல் கண்டறியப்பட்டுள்ள நிலையில் மேற்படி நபர்களின் விண்ணப்பங்களை ஆய்வு செய்யாமல் சமையலர் நேர் காணலுக்கு அனுமதிக்கு சமையலர் பணிநியமனத்தில் முறைகேடுகள் நடைபெறுவதற்கு உடந்தையாக இருந்து பணிநியமன ஆணை வழங்கி தனது கடமையிலிருந்து தவறி அரசுக்கும் துறைக்கும் அவப்பெற்ற ஏற்படுத்தி அரசு ஊழியரது அடிப்படைகடமை, நம்பகத்தன்மை மற்றும் கடமையில் பற்றுணர்வு ஆகியவற்றுடன் செயல்பட தவறி தமிழ்நாடு அரசுப் பணியாளர் நடத்தை விதி 1973 ஆம் ஆண்டு விதி 20(1) மீறி செயல்பட்டுள்ளார்.“

5.Challenging the same, this writ petition came to be filed.

Submissions :-

6.The learned Senior counsel appearing for the petitioner vehemently submitted that the impugned charge memo dated 18.07.2022 is liable to be quashed as the disciplinary authority is the Chairman of Selection Committee for the selection of 18 cooks in Kanyakumari District and as such, he has no jurisdiction to proceed against the petitioner departmentally. In addition to that, the impugned charge memo



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is not only vague but the same lacks bonafide, since no action has been taken against the other members of Committee with regard to the alleged violation of Government Orders in the selection of four cooks out of 18 cooks in Kanyakumari District.

7.The learned Senior Counsel contended that the writ petitioner is victimized by the respondents 2 and 3 by not yielding to the pressure in the appointment of cooks. As the result of which, he was subjected to disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. In fact in order to prevent the writ petitioner's promotion to the post of District Revenue Officer, the writ petitioner was served with charge memo earlier by the Principal Secretary/Commissioner of Revenue Administration and Disaster Management, Chennai under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules vide proceedings in No.Ser.2(2)/49732 dated 02.12.2019 and the same was questioned before this Court in W.P. (MD)No.13061 of 2020. In the said writ petition, this Court by its order dated 15.12.2021 was pleased to examine the said charge memo and ultimately found no case has been made out under Rule 17(b) and



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consequently the charge memo was quashed giving liberty to proceed under 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, if it is so advised. Subsequently, the present second charge memo came to be issued immediately on 18.07.2022 without jurisdiction to deprive the writ petitioner's promotion to the post of District Revenue Officer in the panel drawn for the year 2022 and hence, the action of the second respondent is clearly an abuse of process of power and the charges referred to the impugned charge memo are not supported by any valid documents. This could be elucidated by a critical perusal of inspection report dated 18.02.2022, prepared and submitted by the Ministerial Service Officers. In terms of the said inspection report, four cooks were appointed contrary to the Government Order and the same is extracted hereunder for clarity :-

Sl.No.	Name	Reasons for violations of rule
1.	I.Raja	Born on 02.07.1982 completed 39 years (38 years, three months 17 th date) registered with the Employment Exchange vide registration No. 6928/1998 dated 13.07.1998 candidate not renewed the employment card after 2007 in the light of the G.O.Ms.No.21, Labour and Employment Department dated 02.02.2000. Hence relaxation of age after 35 years cannot be granted.
2.	V.Hariharasudhan	Candidate completed 12 th standard. Vide mark sheet certificate No.4138549



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3.	C.Ranjithkumar	Candidate completed 10 th standard vide mark sheet certificate No.1932202
4.	R.L.Chitra	Candidate completed 12 th standard vide mark sheet certificate Nos.0751606 and 0730166

8.However, none of the reasons put forth in the said inspection report would attract any violation of the government order referred. In so far as I.Raja is concerned, it is absolutely incorrect to say that he has not renewed the registration in the employment exchange after October 2007. On the other hand, the Employment Registration Card itself clearly show that the registration was renewed in November 2013 also. Knowing the fact that the second respondent wantonly failed to disclose the copy of Employment Registration Card suppressing the truth. The inspection report itself admitted that the completed age of the selected candidate is only 38 and not 39.

