

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.687 of 2015
and
M.P.No.1 of 2015

S.L.Hemalatha ... Appellant/Petitioner

Vs.

1. State of Tamil Nadu,
rep by Secretary to Government,
Labour & Employment Department,
Fort St. George,
Chennai-9.
2. The Chief Inspector of Factories,
Chennai-5. ... Respondents/Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 10.06.2014 in W.P.No.5398 of 2009.

Petition under Article 226 of the constitution of India, praying for the issue of a writ of Certiorarified Mandamus, calling for the records relating to the impugned show cause notice issued by the 1st Respondent in 26947/E1/2008-6 Labour and Employment (E1) Department dated 24.02.2009 the impugned charge memo issued by the 2nd Respondnet in E2/43202/2004 dated 11.04.2005 and also the impugned suspension order issued by the 1st Respondent in G.O.(D) No.595 Labour and Employment Department dated 22.04.2005 and quash the same and to pass appropriate orders.

For Appellant : Mr.K.Venkataramani, SC
for Mr.M.Muthappan

For Respondents : Mr.N.Sakthivel, GA

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Assailing the show cause notice dated 24.2.2009 issued by the first respondent and the charge memo dated 11.4.2005 issued by the second respondent and also the suspension order dated 22.4.2005 issued by the first respondent, the petitioner has come up with the writ petition. The learned Single Judge, recording the finding that since the enquiry was complete in the meantime, the disciplinary authority may be directed to pass final order within a period of four weeks from the date of receipt of a copy of the order.

2. The facts in nutshell are that the appellant / writ petitioner, while working as Inspector of Factories, was served with charge memo dated 11.4.2005 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, containing five charges. On the heels of it, she was placed under suspension on 22.4.2005.

3. The contention of the learned Senior Counsel for the appellant is that the enquiry was bogus as the officers have proceeded ex parte without furnishing documents and giving opportunity to the appellant / writ petitioner to defend the charges. In such view of the matter, even if the enquiry is complete, the charge memo is unsustainable in law.

4. The learned Single Judge observed as under :

"6. Justifying the reasons for not furnishing the irrelevant documents, the learned Special Government Pleader, by highlighting that the respondents have complied with the order passed by this Court, again submitted that the respondents had initiated the enquiry and the enquiry officer also completed the enquiry proceedings and that the petitioner also, having participated in the first three hearings, subsequently had deliberately avoided and finally the enquiry officer, who initiated the enquiry, had completed the same and submitted a report. After receipt of the enquiry report, the disciplinary authority has furnished a copy of the report along with the second show cause notice calling the petitioner to submit her written representation. Only at this stage the petitioner has come to this Court. Therefore, the petitioner should allow the respondents to pass orders based on the report of the enquiry officer. Only

thereafter, if the decision that is going to be taken by the disciplinary authority is against the petitioner, it is open to her to challenge the said decision. But today it is not known whether the disciplinary authority is going to take a decision in favour of the petitioner or against her. Therefore, at this stage, it is not open to the petitioner to challenge the report of the enquiry officer, he pleaded."

and ultimately found that since the enquiry was complete, new cause of action has arisen and as such, no interference is warranted, at this stage.

5. We have heard the learned counsel for the parties and have also examined the entire facts.

6. We are in total agreement with the view taken by the learned Single Judge. If the enquiry is defective on account of certain allegations made by the writ petitioner, the same cannot be a ground for quashing the memo of charges. The defective enquiry may be a ground for assailing the final order passed on the basis of the enquiry report. Since the enquiry is complete, no cause of action survives at this stage for adjudication.

7. For these reasons, we are not inclined to interfere with the order of the learned Single Judge, at this stage. Reserving liberty to the appellant /writ petitioner to raise all available issues as provided under law, at an appropriate time when proper cause of action arises, this writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vvk

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To

1. The Secretary to Government,
State of Tamil Nadu,
Labour & Employment Department,
Fort St. George,
Chennai-9.
2. The Chief Inspector of Factories,
Chennai-5.

+1cc to the Government Pleader, S.R.No.22927

W.A.No.687 of 2015

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CA(18/05/2015)



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