9.In so far as the qualification of Hariharasudhan, C.Ranjithkumar and R.L.Chithra are concerned, it is also not violation of any Government Orders and the conditions stipulated in the advertisement are as follows:-

(i)Candidate should be competent to read and write in Tamil.



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- (ii) Preference will be given to Adi Dravidar and Tribal Welfare.
- (iii) Experience in cooking shall be given preference.
- (iv) Age registration is limited to 18 to 35 years.
- (v) Resident of Kanyakumari District.

10. However, age relaxation is permissible upto 40 years in the light of G.O.Ms.No.21 Labour and Employment Department dated 02.02.2000. Hence, there is no violation in the said appointment. Similarly in the case of appointment of three candidates on the basis of qualification, there is no bar in the appointment merely because they are qualified above 10th standard. In this regard, it is necessary to refer to the orders of this Court in batch of cases in W.P.(MD)Nos.16948, 16957, etc batch dated 24.11.2022 and the relevant portion of which is extracted as follows:-

“Though the contention advanced by the learned Additional Advocate General appeals to me, I have to necessarily go by the letter of law. The relevant rules have prescribed only minimum educational qualification. There is no bar against those who are better qualified to take part in the recruitment process. The only ground on which the appointments of the petitioners had been set aside, is that they



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probation was also declared. In view of the same, the impugned charge memo lacks bonafide and the same is vague without showing any motive on the part of the writ petitioner in the appointment of cooks. That apart the writ petitioner is not the one incharge of cooks but on the other hand, was one among two members of the committee, which was constituted in terms of G.O.Ms.No.53 dated 14.08.2013. Hence, having not proceeded against the other member of the Committee initiation of disciplinary proceeding as against the writ petitioner alone is bad in the eye of law and the same cannot be assisted and on that basis, he pressed for dismissal of the writ petition.

12.Per contra the second respondent has filed counter and the learned Additional Advocate General for the learned Government Advocate contended that questioning disciplinary authority/second respondent about the jurisdiction for issuance of charge memo to the writ petitioner on violation of relevant Government Orders in appointment of four cooks is not maintainable. He categorically submitted that it is well within the Section 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules which reads:-



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*“*In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders.”*

13.The petitioner has cited the ruling laid down by the Apex Court reported in ***AUR 1971 Supreme Court 752 - “Surat Chandra Chakuraty v. the State of West Bengal*** and it is not applicable and the writ petitioner



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has been provided with opportunity for his explanation. It is submitted that the charges were specific and it is pertinent to note that the writ petitioner himself has given his explanation to them.

14.The Joint Director (General) Adi Dravidar Welfare Office was appointed as Inquiry Officer pertaining to the irregular appointments made by the Selection Committee in various districts. There is no arbitrariness or malafidness as alleged by the writ petitioner and disciplinary action was taken against the writ petitioner and the Selection Committee on the findings of irregularities.

15.The submission of the writ petitioner that he was not furnished with the necessary documents mentioned in the annexure of the impugned charge memo is absolutely false and he was furnished with the documents linked in annexure III of the charge memo and he was furnished on 25.11.2022. More over the writ petitioner who was then District Adi Dravidar Welfare Officer, Kanyakumari District and was also a Member Secretary and hence, he was well aware of the various Government Orders stated in Sl.Nos.1 to 5 of the annexure III of the



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impugned charge memo. Despite this in addition to the writ petitioner's request, once again the copy of all the documents/records were sent to him vide proceedings dated 28.12.2022. Hence, the writ petitioner's contention that he was not served with the documents is absolutely misleading.

16.The learned Additional Advocate General further submitted that in notification issued in the newspaper, it was clearly mentioned that the eligible age for the candidates is 18 to 35 years. I.Raja who had crossed 38 years, 3 months and 17 days on the date of the publication of notification is very well over aged and is ineligible. Moreover on scrutiny of his employment card and on verification of mark sheet it was found that he has passed SSLC (10th standard) and he cannot claim relaxation of age under G.O.Ms.NO.21, Labour and Employment dated 02.02.2000 and I.Raja had not renewed the Employment Exchange card in 2007 and he is not eligible for age relaxation of age as specified and the same was communicated by District Employment Officer Nagercoil to the District Adi Dravidar and Tribal Welfare Officer, Kanyakumari District vide letter No.A2/3904/2022 dated 22.12.2022. This bears the



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testimony that the writ petitioner had appointed the aforesaid cooks in violation of rules and hence, disciplinary proceedings have been initiated against him and others of the selection committee.

17. With regard to the appointment of V.Hariharasudhan (12th std)< C.Ranjith kumar (X std pass) and R.L.chitra (12th std pass) it is submitted that the Employment exchange was requested to send only the list of persons who are X std fail and VII std pass. It is submitted that Tmt.R.Hemalatha the then P.A. To Commissioner was appointed as Chairman of the Selection Committee as per G.O.(Ms)No.53 Adi Dravidar and Tribal Welfare Department dated 14.08.2013. As the head of the Adi Dravidar Welfare Directorate, the Commissioner, Adi Dravidar Welfare has powers under Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to initiate disciplinary proceedings. Hence, no undoubtedly out of 18 cooks, four cooks were appointed by the writ petitioner deviating the various rules and guidelines and in view of the same, the impugned charge memo need not be interfered with and on that basis, he pressed for dismissal of the writ petition.



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Analysis:-

18.The pertinent question which has to be decided now is that whether the impugned charge memo issued against the writ petitioner leaving the other members of Selection Committee is justifiable and whether the second respondent has jurisdiction to issue charge memo for the alleged violation of appointment of four cooks out of 18 cooks as he himself is the Chairman of Selection Committee along with the writ petitioner for such appointments in Kanyakumari District.

19.A critical perusal of the charge is that two counts of charges were framed as against the writ petitioner would reveal that both the charges are with respect to the alleged violation of rules and guidelines in the appointment of 4 cooks out of 18 cooks to various Adi Dravidar and Tribal Welfare hostels. It is needless to state that both the count of charges are not clear and the same is vague and indefinite. In it's construction and content, no specific details as to the alleged violations in the appointment of 4 cooks has been detailed. The Hon'ble Apex Court



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in the case of **Surath Chandra Chakravarthy v. State of West Bengal** in reported in **AIR 1971 Supreme Court 752** has dealt with similar case and the relevant portion of which is extracted as follows:-

“Rule 55 embodies a principle which is one of the basis contents of a reasonable or adequate opportunity.

If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. So, in spite of the, Government servant repeatedly objecting to the vagueness of charges and non-furnishing of statement of allegations, the failure to supply him the facts, circumstances and particulars relevant to the charges even at the stage of second cause notice would amount to denial of proper and reasonable opportunity of defending himself in complete disregard of Rule 55.”

20.As discussed supra in the aforesaid judgment even in the case in



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hand, charges are indefinite and vague. That apart the inordinate delay of more than two years after the appointment of four cooks who were appointed as early as on 01.12.2020, on the basis of which, the present charge memo has been issued itself vitiates the same. It is a settled proposition of law that the disciplinary proceeding cannot be initiated after a lapse of a considerable period of time. Delayed initiation of proceedings is that trait of bias, malafide and misuse of power, that too when the delay is unexplained, the Court can very well interfere and quash the charges. No where in the charge memo the alleged violations of various rules and guidelines has been specifically pointed out. It is needless to state that the writ petitioner was not the sole appointing Authority of the alleged four cooks out of 18 cooks, who were appointed to the various Tribal hostels.

21. On the other hand, the selection process was initiated by the receipt of various applications of the applicants and thereafter. the applicants were interviewed by the Committee headed by the second respondent himself as Chairman along with the writ petitioner as one of the member and another Superintendent of Tribal Welfare Department,



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Chennai as another member. Precisely the committee of three under the Chairmanship of second respondent including the writ petitioner as the member of the committee conducted the selection process. It is only the committee headed by the second respondent issued a selection list, that too duly signed by the second respondent on 30.11.2020 and thereafter forwarded the same to the writ petitioner for issuing appointment order. Only on the basis of the selection list duly signed by the second respondent on 30.11.2020, the writ petitioner issued an appointment to various selected candidates vide proceedings dated 01.12.2020.

22.Having shortlisted the selected candidates on a joint decision of the committee, the second respondent ought not to have issued charge memo as against the writ petitioner alone without proceedings as against the other member of the committee. That apart no person can be a judge of his own case and on that basis, the second respondent for those appointments, which has been made under his Chairmanship ought not to have issued charge memo to one of the members of the selection committee alleging violations of rules and guidelines in the said appointment and hence I have no hesitation to observe that the second



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respondent has issued charge memo without jurisdiction. This Court in W.P.(MD)No.20073 of 2019 dated 11.12.2019 has dealt with a similar case and has elaborately discussed about the guidelines framed by the Government of Tamil Nadu with regard to framing of charges under Rules 17(a) and 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules and relevant portion of which is extracted as follows:-

“8. This Court, in the case of M.Sampoornam, referred to supra, has held as follows :

"7. Learned counsel for the petitioner submitted that based on the allegations, charges could be framed against the petitioner only under rule 17 (a) and not under rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeals) Rules. In support of the contention raised, the learned counsel appearing for the petitioner also relied the various decisions: A Division Bench of this Court (P.K.Misra, J and F.M. Ibrahim Kalifulla, J) in W.P.No.6809 of 2004 dated 17.06.2004, preferred by the State against the order passed in Original Application No.3913 of 2003 dated 04.02.2004 by the Tamil Nadu Administrative Tribunal, has held that the modification of charge under Rule 17(a) instead of Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules was not against law and accordingly declined to interfere with the order. It was held that there is no error in the order passed by the Tamil Nadu State



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Administrative Tribunal, modifying the charge under Rule 17(b) instead of Rule 17(a) under the Tamil Nadu Civil Services (Discipline & Appeal) Rules and accordingly, the writ petition was dismissed. It has been made clear in the decision that charge Nos.1 and 2 framed against the first respondent therein relating to failure for taking effective steps towards collection of taxes due from the dealers by Subordinate Officials and it was failure in executing administrative instructions given by the superior officers therein. The Tamil Nadu State Administrative Tribunal held that the Assistant Commissioner (CT), violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973 would be under rule 17(a) and not rule 17(b) to frame the charge for the alleged failure for the non-compliance of the administrative instructions given by the superior officer. A Division Bench of this Court (Elipe Dharma Rao, J and K.Suguna, J) passed an order dated 05.09.2006 in W.P.No.3558 of 2004, wherein it has been held that as per the guidelines given by the Government, the charges framed against the petitioner would not come under rule 17(b) but only under rule 17(a) of the said Rules. The Government of Tamil Nadu has given specific guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. In this regard, the guidelines given are as follows:

"(1) Cases in which there is reasonable ground to believe that a penal offences has been committed by a Government



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Servant but the evidence forthcoming is not sufficient for prosecution in a Court, of law, e.g.,

(a) possession of asset disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc.,

(2) Falsification of Government records.

(3) Irregularity of negligence in the discharge of official duties with a dishonest motive".

8. It is not in dispute that the charges under rule 17(a) relate to minor delinquencies whereas the charges under rule 17(b) relate to any major delinquency warranting major punishment in case the same is proved. In Writ Appeal No.1893 of 2011 dated 29.09.2011, a Division Bench of this Court (M.Y.Eqbal, the Chief Justice and T.S.Sivagnanam, J) has held as follows:

"2. We have considered the reasoning given by the learned Single Judge and other materials available on record including the charge memo and the consequential proceedings, from where it appears that there are no grave charges levelled



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against the respondent/writ petitioner except for some lapses in the discharge of his supervisory duty. Moreover the allegation pertains to the period 2004- 2006, whereas, the charge memo was served only in the year 2011, i.e. on the verge of his retirement.

3. In that view of the matter, the impugned judgment passed by the learned Single Judge needs no interference by this Court..."

9. In S.KANNAN VS. STATE OF TAMIL NADU, (2009) 8 MLJ 217, this Court (V.Dhanapalan, J) held that unless there is dishonest motive, misconduct or misappropriation of funds of the Government or wilful and dishonest act, there cannot be any departmental proceeding initiated under rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, as per the guidelines issued by the Government. It is an admitted fact that the Government of Tamil Nadu has issued guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. The unreported decision in W.P.No.13581 of 2007 dated 24.08.2011, this Court (K.N.Basha, J), based on the guidelines given by the Government has highlighted the same in respect of charges being framed under rule 17 (a) and rule 17 (b) of the said Rules. Referring to the guidelines in S.KANNAN VS. STATE OF TAMIL NADU, represented by its Secretary to the Government, calling upon the impugned proceedings therein, this Court (V.Dhanapalan, J) directed the first respondent



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therein to alter the charge levelled against the petitioner only under rule 17(a) and not proceed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules and to proceed in accordance with law.

10. In the instant case, it has been made clear in the light of various decisions rendered by this Court that the guidelines given by the Government have to be followed scrupulously for framing charges against employee of the Government. As per the guidelines, charges can be framed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, under the following circumstances:

1) Cases in which there is a reasonable ground to believe that a penal offence has been committed by the Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g., [a] possession of assets disproportionate to the known sources of income; [b] obtaining or attempting to obtain illegal gratification; [c] misappropriation of Government property, money or shares; [d] obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.,

[2] Falsification of Government records.

[3] Irregularity or negligence in the discharge of official duties with a dishonest motive. [emphasis supplied]



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[4] Misuse of official position for personal gain.

[5] Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

[6] Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills, etc., Charges could be made framed under rule 17(b) of TNCS (D & A) Rules.

12. In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17(a) and not under rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding. It is also brought to the notice of this Court that the petitioner is on the verge of retirement and if she is not promoted that will adversely affect her legitimate right, since the departmental proceeding was initiated after a lapse of 2+ years after the occurrence and pending for more than three years."

9. It is also relevant to refer to the Division Bench



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decision of this Court in Government of Tamil Nadu v. P.Sundar, referred to above, wherein it has been held as under :

'10. We have considered the rival submissions. The guidelines framed by the government of Tamil Nadu for deciding whether charges may be framed under Rule 17 (b) are as follows : 1. Cases in which there is a reasonable ground to believe that the penal offence has been committed by a government servant but the evidence forthcoming is not sufficient for prosecution in a court of law, e.g.,

(a) possession of assets disproportionate to known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing on pecuniary advantage without consideration or for a consideration which is not adequate, etc.,

(2) falsification of government records.

(3) irregularity or negligence in discharge of official duties with dishonest motive.

It is the above guidelines which are considered by the Division Bench in WP No:3558 of 2004. Considering the guidelines issued by the Government with reference to framing of charges against its employees, the Division Bench has



observed as follows :

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Therefore, as per the above guidelines also, as stated earlier, the charges framed against the petitioner will not come under Rule 17 (b), but only under Rule 17 (a) however since the petitioner was imposed punishment on framing charges under Rule 17 (b) which is a bar for consideration of promotion, he has been deprived of the promotion to the next cadre. We are therefore of the view that the charges should have been framed under Rule 17 (a) and not in Rule 17 (b). In Kannan Vs. State of Tamil Nadu, reported in 2009 (8) MLJ, the learned single judge of this court had followed and reiterated the above dictum of the Division Bench.

- 1. Adverting to the facts of the present case, we find that none of the charges framed against the respondent would fall within the parameters laid down in the guidelines issued by the Government. This being so, we do not think that the appellants were justified in framing charges under Rule 17 (b) even for minor delinquencies and thereby denying promotion to the respondent. We must point out that even though the Disciplinary Authority has found the respondent guilty of the charges imposed only a minor punishment of stoppage of increment that too without cumulative effect. The said punishment by itself does not operate as a bar for promotion. If so the appellants cannot by framing charges for trivial*



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derelictions under Rule 17 (b) deprive promotion to the respondent.”

23.Thus, it is clear from the above judgment that framing of charges under Rules 17(a) and 17(b) would arise only when a delinquent has committed penal offences like obtaining illegal gratification, possessing asset disproportionate to the known source of income, misappropriation of Government property, money or shares, falsification of Government records and irregularities of negligence in the discharge of official duty with a dishonest motive. However, the two counts of charges framed vide impugned charge memo has no traits of which have been elaborated supra. Both the count of charges are with respect to the alleged violation of rules and guidelines in the appointment of four cooks out of 18 cooks, which was finalised under the collective decision of the Selection Committee for the appointment of cooks in which the writ petitioner was only a member. Hence, by all means the question of framing charges under Rule 17(b) will never arise. On issuance of charge memo under Rule 17(b), certainly serious consequences will arise, for the delinquent will not be considered for promotion whereas the



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charge memo issued Rule 17(a), the guidelines issued by the Government clearly show that there is no bar in considering the promotion of the delinquent employee subject to the result of the department proceedings. However, in the case on hand, the second charge memo was issued as against the writ petitioner when the first charge memo was issued as against the writ petitioner vide proceedings dated 02.12.2019. This Court vide its order dated 15.12.2021 in W.P.(MD)No.13061 of 2020 has categorically observed as follows:-

“14.At the same time, this Court, after perusing the charges framed as against the petitioner and going by the facts of the case, is of the considered opinion that even if the charges are proved, it would not result in the imposition of any major penalties, like, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time-scale. At the most, the allegations levelled as against the petitioner can be termed under insubordination, for which, this Court is of the view that the respondents could have framed the charges against the petitioner under Rule 17(a) and not under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The guidelines issued by the Government and the decisions referred to supra make it very clear that framing of charges under Rule 17(b) will arise only in very serious



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cases, which is not the case herein.

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15.In fact, the petitioner has also raised a ground that in order to stall his scope for promotion, the impugned charge memo was framed under Rule 17(b) and issued on 02.12.2019, for the alleged occurrence said to have taken place in the year 2017, after a lapse of two years. This ground raised by the petitioner could not be brushed aside in toto, since on issuance of charge memo under Rule 17(b), serious consequences will arise, where the delinquent will not be entitled to be considered for promotion, which is not the case when a charge memo is issued under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules.”

24.In view of the above discussion, this Court was pleased to set aside the first charge memo dated 02.12.2019. Now when the writ petitioner is in the verge of his promotion to the post of District Revenue Officer in the panel drawn for the year 2022. The petitioner has been visited by the second charge memo, which is impugned in this case on 18.07.2022.

25.Hence, I have no hesitation to conclude that the action of the second respondent is clear abuse of process of power and that the charges



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referred to in the impugned charge memo are without any valid substance or reason. It is pertinent to mention here that the appointment of all the four cooks has already been confirmed and they are allowed to work and their service has been regularized and their probation has been declared. In such scenario, it is a mockery for having issued a charge memo on the ground that the said appointments are illegal and has been made violating the various rules and guidelines. I have no hesitation to hold that the same has been issued as against the writ petitioner only to nail him to the coffins of deprivation and stagnation in the present post, in which he is serving.

26. In view of the same, this Court is passing the following order:-

(i) The impugned charge memo dated 18.07.2022 framing charges under Rule 17(b) Tamil Nadu Civil Service (Discipline and Appeal) Rules is hereby quashed.

(ii) The respondents are consequently directed to include the petitioner's name in the panel of District Revenue Officer drawn for the year 2022.



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27. Accordingly, the Writ Petition stand allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

03.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Chief Secretary to Government,
Secretariat,
Chennai – 9.
2. The Commissioner/Director,
Office of the Commissioner of Adi Dravidar Welfare,
Chennai - 5.
3. The Joint Director (General)/Financial Controller,
Officer of the Director of Adi Dravidar Welfare,
Chennai - 5.
4. The District Collector,
Ramanathapuram District.



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L.VICTORIA GOWRI, J.

Mrn

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